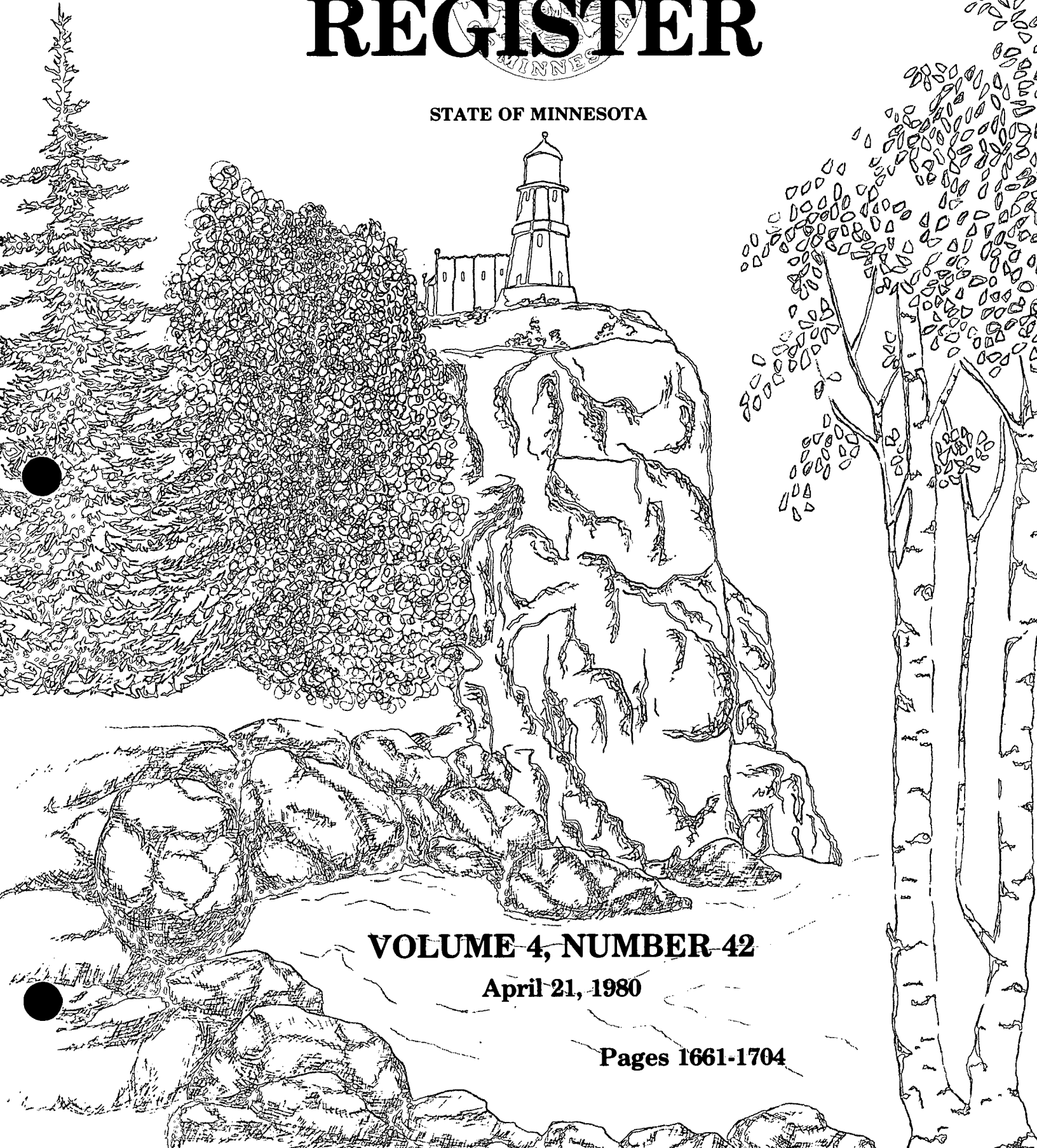




STATE REGISTER

STATE OF MINNESOTA



VOLUME 4, NUMBER 42

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Volume 4 Printing Schedule for Agencies

Table with 4 columns: Issue Number, *Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules, *Submission deadline for State Contract Notices and other **Official Notices, Issue Date. Includes a sub-section 'SCHEDULE FOR VOLUME 4' with rows for issues 43-46.

*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.

**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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NOTICE

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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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.

Minnesota State Retirement System

Executive Director

Proposed Repeal and Adoption of Rules Relating to the Minnesota State Deferred Compensation Plan

Notice of Hearing

A public hearing concerning the proposed repeal and adoption of rules will be held at the Hearing Examiners Office, Room 300, 1745 University Ave., St. Paul, Minnesota, 55104, on June 5, 1980, commencing at 9:00 a.m. The proposed repeal and adoption of rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rule, you are urged to participate in the rule hearing process.

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 Beck, Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, Mn. 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. 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 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 a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the repeal

Public Hearings on Agency Rules April 28-May 5, 1980

Date	Agency and Rule Matter	Time & Place
April 28	Public Welfare Department Welfare Per Diem Rates for Nursing Home Providers Hearing Examiner: Jon L. Lunde	9:00 a.m., Room D, Veterans Service Bldg., 20 West 12th St. and Columbus Ave., St. Paul, MN

and adoption of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimum charge.

The proposed repeal and adoption of rules would repeal the rules governing the present Minnesota Deferred Compensation Plan and establish revised rules governing the Minnesota Deferred Compensation Plan as a restatement and continuation of the present Minnesota Deferred Compensation Plan.

The proposed rule will govern the eligibility to participate in the Plan, the method to enroll, the minimum and maximum deductions permitted, and the procedures to be followed to make changes in the amounts deducted, and to correct an error in the amount deducted.

The proposed rule provides for the records to be maintained, the responsibility of employer, ownership of the assets, valuation of the assets, charges to be assessed against the deduction for administration of the Plan, the type of investment accounts which may be selected by the participant for either past or future deferred compensation, the events under which distribution of the assets in the account may begin and the method and time of distribution.

The proposed rule goes on to provide a distribution in the event of an unforeseeable emergency or financial hardship, the designation of a beneficiary and provides for the non-assignability of the contract and that the deferred compensation monies cannot be attached.

The agency's authority to adopt the proposed rule is contained in Minn. Stat. §§ 352.96 (1978).

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to Paul L. Groschen,

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

Executive Director, Minnesota State Retirement System, 529 Jackson Street, St. Paul, Mn 55101, telephone (612) 296-2761. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rule, contact Mr. Groschen.

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 must 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. (1979 Sept.) 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.

April 4, 1980

Paul L. Groschen,
Executive director

Rules as Proposed

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~~State of Minnesota Deferred Compensation Plan~~

~~CHAPTER ONE—DCP I: ELIGIBILITY~~

~~DCP I—Definition of eligible employee.~~

~~CHAPTER TWO—DCP II: PARTICIPATION PROCEDURES~~

~~DCP II—1. Executive Director to designate open enrollment period. Employee must submit application to participate. Application must be submitted by December 15th and is effective as of the following January 1st. Change in distribution age may be~~

~~made only once and change applies only to subsequent year's deductions. Elections made on previous applications continue in effect if participant fails to indicate change.~~

~~2. Ten dollars is the minimum amount which may be deferred. Amount must be in whole dollars, cents will be disregarded. If initial application fails to show an investment option, investment will be in the income account. Limitations on amount of deferred compensation.~~

~~3. Participant may elect investment in the Income, Growth or Fixed Return Account or various ratios of the accounts. Option selected remains in effect until changed by participant.~~

~~4. Distribution of deferred amount is over a 60 month or 120 month period as selected by participant in his application. Age 65 is assumed if no age specified on application. 120 months is assumed if no period specified on application.~~

~~5. Funds in deferred compensation account are an asset of the state or political subdivision until distributed. Only a contractual obligation exists. Participants' rights are not assignable.~~

~~CHAPTER THREE—DCP III: DEDUCTIONS~~

~~DCP III—1. Amount indicated on employee's application withheld each pay period. Monies to be submitted to Executive Director in form and manner he prescribes.~~

~~2. If indicated deduction exceeds salary, no deduction shall be taken. In case of death, deductions continue on any subsequent check issued for participant.~~

~~3. No adjustment to be made for missed deductions. Amount of any over deduction to be refunded to participant.~~

~~4. Employee must state in application the amount to be withheld each pay period. If pay period length changes, equivalent amount to be deducted.~~

~~5. Funds invested according to M.S. Section 11.18 to 11.24. State or political subdivision not responsible for loss on investment or failure to invest.~~

~~CHAPTER FOUR—DCP IV: BENEFICIARY~~

~~DCP IV—1. Participant may designate a singular beneficiary other than surviving spouse. Payment made to estate if beneficiary predeceases employee. Payment made to surviving spouse or, if none, to estate if no beneficiary is named.~~

~~CHAPTER FIVE—DCP V: DISTRIBUTION~~

~~DCP V—1. Payments commence in January following attainment of age specified or age 65 or death or disability. Social Security Award letter, or if not available, doctor's certificate required as evidence of disability.~~

~~2. Director must be notified of event necessitating payment. Ten percent forfeiture will occur for each year notification of death delayed. Amounts forfeited allocated for administrative costs.~~

~~3A. Monthly payments over the period selected begin the January following specified age or age 65 and continues until account is depleted.~~

~~B. Monthly payments over the period selected begin in January following proof of disability.~~

~~C. Distribution made to beneficiary or, if none, to the surviving spouse or, if none, to the estate upon death of participant.~~

~~(1) Payment commences in January following notification of death over period selected to beneficiary or spouse. Upon death of beneficiary or spouse, balance in lump sum paid to estate of participant.~~

~~(2) If no spouse or beneficiary, upon death of participant, payment made in lump sum to estate of participant.~~

~~D. If participant dies during distribution period, payment continues to spouse or beneficiary.~~

~~E. Participant may elect a 5 year or a 10 year distribution period. If no distribution period specified in application, a 10 year period is assumed. Method of computing number of shares to be distributed each month. If participant has shares in more than one investment account, shares will be redeemed proportionally.~~

~~F. Upon termination of employment, distribution is at the sole discretion of the Executive Director. Distribution options of the Executive Director in the event of termination of participant. Financial Emergency Events defined.~~

~~G. Withdrawal is allowed in the event of a financial emergency.~~

~~H. Director to issue statements prescribed by IRS.~~

~~CHAPTER SIX DCP VI: EMPLOYEE ACCOUNT INFORMATION~~

~~DCP VI Director to provide share account record to participant annually.~~

~~CHAPTER SEVEN DCP VII: ADMINISTRATIVE EXPENSE~~

~~DCP VII 1. Two percent of deferred compensation each pay period shall be deducted for administrative expenses. Rate may be adjusted. Rate adjustment needs concurrence of the legislative auditor.~~

**STATE OF MINNESOTA
DEFERRED COMPENSATION PLAN
Rules & Regulations**

pursuant to Minnesota Statutes, Section 352.96

DCP I. ELIGIBILITY

For purposes of determining eligibility for participation in the Deferred Compensation Plan, the term "officer or employee of the State of Minnesota" shall include any elected official, appointed official or employee of the State of Minnesota, including employees of departments, agencies and instrumentali-

~~ties, wherein the state legislature has specifically held such employees to be "state employees" for any one or more specific purposes such as, but not limited to, membership in Minnesota State Retirement System, employee group insurance program, or unemployment compensation plan for state employees.~~

~~Any elected official, appointed official or employee of a political subdivision of the state, including any employee of such political subdivision or other employing unit entitled to membership in a public retirement plan enumerated in Minnesota Statutes Section 356.20, subdivision 2, shall also be eligible for participation in the Deferred Compensation Plan.~~

DCP II. PARTICIPATION PROCEDURES

1. Submission of Application

~~During periods designated by the Executive Director, Minnesota State Retirement System, an eligible employee may submit an application to the Executive Director, Minnesota State Retirement System, or to his employer, with respect to participation in the Deferred Compensation Plan or with respect to changes to be made in an existing participation program. The employer shall immediately forward such applications to the Executive Director, Minnesota State Retirement System. However, such participation or changes in existing participation will not become effective until the following January 1st.~~

~~Applications for participation in the Deferred Compensation Plan or changes in investment options or withdrawal age must be submitted to the Executive Director, Minnesota State Retirement System by December 15th. Change in age at which distribution will begin may be made only once during employee's period of public service. Such change in investment option or age at which distribution is to begin will apply only to compensation deferred in any subsequent calendar year. If the employee on other than his initial application fails to indicate an amount to be withheld or his choice of investment option, withdrawal age, withdrawal period or other items requested, the Executive Director shall continue employee's previous elections or statements for such items pursuant to the terms of the Deferred Compensation Plan application.~~

2. Deduction Options

~~The minimum amount which may be deferred shall be ten dollars (\$10.00) per pay period. The amounts to be deferred must be stated in whole dollars. If the application indicates any amount which includes cents, the cents will be disregarded. If the application fails to show an investment option, the entire amount will be invested in the income share account.~~

~~While Internal Revenue Service provides no limitation on the amount of compensation which may be deferred, the gross wage is subject to retirement and social security deductions. Therefore, the amount deferred cannot exceed gross wages less amount needed to cover retirement deductions and social secur-~~

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PROPOSED RULES

ity taxes and the state and federal income taxes on such amounts. Consideration should also be given to any voluntary deductions, such as credit union, union dues, etc. However, deduction preference in computing payrolls will be given to deferred compensation deductions over any other voluntary deductions.

3. Investment Options

The participating employee may select one of five investment options, that is, 100% in the Income Share Account, 100% in the Growth Share Account, 50% in the Income Share Account and 50% in the Growth Share Account, 100% in the Fixed Return Account, or 75% in the Fixed Return Account and 25% in the Growth Share Account. The option selected will remain in effect for such calendar year and continue thereafter until changed by submission of a new application to the Executive Director, Minnesota State Retirement System. The State or Political Subdivision may, but is not required, to invest such deferred compensation in accord with the employee's request. Also, shares purchased under such designation will remain in such account until distributed as hereafter provided.

4. Distribution of Assets

The participating employee will have the amount of compensation deferred paid out in monthly installments over a period of either 60 or 120 months, as indicated in his application deferring such compensation upon reaching whatever age is indicated in such Deferred Compensation Application, or if no age is indicated, upon reaching age 65, or becoming totally and permanently disabled. The compensation so deferred will be distributed in accordance with the agreement in effect during the period the compensation was withheld. Any change in age or period for distribution will affect only compensation deferred after effective date of the change. In event of the death of the participating employee, the amount in the deferred compensation account shall be paid out in the manner hereinafter provided. Also, if the application does not indicate the period over which distribution is to be made, 120 months will be considered as being in effect for compensation deferred pursuant to such application.

5. Employee's Rights to Assets

All funds and assets, together with interest, accumulations and increments thereon, in said Deferred Compensation Account shall remain an asset of the State or Political Subdivision, or its successor, and shall be subject to State or Political Subdivision ownership until such time as the participating employee's equity in the funds or assets of such account are distributed in accordance with the Deferred Compensation Agreement. The obligation of the State or Political Subdivision to the participating employee is a contractual obligation only and the employee shall have no preferred or specific interest by way of trust, escrow, annuity or otherwise, in and to the specific assets or funds held in the Deferred Compensation Account.

The employee's rights under the Deferred Compensation Agreement shall not be assigned, transferred or encumbered, nor shall they be subject to attachment, execution or process of any employee's creditors. Except as otherwise provided, the

Deferred Compensation Agreement shall be binding upon the parties thereto, their heirs, assigns, executors, administrators, and successors in interest.

DCP III. DEDUCTIONS

1. Payroll Deductions

The State or other employing unit shall withhold and deduct from the participating employee's total compensation, on a pay period basis, the amount indicated on the employee's application. The amounts so withheld may, but are not required, to be credited and paid into a Deferred Compensation Account established by the Minnesota State Retirement System and shall be submitted to the Executive Director in a form and manner as he prescribes.

2. Deduction Exceeds Pay Period Salary Available

If for any reason the deferred compensation deduction for any pay period exceeds the amount remaining after provision is made for retirement deductions, social security tax contributions, and state and federal income taxes, then no deduction for the deferred compensation plan will be made for such participant for such pay period. No future pay period will be adjusted to take into account the loss of such deferred compensation deduction.

In case of death of the participant, deductions for the deferred compensation plan will continue on any subsequent pay check issued for such participant but subject to the provisions stated above.

3. Missed Deductions and Over Deductions

If a deferred compensation deduction is missed on a payroll period for any reason whatsoever, no adjustment will be made on any future pay period for such missed deduction. However, if for any reason whatsoever an amount is deducted from a pay period greater than that indicated by the participant on his application, the amount over deducted will be refunded by the Executive Director, Minnesota State Retirement System.

Except as provided above, the Department of Finance, Central Payroll regulations shall apply to deductions for the Deferred Compensation Plan for any state department or agency paid through Central Payroll.

4. Change in Pay Period Length

In the employee's application for participation in the Deferred Compensation Plan, he must state the amount he wishes withheld each pay period. If for any reason the length of the period for which the employee is paid is changed from that in effect as of the date of the application, the employer shall compute and have withheld from such employee's salary an equivalent amount to be withheld corresponding to the new pay period length which will result in approximately the same annual amount being withheld.

5. Financial Responsibility of the State or Political Subdivision

The funds and assets paid into the Deferred Compensation Account shall be invested in shares of the Minnesota Supple-

mental Retirement Fund in accordance with Minnesota Statutes, Sections 11.18 to 11.24, and regulations established by the Executive Director until distributed in accordance with the Deferred Compensation Agreement.

The State or political subdivision shall not be responsible for any loss due to the investment or failure of investment of funds and assets in said Deferred Compensation Account, nor shall the State or political subdivision be required to replace any loss whatsoever which may result from said investments.

DCP IV. BENEFICIARY

An employee may designate a singular beneficiary other than surviving spouse to receive payment of the employee's shares in the Deferred Compensation Account in the event of his death. If the designated beneficiary predeceases the employee or dies before receiving payment, the payment shall be made to the employee's estate. Such beneficiary designation shall be in writing and must be filed with the Executive Director of the Minnesota State Retirement System prior to the death of the employee. If no designation of beneficiary is filed with the Executive Director, the beneficiary shall be the surviving spouse, or if none, the employee's estate.

DCP V. DISTRIBUTION

1. Conditions for Distribution

The accumulated shares to the credit of any participant will be distributed upon reaching age 65, or any other age which may be specified by the employee in the Deferred Compensation Agreement; permanent disability; or death, whichever occurs first. Distribution shall begin or be made in January following the year in which the Executive Director, Minnesota State Retirement System, is notified of such occurrence and has received satisfactory evidence as may be required. Permanent disability shall be evidenced by submission of Social Security Administration determination of permanent disability provided the participant is covered by social security and fulfills social security disability benefit requirements. If a social security determination is not available due to non coverage, a doctor's statement indicating nature and extent of disability may be submitted in lieu thereof.

2. Responsibility of Participant

It is the responsibility of the participant, his heirs, or his estate administrator or executor, as the case may be, to notify the Executive Director, Minnesota State Retirement System or the participant's retirement fund chief administrator or former employer who in turn must notify the Executive Director, Minnesota State Retirement System of any of the above occurrences before the end of the calendar year of such occurrence, so that the distribution of the assets may commence in January of the following calendar year, if applicable, in accordance with the distribution provisions listed below.

If notification is not submitted to the Executive director, Minnesota State Retirement System, employer or retirement fund, by January 1st of the calendar year following the date of death, there shall be forfeited, ten percent (10%) of the shares in the Deferred Compensation Account of such deceased employee. Thereafter, for each succeeding January 1st that elapses without such notification of employee's death, an additional ten percent (10%) of the shares held by such deceased employee at date of death shall be forfeited. However, wherein death occurred in either October, November, or December, the first ten percent (10%) forfeiture shall be waived provided notification of such death is given within ninety (90) days of January 1st following date of death. The amounts forfeited under this provision shall be allocated for administrative costs.

3. Manner of Distribution

A. Upon reaching the age specified in the Deferred Compensation Application, or, if none specified, upon reaching age 65, the participating employee will receive monthly payments over the period of months selected in the application deferring such compensation consisting of an equal monthly redemption of the number of shares which such employee held at the time of reaching such age. The monthly payments shall commence in January of the year following the attainment of such age and continue until his account is depleted in its entirety.

B. In the event the employee becomes permanently disabled before the age applicable in 3A above, he will receive monthly payments over the period of months selected in the application deferring such compensation consisting of an equal monthly redemption of the number of shares which such employee held at the time of disability. The monthly payments shall commence in January of the year following submission of satisfactory evidence of such disability to the Executive Director, Minnesota State Retirement System and continue until his account is depleted in its entirety.

C. In the event of the death of a participating employee or former employee before distribution begins under 3A or 3B above, all funds in the Deferred Compensation Account of such employee shall be paid to the designated beneficiary, or if none designated, to the surviving spouse, or if none, to the estate of the deceased employee in accordance with the following:

1. If the above payment is to a designated beneficiary or to the surviving spouse, such beneficiary shall be paid monthly payments over the period of months selected in the application deferring such compensation consisting of an equal monthly redemption of the number of shares which the employee held with the payments commencing in January of the year following notification of death of the employee to the Executive Director, Minnesota State Retirement System, and continuing until the deceased employee's account is depleted in its entirety. In event of the death of the designated beneficiary or the surviving

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spouse while receiving monthly payments, the balance then remaining in the deceased employee's account will be paid in a lump sum to the estate of such designated beneficiary or surviving spouse in January of the year following such notification of the death of such designated beneficiary or surviving spouse.

2. If there is no designated beneficiary or surviving spouse, a lump sum payment of all funds in the Deferred Compensation Account shall be made to the estate of the employee in January of the year following notification to the Executive Director, Minnesota State Retirement System, of such death.

D. In the event of the employee's death during the period of distribution under 3A or 3B above, the employee's designated beneficiary, or if none, the surviving spouse shall be entitled to the monthly payments in accordance with the schedule arrived at for payments under 3A or 3B until the Deferred Compensation Account is depleted in its entirety. If there is no designated beneficiary or surviving spouse, the balance in the Deferred Compensation Account shall be paid in a lump sum to the employee's estate as of January of the year following such notification of death.

E. The employee in the application for participation in the Deferred Compensation Plan can elect for the distribution of such Deferred Compensation over a period of either 5 years (60 months) or 10 years (120 months). The participating employee may submit a new application each year indicating either a 5 year period or a 10 year period for distribution of his deferred compensation. However such election will apply only to compensation deferred in calendar years subsequent to the filing of such new application. If any application fails to indicate the period of time for distribution of the deferred compensation, the period of 10 years shall be applicable to compensation deferred pursuant to such application. The monthly payments required to be made in 3A, 3B or 3C shall be computed by dividing the total number of shares held under each period designation by 60 or 120 in accordance with the withdrawal period selected in the application or applications deferring such compensation so as to determine the number of shares to be redeemed and distributed to the employee or his beneficiary each month. Should such computation result in a quotient of less than ten (10), then ten (10) shares shall be redeemed and distributed to such employee or beneficiary each month until the Deferred Compensation Account is depleted in its entirety. Growth and income shares are purchased and redeemed in whole units. If a participant has shares in more than one investment account, shares will be redeemed proportionally to the extent possible.

F. In the event of the employee's termination of public employment prior to reaching the oldest age specified in the Deferred Compensation Application, for causes other than provided in 3B or 3C, the Executive Director acting for the employer may, at his sole discretion, honor the provisions of the participant's deferred compensation agreement or distribute to the participant amounts from the deferred compensation account in a lump sum upon his termination, provided said lump sum does not exceed the participant's annual salary at the time of his termination, or the Executive Director may pay such amounts as

specified in the participant's deferred compensation agreement but commence said payments at the time of his termination.

If the Executive Director elects to make payments upon participant's termination, either in a lump sum or over the period of time specified in the participant's agreement, and such determination is made prior to the fifteenth day of a month, redemption shall commence at the end of such month; otherwise, redemption shall commence at the end of the following month.

G. Notwithstanding any provisions of 3A through F above, any employee participating in the Deferred Compensation Plan or any former employee who has participated in such plan but has not reached the youngest age specified in the Deferred Compensation Application, may apply for an early withdrawal of certain amounts in the Deferred Compensation Account upon the occurrence of an emergency event as herein defined. Emergency events are defined as and limited to (1) participant's bankruptcy when evidenced by the filing of petition in bankruptcy in federal court or (2) financial losses resulting in participant's net outlay of amounts, over and above reimbursable claims, exceeding three times his gross monthly salary which said losses are occasioned by illness or accidents to participant, his family or property, and which have or will cause great hardship to the participant or beneficiary involved. The employee shall submit such evidence as may be required by the Executive Director to substantiate such loss. If withdrawal is approved by the Executive Director, payment shall be made in a lump sum and shall be limited to that amount necessary to meet the emergency situation. The balance in the Deferred Compensation Account shall, thereafter, be distributed in the manner provided in 3A through F above.

H. For each calendar year that funds are distributed, actually or constructively, from the Deferred Compensation Account, the Executive Director, Minnesota State Retirement System, shall issue to each person receiving, or entitled to receive, such payments, statement prescribed by Internal Revenue Service, informing such persons of the amounts so paid out by the Executive Director.

DGP VI. EMPLOYEE ACCOUNT INFORMATION

Annually, the Executive Director, Minnesota State Retirement System, shall provide a share account record for each participating employee, indicating the number of shares presently credited in such account. An accounting statement will be distributed annually to participants in the Deferred Compensation Plan. The Executive Director, Minnesota State Retirement System, shall distribute information concerning the availability of the Deferred Compensation Plan to eligible public employees from time to time as he shall deem appropriate.

DGP VII. ADMINISTRATIVE EXPENSE

In order to provide funds for administrative costs, two percent (2%) shall be deducted from the Deferred Compensation deduction each pay period, provided, however, that if such deductions prove to be excessive or insufficient to pay all necessary costs of administration, the Executive Director of the Minnesota State Retirement System shall adjust the charges accordingly.

~~However, any increase in administrative charges shall take effect only after the Legislative Auditor in reviewing the operations of the Minnesota State Retirement System concurs in the finding that costs of the Deferred Compensation Plan exceed the income from the 2% administrative charge.~~

Rules as Proposed (all new material)

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2 MCAR § 3.5001 Establishment and purpose of plan.

A. Establishment of plan. This plan shall be known as the Minnesota Public Employees' Deferred Compensation Plan ("plan") and is hereby created in accordance with Minn. Stat. § 352.96 and section 457 of the United States Internal Revenue Code. This plan shall constitute a continuation of the Minnesota Deferred Compensation Plan, approved by the Attorney General and filed with the Secretary of State and the Commissioner of Administration, November 24, 1975.

B. Purpose of plan. The purpose of this plan is to allow employees to designate a portion of their compensation to be withheld each pay period by the employer and invested at the discretion of and in a manner approved by the director for the employer until termination of employment, financial hardship or death of the employee. Any compensation deferred by employees may be invested by the director, for the employer, but there is no requirement for the director or employer to do so. Participation in this plan shall not be construed to establish or create an employment contract between the employee and the employer.

2 MCAR § 3.5002 Definitions.

A. Definitions. Whenever used in the plan, the following terms shall have the meanings as set forth below unless otherwise expressly provided:

1. "Accounting date" means the date on which an investment fund is valued and earnings and/or losses are allocated to participants' deferred compensation accounts. There shall be an accounting date at least once a month on the last business day of the month and, if practical in the discretion of the board, more frequent accounting dates to reflect, as closely as possible, the earnings and/or losses with respect to a deferred compensation account from the time compensation is deferred and invested in various investment funds until it is eventually distributed according to the plan.

2. "Beneficiary" means the person or legal entity provided for by the plan to receive any undistributed deferred compensation which becomes payable in the event of the participant's death.

3. "Board" means the Minnesota State Board of Investment.

4. "Code" means the Internal Revenue Code of 1954, as amended from time to time, or any successor statute.

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5. "Compensation" means any remuneration payable to an individual who performs service for the employer which is reportable as taxable income for purposes of the code.

6. "Deferred compensation" means that portion of the participant's compensation which the participant and employer mutually agree to defer under this plan.

7. "Deferred compensation account" means the account established for the investment of deferred compensation. It shall include the supplemental investment account and the fixed and variable annuity account.

a. "Supplemental investment account" means the Minnesota Supplemental Retirement Fund as established by Minn. Stat. §§ 11.18 and 11.19 and managed by the board.

b. "Fixed and variable annuity account" means the investment accounts of the companies approved by the board pursuant to Minn. Stat. § 352.96, subd. 2.

8. "Director" means the executive director of the Minnesota State Retirement System.

9. "Employee" means:

a. Any individual receiving compensation for services from the State of Minnesota which shall include any elected official, appointed official, independent contractor, or employee of the State of Minnesota, including employees of departments, agencies and instrumentalities, wherein the state legislature has specifically held such employees to be "state employees" for any one or more specific purposes such as, but not limited to, membership in the Minnesota State Retirement System, employee group insurance program, or unemployment compensation plan for state employees, or

b. Any individual receiving compensation for services performed for a political subdivision of the state and shall include any elected official, appointed official, independent contractor or employee of a political subdivision of the state, including any employee of such political subdivision or other employing unit entitled to membership in a public retirement plan, enumerated in Minn. Stat. § 356.20, subd. 2.

10. "Employer" means:

a. The State of Minnesota, or

b. A political subdivision of the State of Minnesota, or an agency or instrumentality of the State of Minnesota or its political subdivisions.

11. "Includable compensation" means the compensation remaining after any deferrals through this plan and/or any amount of compensation excluded from taxable income as a result of contributions made for the benefit of an employee under section 403(b) of the code.

12. "Normal retirement age" means the earliest of the following:

a. Attainment of eligibility by the participant to commence receiving normal retirement benefits from one of the retirement systems enumerated in Minn. Stat. § 356.20, subd.

2, or other Minnesota public employee pension plan of which participant is a member.

b. Age 65.

13. "Participant" means any individual who has enrolled in this plan as provided in 2 MCAR § 3.5004 and has not had a complete distribution of his or her deferred compensation account.

14. "Pay period" means a regular accounting period established by the employer for measuring and paying compensation earned by employees.

15. "Plan" means the Minnesota Public Employee's Deferred Compensation Plan as set forth herein and as it may be amended from time to time.

16. "Prior plan" means the Minnesota Deferred Compensation Plan approved by the Attorney General and filed with the Secretary of State and the Commissioner of Administration November 24, 1975 and any plans established thereunder by political subdivisions of the State of Minnesota.

17. "Projected retirement date" means a date established to allow deferral of underutilized amounts according to the provisions of 2 MCAR § 3.5004 D.2. Only one projected retirement date may be designated and is to be designated on a form approved by the director.

18. "Termination of service" means the permanent severance of the participant's employment relationship with the employer by means of: retirement; discharge (provided all appellate processes have been exhausted or tolled); resignation (provided seniority or continuous service is interrupted); permanent layoff; expiration or nonrenewal of appointment or term of office; nonreelection; or such other form of permanent severance as may be provided by appropriate law, contract or rules and regulations. For purposes of this definition, a break in employment for a period of less than 30 days shall not be considered a termination of service.

19. "Taxable year" means the calendar year, beginning January 1 and ending on December 31.

B. Gender and number. Except when otherwise indicated by the context, any masculine terminology therein shall also include the feminine and neuter and vice-versa, and the definition of any terms herein in the singular may also include the plural.

2 MCAR § 3.5003 Responsibilities of the director. The director has the full power and authority to administer the plan and promulgate, adopt, amend or revoke internal management procedures which are consistent with, and necessary to implement and maintain, this plan.

The employer or the director on behalf of the employer may enter into a written agreement with each participant. Such written agreement and other application forms shall be in a form and manner as prescribed by the director and shall set forth the obligations contained in this plan, the amounts of compensation to be deferred, and such other information as the director deems necessary to administer the plan.

Pamphlets describing this plan and outlining the options and opportunities available shall be prepared under the direction of the director, and made available to eligible employees. Copies of the plan will be made available upon request. Individual account statements shall be made available to each participant at least annually.

2 MCAR § 3.5004 Participation in the plan.

A. Eligibility. All employees who are receiving compensation on or after the date the plan becomes effective, and who have not revoked earlier participation pursuant to 2 MCAR § 3.5004 F. during the most recent taxable year, shall be eligible to become participants in accordance with 2 MCAR § 3.5004 B.

B. Enrollment. Any employee eligible to participate in accordance with 2 MCAR § 3.5004 A. may become a participant by agreeing with the employer in writing, on a form approved by the director, to a deferment of his or her compensation in accordance with 2 MCAR § 3.5004 C. and D. The deferment will commence with the first full pay period following 30 days from the date the application is properly completed by the employee and accepted by the employer or director acting for the employer. The application shall also specify an investment preference for the deferred compensation.

C. Minimum deferment. The minimum amount which may be deferred shall be ten dollars (\$10.00) per pay period. The amounts to be deferred must be stated in whole dollars. If the application indicates any amount which includes cents, the cents will be disregarded.

D. Maximum deferment. The total amount of deferred compensation during any taxable year shall not exceed the limits provided in D.1. and D.2. of this rule.

1. 33½% of includable compensation or \$7,500 whichever is less; or

2. Each participant may designate a projected retirement date to be on or after normal retirement age. For each of three taxable years preceding his or her projected retirement date, a participant may defer an amount equal to the limits set forth in 2 MCAR § 3.5004 D.1. plus an additional amount equal to the difference between the amount of compensation which could have been deferred under this plan, and the amount which was deferred. In no event, however, can the deferral exceed \$15,000 for any taxable year.

If a participant also participates in or has amounts contributed by the employer for the purchase of a tax-sheltered annuity or mutual fund shares held in a custodial account, and part or all of such contributions are excludable under Section 403(b) of the Internal Revenue Service Code, the contributions excludable under Section 403(b) reduce the maximums established in paragraphs D.1. and D.2. of this rule.

In no event can deferrals exceed an employee's compensation less deductions for FICA, any other taxes, pension contributions and other mandatory deductions.

E. Modifications to amount deferred. The employer shall adjust the participant's total annual compensation, on a pay period basis, by the deferred compensation amount indicated on the participant's application. That amount, subject to the limits of 2 MCAR § 3.5004 D. may be increased or decreased only by proper application to the employer or to the director acting for employer. The change shall take effect the first full pay period following 30 days from receipt and approval of the application. Only two modifications (other than a revocation of participation as provided in 2 MCAR § 3.5004 F.) may be made each taxable year.

F. Revocation of deferral. Any participant may revoke his or her election to have compensation deferred by so notifying the employer or the director acting for the employer in writing. The participant's full compensation on a non-deferred basis will then be restored beginning with the first full pay period following 30 days from the date notification was received; however, the participant's deferred compensation account shall be paid only as provided in 2 MCAR § 3.5005. The participant may not again be eligible to defer compensation until the next taxable year.

G. Duration of election to defer compensation. Once an election to have compensation deferred has been made by the participant, the election shall continue in effect until the participant's termination of service, unless the participant modifies the amount in accordance with 2 MCAR § 3.5004 E., or revokes the deferred compensation in accordance with 2 MCAR § 3.5004 F.

H. Deferral adjustments.

1. Deduction exceeds pay period salary available. If for any reason the deferred compensation deduction for any pay period exceeds the amount remaining after provision is made for retirement deductions, social security tax contributions, state and federal income taxes, and any other deductions required by law, then no deduction for the plan will be made for such participant for such pay period.

2. Missed deductions and over-deductions. If a deferred compensation deduction is missed for any reason whatsoever, no adjustment shall be made on any future pay period for such missed deduction. However, if for any reason whatsoever an amount is deducted from a pay period greater than that indicated by the participant on his application, the amount over deducted will be refunded.

3. Change in pay period length. In the employee's application for participation in the plan, he must state the amount he wishes withheld each pay period. If for any reason the length of the period for which the employee is paid is changed from that in effect as of the date of the application, the employer or the

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director acting for employer shall compute and have withheld from such employee's salary an equivalent whole dollar amount to be withheld corresponding to the new pay period length which will result in approximately the same annual amount being withheld.

4. Maximum deduction. The employer shall insure compliance with the maximum deferment set for in 2 MCAR § 3.5004 D. If the amount deducted exceeds the maximum deferment set forth in 2 MCAR § 3.5004 D., the amount of subsequent deductions for the remainder of the taxable year shall be adjusted to conform to the maximum deferment allowed for the year. If it is not possible to correct the total deduction by year end, the overage shall be refunded.

2 MCAR § 3.5005 Participants' accounts, investments and distributions.

A. Deferred compensation accounts and valuation.

1. Participants' accounts. An investment account shall be established for each participant which shall be the basis for any distributions payable to the participants under 2 MCAR § 3.5005 E. Each participant's account shall be credited with the amount of any compensation deferred and received less the administrative charge set forth in 2 MCAR § 3.5005 A.4. and shall be further credited or debited, as applicable, with any increase or decrease resulting from investments pursuant to 2 MCAR § 3.5005 C., credited or debited with any investment expenses, if applicable, debited for the amount of any distribution, and credited initially with the value on the effective date of this plan of any bookkeeping account maintained under the prior plan.

2. Financial responsibility of the employer. The funds and assets paid into the deferred compensation account may be invested in approved investments as provided by Minn. Stat. § 352.96, subd. 2, until distributed in accordance with 2 MCAR § 3.5005 D., E. and F.

The employer shall not be responsible for any loss due to the investment or failure of investment of funds and assets in said deferred compensation account, nor shall the employer be required to replace any loss whatsoever which may result from said investments.

3. Accounting dates and investment fund valuation. The supplemental investment account is to be valued by the board as of each accounting date in accordance with the provisions of Minn. Stat. §§ 11.18 and 11.19. Any withdrawals or distributions shall be made in cash. The amount paid upon such withdrawal or distribution shall be based upon the account's value as of the accounting date.

The fixed and variable annuity account is to be valued at current market value as of each accounting date on a reasonable and consistent basis and according to the terms of the contract as approved by the board pursuant to Minn. Stat. § 352.96.

4. Administrative expense. The director shall establish and levy a charge to be made against the deferred compensation invested in the supplemental investment account to pay adminis-

trative costs. The director shall review the charge levied annually and if such levy proves to be excessive or insufficient to pay all necessary costs of administration, the director shall adjust the charges accordingly.

Administrative costs for the fixed and variable annuity account shall be established by the contract as approved by the board pursuant to Minn. Stat. § 352.96.

B. Unsecured general creditor. Title to, and beneficial ownership of any assets, whether in cash or investment which the employer may earmark to pay or measure any deferred compensation hereunder, shall at all time, remain as a part of the general assets of the employer. The participant and his beneficiary shall not have any property interest whatsoever in any specific asset of the employer on account of his election to defer any compensation under this plan. To the extent that any person acquires a right to receive payments from the employer under the terms of this plan, such right shall be no greater than the right of any unsecured general creditor of the employer.

C. Investment of funds.

1. Any compensation deferred by employees may be invested by the employer or by the director for the employer but there is no requirement to do so.

2. Investment options. The participant may select an investment preference from among the options provided in the deferred compensation account.

a. The supplemental investment account shall provide the following options: the income share account, the growth share account and the fixed return account.

b. The fixed and variable annuity account shall provide the following options: a fixed annuity and a variable annuity.

A participant may select any combination of these five (5) investment account preferences by specifying on the application the amount to be deferred under each investment preference. The amount to be deferred cannot be less than ten dollars (\$10.00) per pay period per account selected.

3. Investment preference requests for future compensation. A participant shall, at the time of enrollment, make an investment preference request an application provided for that purpose. Once made, an investment request shall continue for any deferrals unless later changed by the participant.

A participant may, once in any taxable year, change his or her investment preference request for future amounts of deferred compensation. A change in investment request shall be effective with respect to compensation to be deferred for the first full pay period following 30 days from receipt of the request.

4. Investment preference requests for past deferred compensation. A participant may also, once in any taxable year, at the same time as a change is requested under 2 MCAR § 3.5005 C.3., or in lieu of a change thereunder, change his or her investment preference request with respect to all previously deferred compensation. Such changes are limited to a change

within the fixed and variable annuity account or within the supplemental investment account but not between the accounts and are also limited to transfers to fixed accounts only. These changes in investment preference shall be effected as soon as practical as cash flow to an account permits, but not later than six months after the requested change.

D. Distribution events. A participant's deferred compensation account may begin to be distributed in accordance with 2 MCAR § 3.5004 E. and F. the month following the day on which one of the following events occurs:

1. Termination of service,
2. Death,
3. Financial emergency,
4. Delayed distribution date as provided in 2 MCAR § 3.5005 F.

E. Methods of distribution. Distribution of a participant's deferred compensation account shall be made in one of the following ways, with the method determined in accordance with 2 MCAR § 3.5005 F.

1. A participant in the supplemental investment account may have deferred compensation distributed in one of the following methods:

- a. In a lump sum.
- b. In a lump sum purchase by the director of a fixed or variable annuity contract with the companies approved by the board pursuant to Minn. Stat. § 352.96, Subd. 2 which contract shall include the availability of the options set forth in 2 MCAR § 3.5005 E. 2.
- c. In monthly installments distributed over a period of months specified by the participant not to exceed 240 months.

The monthly installment payment from the supplemental investment account shall be determined by dividing the number of shares held by the months to be paid in accordance with the withdrawal period selected. Should such computation result in a quotient of less than ten (10), then (10) shares shall be redeemed and distributed to such employee or beneficiary each month until the deferred compensation is depleted in its entirety. If the deferred compensation has been invested in shares of more than one investment account, shares will be redeemed in whole units proportionately to the extent possible. Fixed return investment payments shall also include payment of annual interest on the invested balance.

2. A participant in the fixed and variable annuity account may have deferred compensation distributed in the form of monthly annuity payments. The annuity payments shall be based on one of the following methods:

- a. The life of the participant.

b. The life of the participant or a period certain, whichever is greater.

c. The joint lifetime of the participant and a named beneficiary.

Notwithstanding any other rule to the contrary, if a fixed and variable annuity account is equal to or less than \$1,000, the account shall be distributed in a lump sum the month following a delayed distribution date not exceeding one year from the date the participant was first entitled to begin distributions.

Once payments have commenced on an annuity basis, any future payments to a beneficiary will depend on the terms of the annuity payments agreed to by the participant and the employer. If a participant dies prior to the end of a period certain, any remaining distributions will be paid to the beneficiary determined under 2 MCAR § 3.5005 H. If annuity payments have commenced on a joint and last survivor basis, any payments due after the death of the participant will be due only to the other person on which the annuity payments have been based and not any other beneficiary.

If, in fact, an annuity contract is purchased, the owner and named beneficiary shall be the employer. Any rights of participants or beneficiaries are derived solely from this plan.

F. Election of method and time of distribution. At any time prior to the date distributions are to commence (except for hardship distributions as provided in 2 MCAR § 3.5005 G.) a participant may elect a delayed distribution date or elect the method by which the deferred compensation account shall be distributed subject to the following rules:

1. A participant or beneficiary may elect, by filing a form provided for that purpose, to delay the commencement of distributions until after a specific future date. Such future date shall be referred to as the "delayed distribution date" for purposes of this plan.

If a participant should die prior to the delayed distribution date, the death will be treated as an event of distribution, and the beneficiary shall have the right to elect the method and time of distribution as if the beneficiary was the participant.

2. The distribution date or method of distribution may be changed at any time prior to distribution. Once payment has commenced, the distribution date or method of distribution may not be changed, except to allow a lump sum payment of the remaining balance the month following receipt of such request from the participant.

3. Distribution may not begin prior to termination of service or death except for hardship distributions as provided in 2 MCAR § 3.5005 G.

4. If no distribution date or method of distribution is elected, then a lump sum payment shall be made to the partici-

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pant the month following his or her 70th birthday or termination of employment, whichever is later. The participant shall be given 30 days notice of the intent to make such lump sum payment.

G. Financial hardship. A distribution of all or a portion of a participant's deferred compensation account or a change in method of distribution to a participant notwithstanding the fact that distribution has commenced shall be permitted in the event the participant is faced with an unforeseeable financial emergency.

Examples of an unforeseeable emergency or "financial hardship" may include the following: impending personal bankruptcy; unexpected and unreimbursed major expenses resulting from illness, accident, or disability of the participant or any dependent thereof; major property loss or any other type of unexpected unreimbursed personal expense of a major nature that would not normally be budgetable; and the disability of the participant. Foreseeable personal expenditures normally budgetable, such as a down payment for a home, the purchase of an automobile, college, or other educational expenses, etc., will not constitute a "financial hardship."

Any participant desiring a distribution by reason of serious financial hardship must demonstrate that the circumstances being experienced were not under the participant's control and constitute a real emergency which is likely to cause the participant great financial hardship. The employer or director acting for the employer, shall have the authority to require such medical or other evidence as he may need to determine the necessity for participant's withdrawal request.

The distribution shall be limited to an amount sufficient only to meet the emergency and shall in no event exceed the amount of his or her deferred compensation account. Any remaining benefits shall be distributed in accordance with 2 MCAR § 3.5005 D., E., and F.

The allowed distribution shall be payable by a method determined by the employer or the director acting for the employer and commence as soon as possible after notice to the participant of approval.

H. Designation of beneficiary. A participant may designate a beneficiary to receive payment of the participant's deferred compensation in the event of his or her death. With respect to deferred compensation in the supplemental investment account, only a singular beneficiary may be designated. If the designated beneficiary predeceases the employee or dies before receiving payment, a lump sum payment shall be made to the participant's estate. Such beneficiary designation shall be in writing and must be filed with the director or company approved by the board pursuant to Minn. Stat. § 352.96, subd. 2, as the case may be, prior to the death of the participant. If no designation of beneficiary is filed with the director, the beneficiary shall be the surviving spouse, or if none, a lump sum payment shall be made to the participant's estate.

I. Leave of absence. Any participant who is granted a leave of absence by the employer may continue to be a participant in this plan as long as the leave of absence is approved by the employer. If an approved leave of absence is terminated by the employer or employee without the resumption of the employment relationship, the participant shall be treated as having a termination of service under this plan.

2 MCAR § 3.5006 Miscellaneous.

A. Nonassignability. The contract entered into between the employer and a participant through this plan and the benefits, proceeds or payments thereunder cannot be sold, assigned, pledged, commuted, transferred or otherwise conveyed by any employee, participant or beneficiary. An attempt to assign or transfer shall not be recognized and shall impose no liability upon the employer.

Except as otherwise required by law, any deferred compensation monies withheld pursuant to this plan shall not be subject to attachment, garnishment, or execution, or to transfer by operation of law in the event of bankruptcy or insolvency of the participant or otherwise.

B. Headings and subheadings. The headings and subheadings in this plan are inserted for the convenience of reference only and are to be ignored in any construction of the provisions hereof.

C. Severability. If any provision of this plan shall be for any reason invalid or unenforceable, the remaining provisions shall, nevertheless, continue in effect and shall not be invalidated thereby. If the Internal Revenue Service finds any of the provisions of this plan to be inconsistent with section 457 of the code or other regulations of the United States Treasury the director shall have the authority to amend by administrative order any of the provisions of this plan to bring them into compliance with the code or regulations.

D. Conflicts. In the event any form or other document used in administering the plan conflicts with the terms of the plan, the terms of the plan shall prevail.

2 MCAR § 3.5007 Amendment of plan.

A. Amendment of plan. The director acting for the employer shall have the authority to propose amendments to this plan from time to time consistent with the provisions of Minn. Stat. § 352.96 and the code and regulations of the U.S. Treasury. No amendment or modification shall adversely affect the rights of participants or their beneficiaries to the receipt of compensation deferred prior to such amendment or modification unless required by state or federal law to maintain the tax status of the plan and any compensation previously deferred.

B. Prior plan. This plan constitutes a continuation of the Minnesota Deferred Compensation Plan approved by the Attorney General and filed with the Secretary of State and the Commissioner of Administration, November 24, 1975. All participants and any compensation deferred under the prior plan are, from the effective date of this plan, governed by the terms of this plan subject to the following provisions:

1. All deferrals elected under the prior plan shall continue without further action as long as they do not exceed the limits in 2 MCAR § 3.5004 D.

2. Any investment requests made under the prior plan shall continue to apply to any deferrals made under this plan in accordance with 2 MCAR § 3.5005 C.

3. Any election of the method of distribution of benefits made under the prior plan shall be void, and a participant or beneficiary may elect the form of distribution in accordance with 2 MCAR § 3.5005 F.

2 MCAR § 3.5008 Applicable law. This plan shall be construed, administered and governed in all respects under and by the laws of the State of Minnesota, Minn. Stat. § 352.96, and section 457 of the code.

Department of Transportation

Proposed Amendments to Rules on Public Transit Subsidy, Paratransit Grant Program, Regular Route Transit Improvement Program, Financial Application for Subsidy and Grant Assistance; and Proposed New Rules Regarding Uniform Performance Standards in the Metropolitan Transit Taxing District, and the Public Transit Capital Grant Assistance Program

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 May 29, 1980 at 10:00 a.m.

The statutory authority of the Department of Transportation to adopt and promulgate these rules is provided in Minn. Stat. §§ 15.0412 and 174.23, subd. 2 (1978). The proposed rules, if adopted, would:

- (1) Change rule titles and make other similar editing changes of a non-substantive nature in the light of recent amendments to Minn. Stat. ch. 174.
- (2) Modify certain statutory references to enable the rules to remain effective until reached by future legislative action.
- (3) Delete provisions concerning local governmental financial support now obsolete as a result of recent enactments.
- (4) Adopt uniform performance, service, and operating standards, as well as funding procedures, for private operators in the metropolitan transit taxing district.
- (5) Adopt application, review, and approval procedures for the public transit capital grant assistance program.

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: Ms. Sherri Y. Alston, Assistant Commissioner for Public Transportation, Minnesota Department of

Transportation, Room 413 Transportation Building, Saint Paul, Minnesota 55155. The rules will be available at the door on the date of the hearing.

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 above 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 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.

All interested or affected persons will have an opportunity to participate concerning the adoption of proposed or amended rules relating to public transportation assistance and transportation management as authorized under Minn. Stat. §§ 174.21 to 174.27, 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 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 Richard DeLong, Hearing Examiner, Office of Hearing Examiners, at Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104, telephone (612) 296-8117, 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.

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

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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 an 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 its 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 or her 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.

April 7, 1980

Richard P. Braun
Commissioner

Rules as Proposed

14 MCAR § 1.4025 General provisions.

A. Authority. The Minnesota Department of Transportation is authorized to adopt rules necessary to carry out the Public Transit Subsidy Program, Paratransit ~~Demonstration Grant Program, and the Regular Route Demonstration Transit Improvement Program, and the Public Transit Capital Grant Assistance Program~~ pursuant to Minn. Stat. ~~1977, ch. 174 (1977 Supplement)~~ and Minn. Stat. ~~1976~~ § 15.0412 ~~as amended~~.

B. Definitions. The following terms as used in these Rules have the following meanings:

1. "Department" means the Department of Transportation.

2. ~~"Demonstration assistance"~~ "Regular Route Transit Improvement Program" means state financial assistance granted to an eligible recipient in accordance with ~~the Paratransit Service Demonstration Grant Program or Regular Route Demonstration Program established pursuant to Minn. Stat. §§ 174.25 and 174.26 (1977 Supplement)~~.

3. "Public transit" or "transit" means general or specific transportation service provided to the public on a regular and continuing basis. "Public transit" or "transit" includes paratransit and regular route transit. For the purposes of these rules, this term does not include air or rail transit.

4. "Subsidy assistance" means state financial assistance granted to an eligible recipient in accordance with the Public Transit Subsidy Program established pursuant to Minn. Stat. § ~~174.24 (1977 Supplement)~~.

5. "Operating deficit" means the amount by which the total operating expenses incurred in the operation of the public transit system exceeds the amount of operating revenue derived therefrom and the amount of any social fare reimbursement pursuant to Minn. Stat. § ~~174.24~~ 174.24, subd. 4. ~~(1977 Supplement)~~. Financial assistance received from the federal government for the operation of a public transit system shall be treated as revenue for the purpose of determining the operating deficit.

6. "Commuter van" has the meaning given it in Minn. Stat. ~~1976~~, § 221.011.

7. "Development region" has the meaning given to it by Minn. Stat. §462.384.

8. "Paratransit" means the transportation of passengers by motor vehicle or other means of conveyance by persons operating on a regular and continuing basis and the transportation of passengers as its primary and predominant purpose and activity, but excluding regular route transit. "Paratransit" includes transportation by car pool and commuter van, point deviation and route deviation services, shared-ride taxi service, dial-a-ride service, and other similar services.

9. "Regular route transit" means transportation of passengers for hire by a motor vehicle or other means of conveyance by any person operating on a regular and continuing basis as a common carrier on fixed routes and schedules. "Regular route transit" does not include transportation of children to or from school or of passengers between a common carrier terminal station and a hotel or motel, transportation by common carrier railroad or common carrier railroads or by taxi, transportation furnished by a person solely for his or its employees or customers, or paratransit.

C. Program applications. The program application procedure shall consist of a preliminary and final application. (See 14 MCAR §§ 1.4026, 1.4027 and 1.4028 for other rules relating to final application.)

The preliminary application must be submitted to the department and appropriate regional development commission for review and approval for consistency with regional transportation plans and development guides prior to the department approving the application. The RDC as part of their review will insure that existing public or private transit service in the proposed service area has the opportunity to comment on the proposed project. The RDC in their review will indicate this has been accomplished. Any regional development commission that has not adopted a transportation plan may review but may not approve or disapprove an application. The regional development commission must transmit its comments to the department within forty-five days of the receipt of the application. The preliminary application must also be submitted to the local transit authority, commission or system for review and comment as to consistency with its approved transportation development program. That review must be submitted to the department and RDC within thirty days of receipt. No comment from the RDC, local transit authority, commission or system will constitute a positive comment from such commission, authority or system. After considering those comments and within sixty days of receipt of preliminary application, the department shall determine and notify the applicant of its eligibility to submit a final application.

The final application must also be submitted to the RDC and transit authority, commission or system for comment. The department will allow any regional development commission or transit system to withdraw their approval or comment for any

final application that deviates significantly from the preliminary application. Those comments must be submitted to the department with 15 days of receipt. The department will act upon the final application within 20 days of receipt.

Approval of applications shall be based on criteria in 14 MCAR §§ 1.4026, 1.4027 and 1.4028.

D. Regulation of use of subsidy and demonstration assistance.

1. State audits. The financial records of the eligible recipient will be audited by the department. A benchmark audit of the recipient's books shall be required at the beginning of the first contract period and prior to contract execution and fund encumbrance. Another audit shall be required at the end of the contract period to establish an approved total operating deficit. The department shall conduct an interim audit of an approved total operating system that is sold during the contract period as of the effective date of the ownership transfer. Other audits may be made by the department. The eligible recipient will be required to conduct an audit of the participating public transit system financial records.

2. Record keeping. The eligible recipient and participating public transit system shall maintain accounting and other records as required by the department. These records will permit audit verification of all transit cost allocations claimed during the contract period.

3. Project evaluation. The department shall use the management plan required pursuant to 14 MCAR § 1.4028 as a basis for monitoring and evaluating the performance of the participating public transit system during the contract period. Public transit policy management decisions made and actions taken during the contract period shall conform with the management plan. Any proposed deviation from the management plan shall be reported to the department for approval prior to implementation. Failure to secure approval will jeopardize continued subsidy or demonstration assistance.

4. Third-party contracts. Private and public organizations may participate in projects by contract with the eligible recipient. Mn/DOT concurrence is required for the third-party contract.

5. Penalties. When the eligible recipient fails to faithfully comply with the terms and conditions of the contract, the department may terminate all or part of the subsidy or demonstration assistance awarded to the eligible recipient.

14 MCAR § 1.4026 Public transit subsidy program.

A. Purpose. The purpose of the Public Transit Subsidy Program is to supplement local effort in financing public transit systems in order to preserve and develop public transit and a balanced transportation system in the state.

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B. Eligibility.

1. Eligible recipients. Any legislatively established public transit commission or authority, any county or statutory or home rule charter city providing financial assistance to public transit, any private operator of regular route transit, or any combination thereof is eligible to receive financial assistance through the public transit subsidy program.

2. Eligibility factors. A public transit system with a total operating deficit projected for the contract period shall be eligible for subsidy assistance. Deficits incurred prior to this period shall not be eligible for subsidy assistance. When a legislatively established public transit commission or authority is in existence, any application for the area under the jurisdiction of the commission or authority must be submitted by that commission or authority, except any private operator of regular route transit in the metropolitan transit taxing district as defined in Minn. Stat. § 473.446, subd. 2 may apply directly to the department.

C. Application for subsidy assistance.

1. General. The application for subsidy assistance shall be submitted in two stages: preliminary and final applications. The department shall assist the applicant in the preparation of the final application upon request. Subsidy assistance may not be used to pay any costs incurred by the applicant in the preparation, submission or processing of applications.

2. Preliminary application. The preliminary application shall be submitted to ascertain the probable eligibility of the applicant, including projected total operating deficit and projected availability of state and local financial assistance. For a particular public transit system, only one preliminary application shall be submitted on behalf of all units participating in the system. The preliminary application shall be in the form and manner prescribed by the department and shall contain the information required by the department, including the following:

- a. The applicant's legal name;
 - b. The official name of the public transit system for which the subsidy assistance would be used;
 - c. The common carrier certificate number of public transit system prescribed by the Minnesota Public Service Commission;
 - d. The amount of subsidy assistance requested;
 - e. A narrative describing the transit service; and
 - f. A description of the transit costs allocation method.
- g. The preliminary application shall be submitted to the department and appropriate RDC as required in 14 MCAR § 1.4025 C.

A preliminary application that contains all of the above information will be approved for submittal of a final application.

3. Final application. The final application shall be submitted to determine the subsidy assistance to be granted and basic elements in the agreement. It shall be submitted by an applicant who has received notice that, based on its preliminary

application, it is an eligible recipient. It shall be submitted to the department and appropriate RDC and include the elements specified in 14 MCAR § 1.4028. When the eligible recipient has submitted or anticipates submitting an application for assistance under the demonstration program 14 MCAR § 1.4027, during the contract period, that project must be identified in the application.

D. Determination of subsidy assistance.

1. Total operating deficit. In determining the total operating deficit of a public transit system, the following shall apply:

- a. Generally accepted accounting principles and practices;
- b. Depreciation of capital equipment that was purchased with state or federal financial assistance shall be excluded in the computation of total operating expenses to the extent of the federal or state assistance;
- c. Subsidy assistance shall be considered on the basis of the total project deficit for the proposed contract period;
- d. A deficit incurred as the result of authorized increased services shall be considered in determining eligibility;
- e. An eligible recipient shall treat financial assistance received from any agency of the federal government for the operation of a public transit system as revenue for the purposes of determining its total operating deficit.

2. Factors in subsidy assistance. The department shall review the application and determine the amount of subsidy assistance, if any, that shall be given to the eligible recipient.

a. The department shall use the management plan required pursuant to 14 MCAR § 1.4028 as a basis for allocation of subsidy assistance to an eligible recipient. In the allocation of subsidy assistance, the department shall consider population, transit ridership, relative need for public transit, new developments, and prior local assistance. Subsidy assistance shall not exceed two-thirds of the total operating deficit of the public transit system, as approved by the department. The eligible recipient shall establish to the satisfaction of the department that at least one-third of the total operating deficit will be available from local sources during the contract period. When more than one unit contributes assistance to the operation of the public transit system, the share contributed by each shall be specified.

b. In the Minneapolis-St. Paul Metropolitan transit taxing district as defined in Minn. Stat. § 473.446, subd. 2 private operators of transit service that are eligible recipients may receive a grant for up to 100% of their operating deficit. The amount of the grant shall be based on the uniform performance standards specified in 14 MCAR § 1.4029.

E. Contract.

1. Content. The subsidy assistance contract shall be based upon the final application. It shall specify the amount of subsidy assistance that shall be awarded to the eligible recipient and shall be effective for a period of no more than one (1) year. It shall include the assurance of the eligible recipient that it will

provide the required local share. For a particular public transit system, only one contract shall be executed on behalf of all units participating in the system.

2. Disbursement schedule. The contract shall specify a monthly or quarterly disbursement schedule at the pleasure of the recipient. Disbursements will reimburse the recipient based on the claimed operating deficit for the monthly or quarterly reporting period, but will not be allowed to exceed the estimate in the final application. At the end of seven months if it appears that the existing contract limit shall be insufficient the department will, upon application, amend the contract.

As agreed to in the contract, a portion of the final payment of the transit subsidy shall be withheld pending a final audit of the public transit system's books by the department at the termination of the contract. The final audit shall be used by the department to verify the transit costs claimed during the contract period. When the supplemental assistance is more than two-thirds of the total operating deficit, the final payment shall be reduced accordingly. Any overpayment by the state shall be returned to the state treasury at the request of the department.

14 MCAR § 1.4027 Paratransit service grant and regular route demonstration grant transit improvement program.

A. Paratransit purpose. The purpose of the Paratransit Service Demonstration Grant Program is to plan, promote, demonstrate, and evaluate the effectiveness, cost, and efficiency of paratransit as a means of accomplishing program objectives.

B. Paratransit objectives. The objectives of the Paratransit Service Demonstration Grant Program are:

1. To provide transportation services which improve the accessibility and productivity of regular route transit;

2. To provide transportation services in those areas inefficiently or inadequately served by regular route transit;

3. To provide transportation services for persons who because of age or incapacity are unable to drive a private automobile or use existing modes of public transit;

4. To show how existing single occupant auto drivers can be diverted to paratransit or other public transportation modes; and

5. To determine the most effective manner of providing paratransit services. A potential demonstration project shall be designed to meet directly one or more of these program objectives.

C. Eligible recipients. Any public or private agency, entity, or person is eligible to receive financial assistance through the Paratransit Service Demonstration Grant Program.

D. Regular route program objective. The objective of the Regular Route Transit Demonstration Grant Improvement Program is to ~~demonstrate~~ provide financial assistance for improvements in the accessibility, quality, economic performance, or patronage of regular route transit service by the following means:

1. Expansion of existing routes and addition of new routes in areas that previously have not been served or have been served inadequately by regular route transit;

2. Management and operations improvements without expanding existing routes or adding new routes.

A potential ~~demonstration~~ improvement project shall be designed to meet program objectives by one of these two methods. Not less than 40 percent nor more than 60 percent of the total financial assistance available shall be granted to projects ~~to demonstrate~~ for improvements by each method.

E. Eligible recipients. Any organization that qualifies under 14 MCAR § 1.4026 B.1. who operates, intends to operate, or assists in the operation of regular route transit services is eligible to receive financial assistance through the regular route transit ~~demonstration~~ improvement program.

F. Eligible projects. An eligible project for Paratransit Service Grant and Regular Route Demonstration Improvement Grant programs shall meet the following requirements:

1. It shall be designed to have potential for general applicability in other areas of the state;

2. It shall demonstrate the effect of improved public transit service; and

3. It shall meet one or more of the program objectives in 14 MCAR § 1.4027 B. or D.

An application should include a request for funding an ongoing evaluation of the project.

G. Determination of demonstration grant assistance.

1. General. The application for demonstration grant assistance shall be submitted in two stages: preliminary and final applications. The department shall assist the applicant in the preparation of application upon request. Demonstration Grant assistance may not be used to pay any costs incurred by the applicant in the preparation, submission or processing of the applications.

2. Preliminary application. The preliminary application shall be submitted to ascertain the probable eligibility of the applicant, including projected availability of state and local financial assistance. For a particular public transit system, only one preliminary application shall be submitted on behalf of all units participating in the system. It shall be in narrative form and shall contain the following:

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a. Project objectives. A narrative describing the purpose of the proposed project shall include the manner in which it will meet one or more of the program objectives.

b. Project description. The following must be discussed:

- (1) The content of the project;
- (2) The time schedule proposed for completion of the project;
- (3) The public transit service including identifying proposed service levels and daily hours of operation;
- (4) The compatibility of the project with any existing transit service;
- (5) The potential for continuation of the project beyond the demonstration phase;
- (6) A project budget, by categories of expenditures, including sources and amounts of non-state funding;
- (7) A description of the applicant's organization including the key personnel and their experience.
- (8) Identification of the market to be served, including the proposed daily and weekly patronage.
- (9) Transit cost allocation procedures.

A preliminary application that contains all of the above information will be approved for submittal of a final application.

The preliminary application shall be submitted to the department and appropriate regional development commission and transit systems as required in 14 MCAR § 1.4025 C. The department will assist in the planning of a system or the preparation of the applications if requested.

3. Final application. The final application shall be submitted to determine the ~~demonstration~~ financial assistance to be granted and the basic elements of the agreement. It may be submitted only by an applicant who has received notice that, based on its preliminary application, it is an eligible recipient. It shall be submitted to the department and appropriate RDC in the form and manner prescribed by the department and shall include the elements specified in 14 MCAR § 1.4028. When the eligible recipient has submitted or anticipates submitting an application for assistance under the Public Transit Subsidy Program, 14 MCAR § 1.4026, during the contract period, this shall be briefly discussed in the application.

4. Application evaluation. The criteria that will be used by the Department to evaluate and approve proposed demonstration projects are:

- a. Potential for meeting one or more of the program objectives;
- b. Potential in demonstrating specific concepts that are applicable in other areas of the state;
- c. Degree of innovation incorporated;
- d. Compatibility and coordination with existing regular route and paratransit systems;
- e. Potential for integration with existing transit service;

f. Evidence of local government and public support;

g. Ability to continue a successful project beyond the demonstration phase;

h. Efficiency in the use of energy resources to accomplish objectives; and

i. Cost effectiveness of the project.

~~5. Project funding. The applicant is expected to share in the cost of a demonstration project. Demonstration assistance normally will not exceed 90 percent of the cost of approved demonstration projects. The Department reserves the authority to fund up to 100% of a project that it feels is unique and needs to be demonstrated but lacks the necessary local financial support. When in the Department's judgment, a proposed demonstration project has potential national significance, the Department may require the eligible recipient to submit an application to the Federal Government, in addition to the State application.~~

H. Contract.

1. Content. The demonstration contract shall be based upon the final application. It shall specify the amount of the demonstration assistance that shall be awarded to the eligible recipient and shall not exceed one year. It shall include the assurance of the eligible recipient that it will provide the required local share and carry out the management plan. For a particular public transit system, one contract shall be executed on behalf of all units participating in the system.

2. Disbursement schedule. ~~The contract shall specify a disbursement schedule either monthly or quarterly at the pleasure of the recipient.~~ Disbursements will reimburse the recipient based on the claimed deficit for the monthly or quarterly reporting period, but will not be allowed to exceed the estimate contract amount.

As agreed to in the contract a portion of the final payment of ~~the demonstration assistance~~ shall be withheld pending an audit of the transit system's books by the department at the termination of the contract. This final audit shall be used by the department to verify the transit costs claimed during the contract period. When the demonstration grant assistance is more than the approved limit of the total cost, the final payment shall be reduced accordingly. Any overpayment by the state shall be returned. ~~to the State Treasury at the request of the department.~~

14 MCAR § 1.4028 Final application for subsidy and grant assistance.

The final application for the subsidy program or for the ~~demonstration grant~~ program shall be a form as prescribed by the department and shall contain the following:

A. Management plan. The basic component of the final application shall be a management plan that details all of the planned and anticipated events that will affect the public transit system's operating revenue and expenses during the contract period.

1. Purposes. The essential purposes of a management plan are:

- a. To document the maintenance or improvement of public transit services;

b. To identify and implement policies and practices to increase the efficiency of public transit operations; and

c. To insure that state assistance will be spent wisely.

2. Content. The final application shall include the following elements which may vary in detail with the size of the public transit system:

a. Ownership. The ownership of the participating transit system during the contract period shall be described.

b. Levels of service. The levels of service provided by the participating public transit system during the contract period shall be described.

c. Fares. The fare structures anticipated during the contract period shall be described.

d. Marketing. A proposed marketing program shall be described in general terms, including the cost benefits of the major elements. Elements of a marketing program shall include:

- (1) Market research;
- (2) Public information;
- (3) Promotion;
- (4) Advertising;
- (5) Community relations; and
- (6) Employee relations.

e. Capital improvements. Any actual or anticipated capital improvements in the participating public transit system during the contract period shall be described. Capital improvements include, but are not limited to: buses, fareboxes, communications equipment, storage and maintenance facilities and equipment, passenger shelters, and bus-stop signs.

f. Non-capital improvements. Any anticipated non-capital improvements proposed in the participating public transit service area during the contract period shall be described. Noncapital improvements include, but are not limited to:

- (1) Staggering work hours;
- (2) Regulating supply and prices of off-street parking; and
- (3) Increasing daytime parking rates on work-days.

g. Revenue contracts. Revenue producing contracts relating to the public transit services provided by or for the eligible recipient shall be described. A copy of the contract will be required as part of the final application.

The following types of contracts shall be discussed:

(1) Contracts with private and public schools, colleges and universities;

(2) Contracts with private and public organizations that guarantee a minimum revenue on regular or special route(s);

(3) Contracts with private and public organizations that purchase rides for employees or patrons; and

(4) Advertising contracts.

h. Traffic improvements.

(1) Any traffic improvements made in the public transit service area during the contract period that will affect directly the speed and reliability of transit services shall be described. Examples of traffic improvements include:

(a) Use of exclusive or preferential streets, bus lanes, or expressway ramps;

(b) Control of traffic lights by buses;

(c) Provision of fringe parking spaces with express or improved bus service;

(d) Provision of bus turnouts; and

(e) Priority snow-plowing of transit routes.

(2) The discussion of each type of traffic improvement shall include the following:

(a) The date the traffic improvement is expected to be made; and

(b) The expected impact of the traffic improvement upon estimated public operating revenues and expenses.

i. Expenses contracts. Any contracts for services and goods relating to the public transit services provided by or for the eligible recipient and others shall be described.

The types of contracts to be discussed include:

(1) Contracts for management and consulting services;

(2) Contracts for storage and maintenance of buses;

(3) Contracts for the lease or purchase of tires and tubes;

(4) Contracts for fuel and lubricants;

(5) Contracts for liability and property insurance;

(6) Contracts, union and non-union, with transit system employees.

A copy of each contract will be required as part of the ~~final application~~ management plan.

j. Preventive maintenance. The participating public transit system's planned preventive maintenance program for

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the contract period shall be described. Elements of a preventive maintenance program typically include:

- (1) Defect reporting by drivers;
- (2) Daily fueling inspection;
- (3) Mileage inspection; and
- (4) Inventory controls.

B. Organization. The local institutional or organizational structures established to carry out the management plan shall be described, including a description of the technical policy and decision-making organizations responsible for directing, controlling, reviewing, and implementing the management plan. The relationships between these various organizations shall be illustrated in a simple diagram following the narrative. In addition, the following questions shall be answered:

1. Who is directly responsible for the day-to-day management and operation of the transit system?
2. Who is directly responsible for negotiating wage contracts with the employees of the transit system?
3. Where more than one local unit of government participates in the program, who represents the applicant public body in negotiations with surrounding communities? Who represents the surrounding communities?
4. Who will represent the applicant public body in negotiating an assistance contract with the State, and how shall a contract be ratified by the applicant public body?
5. Who is responsible for filing reports for the transit system with the Minnesota Public Service commission?

C. Financial conditions. Financial data shall be reported in the form and manner prescribed by the department. The cash accounting method shall be used to report financial data unless otherwise authorized by the department.

1. For the transit subsidy program, this financial data shall contain the audited figures for a twelve (12) month period preceding the contract period and estimated figures for the contract period.

2. For the ~~demonstration~~ grant program, the financial data shall contain estimated figures. When the ~~demonstration~~ grant project is associated with an existing public transit system, the financial data shall include the audited figures for a twelve (12) month period preceding the contract period.

D. Financial statement. A detailed breakdown of operating expenses shall be required. The projection of revenues and expenses should reflect the policies and practices outlined in the management plan.

E. Operating statistics. The actual and anticipated operational characteristics of the public transit system in a twelve (12) month period preceding the contract period and/or the contract period shall be described. This discussion shall include revenue passengers, monthly ridership, total operating miles, revenue hours, and other relevant information required by the department.

F. Sources of local funds. The sources and type of revenue that the eligible recipient and each participating unit will use to match the supplemental or demonstration assistance shall be identified.

G. Fuel supplies. Existing and potential problems that the public transit system faces in obtaining adequate fuel supplies during the contract period shall be identified, including the status of contracts with fuel suppliers, the prospects for securing contracts for the contract period, the time between deliveries under normal and anticipated conditions, and any other pertinent facts.

The existing rules dated August 23, 1974 under Laws 1974, ch. 534 are rescinded.

14 MCAR § 1.4029 Uniform performance standards for private operators in the metropolitan transit taxing district.

A. General.

1. These rules set forth a description of what shall be considered minimum levels of performance or design and identifies the standards against which existing services will be evaluated and for planning new or modified services.

2. Performance standards have been developed to apply to the unique financial and geographical characteristics encountered by private operators in the Metropolitan Area as defined in Minn. Stat. § 473.121, subd. 2 (1978). These standards are not necessarily the same ones utilized by the Metropolitan Transit Commission (MTC). The MTC service standards are spelled out in the "TRANSPORTATION DEVELOPMENT PROGRAM AND TRANSPORTATION IMPROVEMENT PROGRAM (1978-1983)."

B. Definitions. The following terms as used in these rules will have the following meanings:

1. "Regular service" shall mean a bus service operating primarily on arterial streets making a minimum of 5 pickup or dropoff stops per mile and having an average operating speed of 15 mph or less.

2. "Express service" shall mean a bus service having the following characteristics:

a. Average operating speed in excess of "regular" bus service speeds and nearly equivalent to average automobile speeds for the same trip.

b. A limited-stop route segment which is greater than 50% of the route's one-way mileage. Limited-stop route segment is defined as one-half or less than the minimum stops for regular service.

3. "School service" shall mean extra bus trips on "regular or express" service, designed to transport students either on the route or directly to or from a school.

4. "Contract service" shall mean bus service operated under contract (or as a charter) to provide service to a specific market.

5. “Linehaul service” shall mean direct, point-to-point travel over distances (route length) greater than two (2) miles between residential areas and activity centers of business districts.

6. “Feeder service” shall mean providing access to or from a linehaul service.

7. “Crosstown service” shall mean bus service connecting either community subcenters or linehaul services emanating radially from a central business district (CBD). It shall generally be construed to mean nonradial travel that is not directed to or from a central business district.

8. “Peak period” shall mean the hours of 6:30 a.m. to 9:00 a.m. and 3:30 p.m. to 6:00 p.m. weekdays.

9. “Off peak periods” shall mean all other times not included under “Peak period.”

10. “Headway” shall mean the time interval between two consecutive buses (Frequency of Service) measured at the maximum load point.

11. “On time performance” shall mean zero minutes early and no more than five (5) minutes late at a schedule time point.

12. “Load factor” shall mean the ratio of the number of passengers on board versus the number of seats provided measured at the maximum load point(s) on a particular route.

13. “Capacity” shall mean the number of passenger seats made available.

14. “Peak period bus requirement” shall mean the maximum number of transit units an operator must have in service to meet scheduled trips excluding spare units.

15. “Route miles” shall mean the one-way mileage between route termini.

16. “Bus miles” shall mean the miles operated by a transit unit from the time it leaves the garage until it returns including “pull-out” and “pull-in” mileage.

17. “Passenger per mile” shall mean the number of passengers carried divided by the number of bus miles operated.

18. “Vehicle hours” shall mean the hours operated by a transit unit from the time it leaves the garage until it returns including “pull-out” and “pull-in” time.

19. “Revenue hours/revenue miles” shall mean the miles or hours operated by a transit unit on a route excluding “pull-in”/“pull-out” miles and hours. Same as “scheduled” hours/“scheduled” miles.

20. “Deadhead miles” shall mean those miles operated for the purpose of maintenance testing, driver training and garage transfers.

C. Purpose. The purpose of uniform performance standards for private operators in the metropolitan transit taxing district is:

1. To increase the number of persons riding and the rate at which persons are diverted from driving to riding.

2. To achieve the fullest and most efficient use of public resources and investments in public transit.

3. To provide adequate service levels within geographic areas and on route segments characterized by high density of demand for service and for the transit dependent population.

D. Objectives. The objectives of uniform performance standards for private operators in the metropolitan transit taxing district are:

1. The public transit service provided by state funded private operators within the Metropolitan Area as defined in Minn. Stat. § 473.121, subd. 2 (1978) shall be designed, operated and maintained to attract patrons in such numbers as to assure continuing viability as a reasonable alternative to the private automobile.

2. Prime consideration shall be given to the safety of operators and passengers.

3. Each private operator’s system shall be maximized within the Metropolitan Urban Service Area and shall be consistent with the Development Guide of the Metropolitan Council.

4. Existing service levels shall be evaluated for economic considerations, public necessity and ability to attract new patrons from competing modes of transportation.

5. Service shall be designed to minimize door-to-door travel time.

6. Service changes shall be made on the basis of feasibility and the attendant physical, operational, economical, financial and social merits.

7. Each private operator shall provide some opportunity for local input into their systems’ service levels and route structures.

8. Service provided by the private operators shall be comparable to and compatible with other service offered in the Metropolitan Urban Service Area.

E. Service standards.

1. Route spacing. Route spacing is a function of population density and physical considerations such as terrain and adequate roadways.

Population Per Square Mile (1) (Thousands)	Minimum Route Spacing	
	Route Spacing (Miles)	Route Miles Per Square Mile
4 & over	0.50	1.50
2-4	1.00	1.00
0-2	2.00	0.50

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PROPOSED RULES

(1) Land acreage only.

2. Directness of service.

a. Schedule leave and arrive times for routes having common termini shall be coordinated to the maximum extent possible.

b. Not more than 25% of the total systems riders will be required to transfer between an operator's vehicles to complete their trip.

3. Route layout.

a. Route alignment shall be as direct as possible and to the maximum extent feasible, areas with no adjacent land development will be avoided in laying out the collector portion of a route.

b. Service shall be operated over permanently paved streets having at least ten (10) foot lanes.

c. Service shall not be operated over streets which continually exhibit danger-producing situations such as steep grades; poorly plowed or sanded roadways; or streets where parking habitually encroaches on the roadway reducing passageway to less than ten (10) feet.

4. Frequency of service. A sufficient number of vehicles shall be provided past the maximum load points on a route to accommodate the passenger volume within the loading standards established under the Section: "Operating Performance Standards."

Minimum Headways

Service Type	Days Provided	Range of Service	Peak	Off Peak
Regular	Mon-Fri	6:00 am-6:30 pm	30 min	70 min
Regular	Sat	8:00 am-6:00 pm	To be based on demonstrated need	
Express	Mon-Fri	6:30 am-9:00 am 3:30 pm-6:00 pm	To be based on demonstrated need	

5. Passenger stops.

a. In suburban residential areas, the distance between bus stops shall not exceed 2000 feet.

b. In CBDs, the distance between bus stops shall not exceed 600 feet.

c. Designated bus stops shall be indicated by at least a sign on a stanchion or fastened to a utility pole. The bus stop sign shall display a bus information phone number.

d. Minimum acceptable bus stop lengths are:

- (1) farside stop 80 feet.
- (2) nearside stop 80 feet.
- (3) mid-block stop 80 feet.

NOTE: Farside stops are preferable to all others.

e. Shelters shall be provided at all stops which serve 40 or more boarding or transferring passengers during the course of a typical day.

F. Operating performance standards.

1. Speed.

a. Average operating speed excluding recovery time shall not exceed twenty five percent (25%) deviation from the service (i.e., express and regular) operating speed for the time being analyzed. Any service having an average operating speed less than this standard will be considered for remedial analysis.

b. No service is to have a layover time to running time ratio over 30% at any time.

2. Maximum load standards—per route shall be:

Service	Peak of the Peak	Total Peak Period	Off Peak
Express	1.1	1.0	1.0
Regular	1.25	1.1	1.0

3. Labor productivity shall be measured by "miles per employee" factored to 8 hours = 1 full time employee. No operator's labor productivity shall be less than 18,000 bus miles per employee.

4. Schedule adherence and service dependability.

a. 95% of all service provided shall be on time.

b. 99% of all scheduled trips shall be completed each month.

c. Maintenance standards shall be high enough to provide, at a minimum, 10,000 bus miles of service for each disruption of service due to mechanical failure.

d. Complaints shall not exceed one (1) per 100 hours of service. A complaint is defined as official contact in writing with either the PSC or the Minnesota Department of Transportation (Mn/DOT).

5. Economic standards.

a. No service shall be permitted to have a "revenue per passenger" departure from the system average of more than -25%, unless the "passengers per mile" are at least 65% of the system average.

b. System fares shall be set to ensure a system "revenue per passenger" ratio to "full cost per passenger" of at least 35% in that reimbursement to the operator on a "deficit per passenger" basis will not exceed 65% of the "full cost per passenger."

G. Funding procedure.

1. Two months prior to the expiration of an existing contract term, the operator shall be sent a letter by the Minnesota Department of Transportation notifying him of the upcoming expiration. This letter shall also have attached the "Service Standards for Metro Area Private Operators." The letter will ask the operator to:

a. Advise Department of Transportation (Mn/DOT) of the operator's intent to continue providing fixed route public transit service within his authorized service area.

b. Advise Mn/DOT if he intends to apply for a state financial assistance contract relative to the public transit service.

c. Submit a signed statement to Mn/DOT that he has read and met the required "service standards."

2. If the operator intends to apply for state financial assistance, and has indicated he can meet the "service standards," a member of the Mn/DOT staff shall meet with the operator to assist him to prepare the application including, but not limited to:

- a. Management plan.
- b. Operating budget.
- c. Patronage and revenue projections.
- d. Transit cost allocation plan (to be attached as an element of the contract).
- e. Capacity analysis.
- f. Operations narrative.

3. When the application is complete and agreed to as accurate by Mn/DOT and the operator, funding shall be calculated as follows:

- a. Full operating cost shall be divided by the number of rides projected. This will yield a "full cost per passenger."
- b. All anticipated revenues shall be calculated and divided by the number of rides projected to obtain an estimated "revenue per passenger."
- c. The estimated "revenue per passenger" shall then be subtracted from the "full cost per passenger" to obtain a "deficit per passenger."
- d. The amount of the "deficit per passenger" shall be what the operator will be reimbursed for each passenger carried on his system. Such reimbursement shall not exceed 65% of the "full cost per passenger."

H. Verification procedure.

1. Timetable analysis.

a. Prior to the execution of a financial assistance contract or a route or service change the operator shall be required to submit a complete set of current or proposed schedules to Mn/DOT.

b. Upon receipt of the schedules, Mn/DOT and Metropolitan Council staff shall perform an analysis to ensure that the service offered is consistent with the recommended operating performance standards and Metropolitan Council Development Guide.

c. Upon completion of the schedule analysis, a summary shall be prepared detailing those portions, if any, of the service that are sub-standard and outlining possible corrective measures.

2. Maximum load and on-time performance analysis.

a. Performed by operators.

- (1) Operators shall develop and maintain "daily

trip sheets" for their drivers to record daily passenger counts. The driver's daily trip sheet should include, but not be limited to:

- (a) Day of week/date/run number/bus number.
- (b) Each trip run (terminal and schedules departure time).
- (c) Maximum load carried per trip (at specified maximum load points).
- (d) Number of transfers received.
- (e) Any deviation from scheduled time, and reason for this.
- (f) Driver signature.

(2) Daily trip sheets shall be collected for each service day by the operator.

(3) Daily trip sheets are to be retained by the operator for a period of two years or until final audit, whichever occurs first.

b. Performed by Mn/DOT.

(1) Mn/DOT shall establish maximum load points for each route in an operator's system; these will be consistent with the maximum load points that the operators are using.

(2) Checking sheets shall then be developed for each maximum load point. The checking sheets will be organized by trip (inbound or outbound), in time order, for an entire service day. Separate sheets will be developed for weekday and Saturday service.

(3) Mn/DOT shall hire on-street checkers to collect the actual data. The checkers will be placed at the maximum load points and required to record the following data for each bus that passes:

- (a) Condition of bus.
- (b) Bus number.
- (c) Actual time bus passes maximum load point.
- (d) Estimated number of passengers on board.
- (e) Trips not completed will also be recorded.
- (f) Weather and street conditions.

(4) Checkers shall conduct "spot checks" on a random basis. Checks shall be performed at random times within the peak and off peak periods to ensure that all time periods will be observed.

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PROPOSED RULES

(5) Occasionally, checkers shall be required to perform "on-board" checks of an operator's service. On board checks are utilized to observe the loading patterns of an entire route, operating hazards along the route, transfers issued and received, and running time for the route. The operator shall be notified, in advance each time this is planned.

(6) Checking sheets shall be submitted to Mn/DOT and the data will be analyzed.

(7) A summary of the maximum load/on-time performance checks shall be prepared monthly and will detail the areas, if any, where the operator's system is performing below the minimum operating standards and recommendations for remedial measures will be made.

(8) Mn/DOT maximum load check sheets shall be compared with the operator's "drivers trip sheets" monthly to verify passengers carried.

3. Maintenance analysis.

a. Operators shall be required to report all disruption of service due to mechanical failure, to Mn/DOT monthly.

b. Mn/DOT shall apply the "total bus miles" operated monthly to the total number of "disruptions of service due to mechanical failure" to ensure that "bus miles for each disruption of service due to mechanical failure" are consistent with the maintenance standards.

14 MCAR § 1.4030 Public transit capital grant assistance program.

A. Application. Eligible recipients as defined in Minn. Stat., § 174.245 (1979 Supp.) shall apply for capital grant assistance by a letter to the Minnesota Department of Transportation citing the Minnesota Statute under which eligibility is claimed. The letter of application shall contain the following information:

1. A statement of eligibility under the Urban Mass Transportation Act of 1964, Public Law 88-365, as amended.

2. The amount of state financial assistance requested.

3. A statement that this capital improvement is included in the current approved management plan if the recipient is currently receiving state financial assistance.

B. Procedure for review and approval. A letter of application shall be reviewed by the Department of Transportation for the requirements contained in paragraph A and shall be considered for funding.

C. Capital grant assistance shall be based on:

1. The priority listing recommendation of the Transportation Advisory Committee established by the State Management Plan for Public Transportation Financial Assistance under Section 18, Urban Mass Transportation Act of 1964, Public Law 88-365, as amended. The Committee shall base their recommendations on the following criteria:

a. How well the project meets the program objectives.

(1) To actively promote the coordination of transportation services where no local agency has taken this responsibility or where local disputes threaten accomplishment of the task.

(2) To help alleviate the transportation problems of Minnesota's elderly and handicapped residents.

(3) To participate in joint-agency efforts to construct and implement park-ride facilities when it can be demonstrated that these facilities will serve existing demand.

(4) To develop a specific position on performance funding for non-urban transit operators.

(5) To effectively provide public transportation in rural and small urban areas inefficiently or inadequately served by regular route transit.

(6) To divert single occupant auto drivers to public transportation modes.

(7) To fund effective and cost efficient methods of providing non-urban transportation services.

b. The accessibility of the handicapped and elderly to the transit system.

c. The amount of local government and community support.

d. The potential for continuation after the first year.

e. The applicability of the project results to other areas of the state.

f. The potential for meeting the life support needs (i.e., nutrition, health, shopping, recreation, etc.) of those the transit system is designed to serve.

2. The availability of state public transit capital grant assistance funds.

3. The availability of local matching funds.

D. Contract. The public transit capital grant assistance contract shall be based on the letter of application. It shall specify the amount of financial assistance to be awarded. It shall include the assurance of the eligible recipient that the local matching funds are available and shall be provided.

Housing Finance Agency Proposed Temporary Rule Governing the Emergency Energy Conservation Grant Program

Request for Public Comment

Notice is hereby given that the Minnesota Housing Finance Agency has proposed the following proposed temporary rule for the purpose of implementing the Emergency Energy Conservation Grant Program.

All interested persons are hereby afforded the opportunity to submit their comments on the proposed rule for 20 days immediately following publication of this material in the *State Register* by writing to Mary Tingerthal, Manager Home Improvement Programs, Minnesota Housing Finance Agency, 333 Sibley Street, Suite 200, St. Paul, Minnesota 55101. The proposed temporary rule may be revised on the basis of comments received. Any written material received shall become part of the record in the final adoption of the proposed temporary rule.

April 7, 1980

James J. Solem
Executive Director

Temporary Rules as Proposed (all new material)

12 MCAR § 3.081 The agency shall administer the Emergency Energy Conservation Grant Program funds through administering entities selected by the agency which have demonstrated that they have the capacity to carry out the program.

12 MCAR § 3.082 Eligible Recipients of Emergency Energy Conservation grants. In addition to all conditions imposed by the act, an application for an Emergency Energy Conservation grant shall satisfy the following requirements:

A. The recipient(s) must occupy the structure to be improved as the recipient(s)' principal place of residence and individually or in the aggregate have at least

1. a life estate or

2. a one-third interest in the fee title or in the contract for deed with respect to such structure. The agency may waive or modify the ownership and security requirement when necessary to permit emergency energy conservation grants for structures located on Indian Reservations. For mobile homes taxed as personal property or not permanently affixed to real property recipient(s) must: (1) have resided in the structure at the present location for a period of one year immediately preceding the date of application as the recipient(s)' principal place of residence, (2) be current in any loan payments on the structure, and (3) individually or in the aggregate have a 100% interest in the title to the mobile home.

B. For the purpose of complying with the ownership requirements, the recipient may aggregate his interest in such property with the ownership interests of other individuals also occupying the structure to be improved as their principal place of residence. All individuals occupying the structure to be improved as their principal place of residence and having an ownership interest in such structure must join in the application.

12 MCAR § 3.083 Amount of grant. The amount of the emergency energy conservation grant shall not exceed the lesser of:

A. \$2,000; or

B. the actual cost of the work performed.

12 MCAR § 3.084 Responsibilities of administering entity. The administering entity shall have the following responsibilities:

A. The administering entity shall have full responsibility for program implementation including public information, reviewing and screening applicants, choosing recipients, and certifying that the energy conservation work is satisfactorily completed.

B. The administering entity shall make on-site inspections of the properties to be improved

1. before such application is approved and

2. after work has been completed and before the contractors have been paid in full

C. The administering entity shall not charge an applicant or recipient any application, processing, or other fee.

D. The administering entity may, with the prior written consent of the agency, allocate part of its total funding, in accordance with a formula based upon data assembled by the agency and reflecting administrative costs, geographic area, level of funding, and other related factors, to defray a portion of the administrative costs of the program, to the extent that other sources are not available. It shall be the responsibility of the administering entity to bear all administrative costs, including salaries and office rental, automobile and telephone expenses, and costs of counseling or technical assistance. The administrative allowance, if any, shall be distributed by the agency according to a budget submitted by the administering entity and approved by the agency. Disbursements of the administrative allowance shall be contingent upon the agency's review and approval of the satisfactory progress of the program.

12 MCAR § 3.085 Eligible properties. Grant funds shall be used only to improve properties which meet the following criteria:

A. The property shall be located within the State of Minnesota, be used primarily for residential purposes, and contain no more than two dwelling units, one of them owner-occupied.

B. The property to be improved shall conform to applicable zoning ordinances and possess all appropriate use permits.

C. The improvements shall be made upon or in connection with existing structures, including mobile homes. Trailers shall not be eligible.

D. Emergency Energy Conservation grant funds shall not be used for the payment, wholly or in part, of assessments for public improvements.

E. All contracts covering all or any portion of an improvement shall contain an Agency approved warranty of workmanship and materials.

F. No grant funds shall be used for the purpose of refinancing or paying off existing indebtedness. All such funds shall be used to finance improvements begun after application for such funds has been approved.

G. No property shall be eligible for an Emergency Energy Conservation grant if it has been improved by such a grant within the five-year period next preceding the date on which application for such grant is made.

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."

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.

Health Department Manpower Division

Adopted Rules Relating to the Examination and Licensing of Morticians

The rules proposed and published at *State Register*, Volume 3, Number 34, pp. 1603-1607, February 26, 1979 (3 S.R. 1603) are adopted with the following amendments.

Rules as Adopted

7 MCAR § 1.022 Morticians—examination and license requirements.

A. Every person who wishes to qualify as competent to engage in the practice of mortuary science, shall comply with the following requirements:

1. An applicant shall apply to the Minnesota Commissioner of Health for a license. The application shall contain the full name of the applicant, age, mailing address and such other pertinent identifying information as the commissioner may require.

2. The applicant shall be at least 18 years of age and shall have successfully completed a minimum of 60 semester or 90 quarter credits at an accredited college or university with credit evaluation in course areas as follows: communications, 15 quarter credits to include speech and English; the social sciences, 18 quarter credits to include sociology and psychology; natural science, 21 quarter credits to include general or inorganic chemistry and biology or zoology; and elective areas, 36 quarter credits. Following this academic work, the applicant shall have completed and have secured a verification of completion of the prescribed course of study from any college of Mortuary Science accredited by the Conference of Funeral Service Examining Boards of U.S., Inc. or the American Board of Funeral Service Education. ~~The Commissioner may at his discretion vary the number of semester or quarter credits in specified areas.~~

3. After these education qualifications, in the order specified, have been acquired, the applicant shall attain a satisfactory level of achievement in a comprehensive written examination, approved by the Commissioner of Health in such

subjects related to the practice of mortuary science as the commissioner may prescribe. If an applicant for a license to practice mortuary science has satisfactorily passed the National Board examination given by the Conference of Funeral Service Examining Boards of the U.S., Inc., and is so certified to the commissioner by the conference, effective January 1, 1976, the commissioner shall, subject to the criteria listed below, accept the results of the National Board and require the applicant to successfully pass an examination on laws of the State of Minnesota and the rules of the commissioner pertaining to registration of deaths, embalming, transportation, disposition of dead human bodies and funeral directing. In order to accept the results of such national examination, the commissioner shall first determine that the knowledge and skills assessed by the examination adequately and accurately evaluates the knowledge and skills needed for actual job performance and ensures that the public is adequately served and protected. An applicant who fails to attain a satisfactory level of achievement on any examination given by or on behalf of the commissioner may be reexamined on application at the next examination. After successful completion of required examinations the applicant shall serve at least one year as a trainee in mortuary science under a mortician licensed by the State of Minnesota. During such period of experience the applicant shall be registered as a trainee in Mortuary Science with the commissioner and shall assist under the supervision of a mortician in embalming at least 25 bodies and in the direction of at least 25 funerals.

4. License application, renewal and endorsement fees. An applicant for examination for a license in mortuary science shall submit an application therefor on forms provided by the Commissioner of Health together with a fee of \$25.00.

When the applicant has successfully completed the examination and requirements for original license, the applicant shall submit to the commissioner a license application on a form prescribed by the commissioner and a fee of \$25.00 payable to The Treasurer, State of Minnesota, after which the license shall be duly issued.

An applicant for a license in mortuary science by endorsement without examination as to technical qualification pursuant to Minn. Stat. § 149.03, subd. 2, shall submit an application therefor on forms provided by the Commissioner of Health together with a fee of \$75.00. The applicant shall prior to licensure pass an examination on the Minnesota laws and rules relating to mortuary science only.

An applicant for a mortuary science courtesy card, issued

pursuant to Minn. Stat. § 149.03, subd. 2, shall submit an application therefor on forms provided by the Commissioner of Health together with a fee.

Initial and renewal mortuary science licenses or courtesy cards shall be issued for the calendar year for which application is made and shall expire on December 31 of that year.

Renewals thereof shall be obtained on an annual basis. Application for license or courtesy card renewal, together with the renewal fee of \$25.00, shall be submitted to the Commissioner of Health on forms provided no later than December 31 of the year preceding the year for which application is made. Failure to submit the renewal application and fee by the date specified above shall result in an increase in the fee to \$35.00. If the renewal application and fee are not submitted within thirty-one (31) days after the expiration date, the license or courtesy card shall automatically lapse. Such persons shall be required to apply for a new license and meet all the requirements therefor.

7 MCAR § 1.032 Itemization and authorization to embalm.

A. Definitions. For the purposes of 7 MCAR §§ 1.021-1.032, the words, terms and phrases listed below in this subdivision shall have the meaning stated herein, unless the language and context clearly indicates that a different meaning is intended.

1. Casket—a container commonly used to enclose a dead human body for the purposes of the funeral and final disposition.

2. Burial vault/interment receptacle—an outer container used to enclose the casket for earth burial.

3. Use of facilities.

a. Provision of chapel or room for the funeral or memorial service and/or provision of facilities for parking, counseling offices and other administrative purposes.

b. Provision of chapel or room for visitation/reviewal.

4. Transportation costs—includes the vehicle used for the initial transfer of the deceased, funeral coach, funeral sedans, flower car, service/utility car and the use of common carriers where needed.

5. Funeral service merchandise—includes such items as clothing, register books, cards and religious and fraternal items necessary to the conduct of the service.

6. Embalming—a process of chemically treating the dead human body to reduce the presence and growth of organisms, to retard organic decomposition and to restore an acceptable physical appearance.

7. Preparation of the body—includes such items of care

as the setting of features; restorative procedures; washing; disinfecting; care of hair; shaving; dressing and casketing.

8. Professional services—includes the provision of staff for arrangements, visitations, funeral, memorial service when the body is not present, final disposition and administrative services such as counseling, securing and preparing necessary documents.

9. Cash advanced items—items of merchandise and services provided by other than the mortician, funeral director or funeral establishment, the liability for which is incurred by the mortician, funeral director or funeral establishment on behalf of the funeral arranger and listed on the itemization form.

10. Cremation/calcination—the use of direct flames or intense heat to reduce the dead human body to ashes and inorganic bone fragments.

11. Destination—the city or town of final disposition.

12. Disposal unit—a container other than a casket used for burial, cremation, calcination or entombment of a dead human body.

13. Funeral—the rites or ceremonies connected with the final disposition of a dead human body with the body present.

B. Itemization of funeral costs.

1. Before final agreement is reached between the client and funeral establishment the mortician or funeral director shall give or cause to be given to the person(s) making arrangements a written disclosure with the items and costs listed separately as required by Minn. Stat. § 149.09, subd. 1.

a. Minimum items. As a minimum the disclosure shall include a statement of charges for casket, burial vault, use of facilities for reviewal, use of facilities for funeral services, specifically itemized transportation costs, specifically itemized funeral service merchandise, embalming, preparation of the body, other professional services, and anticipated cash advances and expenditures. When cremation is to be the method of final disposition the disclosure shall have printed in conspicuous print: "Minnesota law does not require that remains be placed in a casket before or at time of cremation."

b. Copy given. A copy of the itemized statement (funeral expense contract) shall be given the person(s) making funeral arrangements. The contract shall be signed by both parties and the funeral establishment shall retain a copy for three years thereafter.

c. Charges not known. If the charge for any item is not known at the time the contract is entered into, the establishment representative shall give his/her best estimate of the charges and advise the purchaser(s) of the exact charge as soon as the information becomes available.

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."

ADOPTED RULES

d. Net amount billed. No funeral establishment shall bill or cause to be billed any item that is referred to as a "cash advanced" item unless the net amount paid for such item or items by the funeral establishment is the same as is billed to the funeral establishment. The term net is not meant to include any discounts that may be allowed for prompt payment by the funeral establishment.

C. Authorization to embalm.

1. Who grants permission. Written authorization for embalming a dead human body shall be obtained from the person lawfully entitled to custody of the body or from the individual prior to his/her death.

2. Oral permission procedure. Oral permission shall constitute approval to proceed with embalming; however, the establishment representative must specifically use the term "embalm" in securing oral permission. Written authorization shall be obtained as soon as practicable.

3. Embalming mandate. Upon request the mortician or funeral director shall explain the requirements of 7 MCAR § 1.024 which in some instances mandate embalming and make available a copy of 7 MCAR § 1.024. When embalming is required as provided in 7 MCAR § 1.024, permission to embalm shall, as a matter of law, be implied.

4. Retention of copy. The written authorization shall be retained in the establishment record of the deceased for three years and a copy made available to the person(s) granting authority.

5. Form of authorization to embalm. The written authorization statement shall be as follows:

AUTHORIZATION TO EMBALM

I authorize _____
and its staff, agents or representative to embalm the body of

I am a relative of the deceased and/or am entitled to custody of the deceased. I understand that embalming is not required by Minnesota law except as provided by 7 MCAR § 1.024 when:

- 1) The deceased is to be sent out of state by common carrier or aircraft,
- 2) Death is due to communicable disease,
- 3) More than 18 hours will elapse from time of death to arrival at the destination, or
- 4) Final disposition of the deceased is longer than 72 hours after death.

name relationship

name establishment representative

Housing Finance Agency

Adopted Temporary Rules Governing the Urban Indian Housing Loan Program

The temporary rules governing the Urban Indian Housing Loan Program proposed and published at *State Register*, Volume 4, Number 27, p. 1089, January 7, 1980 (4 S.R. 1089) were adopted on February 28, 1980 and approved by the Office of the Attorney General on March 19, 1980. No amendments were made to the rules as proposed.

Housing Finance Agency

Adopted Rules Governing the Accessibility Improvement Assistance Program

The rules proposed and published at *State Register*, Volume 4, Number 17, pp. 704-707, October 29, 1979 (4 S.R. 704) are adopted with the following amendments:

Rules as Adopted

12 MCAR § 3.071 C. As used in this chapter "Percent Indebted" means the percent of monthly gross income that a person or family is obliged to pay each month towards all fixed non-business debt which the recipient in good faith has incurred the obligation to pay over a period of more than three months for goods and/or services already provided. Personal debt includes mortgage or contract for deed payments related to the purchase of residential property, but does not include debts incurred solely for the recipient's business or farm operations. The agency shall not include in the calculation of percent indebtedness any debt which the recipient cannot demonstrate has been incurred in good faith. The recipient shall have the burden of demonstrating that any debt incurred within six months of the date of application for Accessibility Improvement assistance has been incurred in good faith. A finding that a recipient has incurred a debt in order to defraud the agency will be grounds for exclusion from all agency-financed assistance.

12 MCAR § 3.073 A. Accessibility Improvement assistance shall be in the form of a grant, a Home Improvement Loan pursuant to Chapter Six of these rules, or a combination of such grant and loan, depending upon the Adjusted Income and proportion of existing indebtedness of the recipient. The proportion of assistance to be given in grants shall be determined according to the following table:

ADOPTED RULES

6. SW 6(2) (z) shall not apply, rather, the permittee shall properly complete the agency's operational report forms and submit them quarterly.

C. Permit applications for the operation of modified landfills shall comply with SW 6(3) with the following exceptions:

1. The permit application requirements in SW 6(3) (b) (ii) shall not be required, however, a site analysis shall be submitted with the permit application and shall include surface features, underground formations, soil boring data, water table profile, direction of underground water flow, need and availability of cover material, and existing refuse deposits.

2. The permit application requirements in SW 6(3) (c) (ii) shall apply in total except those requirements relating to contour intervals of two feet or less and hazardous waste storage areas which shall not be required, rather, contour intervals sufficient to show drainage shall be provided by the applicant.

3. The permit application requirements in SW 6(3) (c) (iv) relating to an ultimate land-use plan shall not be required.

D. A modified landfill shall not be placed in operation until compliance with the provisions of SW 6(4).

~~E. Each county shall have an Agency approved plan for solid waste management within such county. The plan shall be amended from time to time as changing conditions occur by filing revisions for the approval of the Agency. Prior to filing such amendments and revisions, the county shall consider the economic and environmental consequences of feasible alternatives. Such plans and revisions shall be adopted by the Board of Commissioners of the county prior to filing with the Agency. Each county shall provide for a solid waste management system plan to serve all persons within the county. Two or more counties may elect to submit a joint plan.~~

E. On or before July 1, 1971, each county shall submit to the agency a workable preliminary plan for a solid waste management system within such county. On or before July 1, 1972, each county shall submit for the approval of the agency a workable final plan for a solid waste management system within such county. The plan shall be amended from time to time as changing conditions occur, by filing revisions for the approval of the agency. Such plans and revisions shall be adopted by the Board of Commissioners of the county prior to filing with the agency.

Each county shall provide for a solid waste management system plan to serve all persons within the county. Two or more counties may elect to submit a joint plan.

F. Public hearings. Any person may request a public hearing on any matter relating to the administration of this rule in accordance with 6 MCAR § 4.3009. If the agency denies a county plan or a revision to a county plan submitted in accordance with SW 11 (E), the agency shall grant a public hearing when requested to do so by a resolution duly and properly passed by a majority of the county board whose plan or revision was denied.

G. Severability. If any provision of this rule or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions of this rule or application of any other part of this rule which can be given effect without application of the invalid provision. To this end the provisions of all sections, subsections and subdivisions thereof are declared to be severable.

H. Variance from rules. Any person may apply for a variance from any requirements of this rule. Such variances shall be applied for and acted upon by the Agency in accordance with Minn. Stat. § 116.07, subd. 5 (1978) and other applicable statutes and rules.

SUPREME COURT

Decisions Filed Friday, April 11, 1980

Compiled by John McCarthy, Clerk

50275/94 LeRoy Leonard Berndt, petitioner, Appellant, vs. Leona Evelyn Berndt, LeSueur County.

Determination of three-judge district court panel awarding custody of a three year old girl to mother as primary parent notwithstanding county court decision granting custody to the father approved.

Affirmed. Sheran, C. J.

48729, 50533/183 State of Minnesota 48729 vs. Henry Louis Rivet, Appellant, and Henry Louis Rivet, petitioner, Appellant, 50533 vs. State of Minnesota. Ramsey County.

Evidence of defendant's guilt of aggravated assault was not, as defendant contends, legally insufficient, and postconviction court did not err in denying petition for postconviction relief.

Affirmed. Peterson, J.

48128/227 (1978) State of Minnesota vs. Glenn Arnold Earnest, Appellant. Koochiching County.

Held, defendant's Fourth Amendment rights were not violated by warrantless probable cause search of defendant's residence by probation officer during home visit prompted by reliable information that defendant was using and selling drugs and admission of drugs at probation revocation hearing was proper.

Evidence was sufficient to warrant revocation of probation.

Defendant was not prejudiced by prosecutor's comment on defendant's failure to testify at the probation revocation hearing.

Affirmed. Kelly, J. Concurring specially. Rogosheske, J., Otis, J., Yetka, J., and Wahl, J.

50045, 50078, 50092/165 Joel Lerich, Relator (50092), vs. Thermo Systems, Inc., et al., Relators (50045 and 50078). Workers' Compensation Court of Appeals.

An award for permanent partial disability benefits to an employee who as the consequence of simultaneous injuries to his spine and limbs sustained 100% permanent partial disability of his back, of each arm, and of each leg was properly computed by use of the schedules set forth in Minn. Stat. § 176.101, subd. 3 (14, 19, 42) (1974), and properly increased by 15% pursuant to § 176.101, subd. 3 (46).

Affirmed. Kelly, J.

48727/457 (1979) State of Minnesota vs. Alan N. Eaton, Appellant. Hennepin County.

Appellant was not prejudiced by a joint trial with a co-defendant even though the defendants were represented by the same attorney, where appellant was advised of the dangers of joint representation by the trial court and appellant waived his right to independent counsel.

The thefts of a \$12,500 check on February 6, 1976, and of a \$30,000 check on February 9, 1978, constitute separate behavioral incidents within the meaning of Minn. Stat. § 609.035 (1978).

Appellant may be prosecuted for theft as well as securities fraud arising out of the same conduct. Minn. Stat. § 80A.22, subd. 3 (1978).

Questions asked by the prosecutor were either proper or caused no prejudice to appellant.

In this case, the two counts of theft by false representation were necessarily proved by proof of the two counts of theft by swindle. The two convictions of theft by false representation are therefore vacated.

Affirmed in part; two convictions of theft by false representation vacation. Yetka, J.

48726/70 State of Minnesota vs. Norvell Shapleigh Stith, Appellant. Hennepin County.

Appellant was not prejudiced by being tried jointly with his co-defendant.

The thefts of two different checks at two separate times were separate behavioral incidents pursuant to Minn. Stat. § 609.035 (1978). The crime of theft by false representation was necessarily proved by proof of theft by swindle within the meaning of Minn. Stat. § 609.04 (1978). The convictions for theft by false representation are accordingly vacated.

Appellant may be prosecuted for theft as well as securities fraud arising out of the same conduct under Minn. Stat. § 80A.22, subd. 3 (1978). The seven counts of securities fraud were not multiplicitous.

The definition of "security" in Minn. Stat. § 80A.14(q) (1978) is not too vague to notify appellant he was dealing with securities.

The state proved the essential elements of securities fraud in this case.

Convictions and sentences for theft by swindle and securities fraud affirmed; two convictions for theft by false representation vacated. Yetka, J.

50019/128 Worthington Dormitory, Incorporated, a.k.a. Worthington College Foundation, Incorporated, Relator, vs. Commissioner of Revenue. Tax Court.

A non-profit foundation which provides low-cost housing to students at a state-operated community college is exempt from sales and use taxation pursuant to Minn. Stat. § 297A.25, subd. 1(p) (1978).

Reversed. Yetka, J.

50165/135 Joel D. Rath, as trustee for the surviving spouse and next of kin of Laird E. Simpson, decedent, vs. Hamilton Standard Division of United Technologies Corporation, et al., Darlene Hauck, as guardian ad litem of Tara Kay Simpson, Appellant, Barbara R. Simpson, individually and as natural guardian for Andrea Simpson. Hennepin County.

In distributing the proceeds of a wrongful death action, the recovery of a child of the decedent in the custody of a divorced spouse is not limited to the amount the decedent paid in child support. The child may recover for all "pecuniary loss" as that term has been defined.

In distributing the proceeds of a wrongful death action, district courts should use the support years formula as a starting point but may also take into account other relevant factors.

Reversed and remanded. Yetka, J.

SUPREME COURT

48943/187 State of Minnesota vs. Donald Bird, Appellant. LeSueur County. (Venue changed to Scott County).

Evidence that 47-year-old defendant was in position of authority over his 14-year-old niece and that he used this authority to coerce her to submit to sexual penetration was legally sufficient to support conviction for criminal sexual conduct in the first degree.

Allegations as to date of occurrence of prior sex offenses committed by defendant on complainant, evidence of which was admitted at defendant's trial, were not so vague as to make it impossible for defendant to defend himself.

Postconviction court did not abuse its discretion in failing to order a post-trial psychological examination of complainant to determine whether she had been competent as a witness.

Postconviction court did not abuse its discretion in refusing to order a new trial on the basis of complainant's alleged recantation of her trial testimony.

Affirmed. Yetka, J.

48704/352 State of Minnesota vs. Bruce J. Webber, Appellant. Mower County.

Extensive evidence showing a longstanding and conspiratorial relationship between the husband of the murdered woman and the defendant, an Illinois resident; defendant's presence in the Winona area at the time of the crime; his possession of the same type of handgun as used in the killing; and a clear payoff by the husband to the defendant after the murder was accomplished, along with other material facts, supply ample evidence as required to sustain the jury's conviction of first degree murder and conspiracy to commit murder in the first degree.

It is within the trial court's broad discretion to admit evidence that defendant owned other guns, because the evidence is relevant to the crimes alleged.

Although the foundation as to who actually made the gun records is weak, any error in admitting the records was not so prejudicial as to require reversal.

Although the procedures used in the pretrial identification were questionable, the in-court identifications were sufficiently reliable not to warrant reversal.

The trial court granted a change of venue, eliminating the possibility that the jury verdict might be prejudiced or biased.

Affirmed. Scott, J.

49483/404 John R. Togstad, et al., vs. Vesely, Otto, Miller & Keefe and Jerre Miller, Appellants. Hennepin County.

To prevail in a legal malpractice action, four elements must be shown:

- (1) that an attorney-client relationship existed;
- (2) that the defendant acted negligently or in breach of contract;
- (3) that such acts were the proximate cause of the damages; and
- (4) that but for the attorney's conduct the individual would have been successful in prosecuting the claim.

The record contains adequate evidence reasonably supporting the jury's verdict that all elements are present here, and thus the trial court did not err in denying the motion for judgment notwithstanding the jury verdict.

A trial judge's decision regarding that excessiveness of damages will not be interfered with unless there is a clear abuse of discretion.

The damages should not be reduced by a hypothetical contingency fee that would have been paid had the original action been successfully prosecuted.

The trial court's findings that certain comments by counsel were not improper was not an abuse of discretion.

Affirmed. Per Curiam.

Decision Filed Thursday, April 3, 1980

51072/306 State of Minnesota, Appellant, vs. Gary Lee Armstrong. Brown County.

While district court correctly concluded that arresting officer could not justify search of defendant's car as being incident to a lawful arrest for the misdemeanor of possession of small amount of marijuana, *State v. Martin*, 253 N.W. 2d 404 (Minn. 1977), court was not presented with opportunity for considering alternative basis for upholding search under motor vehicle exception to the warrant requirement.

Remanded for rehearing. Sheran, C. J.

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.

Office of Hearing Examiners Notice of Request for Proposals for Hearing Examiners and Court Reporters

The Minnesota Office of Hearing Examiners will be contracting with qualified attorneys and court reporters for the fiscal year beginning July 1, 1980, and ending on June 30, 1981. Attorneys must be admitted to practice law in the State of Minnesota at the time they apply. Remuneration for contractual hearing examiners, under present law, may not exceed \$150.00 per day. Pending legislation, if passed, would change the remuneration to allow it to be set by the Chief Hearing Examiner. Court reporter remuneration is also the subject of pending legislation. The exact details will be included in the Request for Proposal which will be sent to all persons or associations who ask to receive one. Persons or associations desiring to receive a Request for Proposal must request one by notifying Duane R. Harves, Chief Hearing Examiner, Minnesota Office of Hearing Examiners, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone (612) 296-8100, no later than 4:30 p.m., Wednesday, May 21, 1980. The Request for Proposal will contain more details. Final proposals must be received by the Office of Hearing Examiners by 4:30 p.m., Friday, May 30, 1980.

State Board of Investment Notice of Availability of Contracts for Expansion of the Minnesota Public Employees Deferred Compensation Plan

The Minnesota State Board of Investment will be contracting with insurance carriers and/or marketing companies to expand the Minnesota Public Employees Deferred Compensation Plan. The state seeks to give employees a greater choice of investment vehicles and payout options and to increase employee participation in the plan through a strong marketing effort.

Three approaches for plan expansion are under consideration. The board will consider the services of:

1. Insurance carriers whose annuities will be sold and serviced by their own field organizations or by marketing organizations of their choice;

2. Insurance carriers whose annuities will be sold and serviced by an independent marketing organization; and/or

3. A single marketing organization which offers to market the products of more than one insurer.

In determining which annuity contract(s) and companies will be endorsed, consideration will be given to the structure of the annuity contract, the nature of the company's/marketer's enrollment and administrative facilities, and to the illustrative financial results which the contract provides for the employee.

This is not a request for proposals.

For further information, please contact:

Mr. Daniel J. McCarthy F.S.A.
Consulting Actuary
Milliman & Robertson, Inc.
Two Pennsylvania Plaza
New York, New York 10001

Specifications will be available on April 22, 1980. The deadline for submission of proposals is May 19, 1980.

Department of Public Welfare Fergus Falls State Hospital

Notice of Request for Proposals for Services to be Performed on a Contractual Basis

Notice is hereby given that the Fergus Falls State Hospital, Mental Health Division, Department of Public Welfare, is seeking the following services for the period July 1, 1980, through June 30, 1981. These services are to be performed as requested by the administration of the Fergus Falls State Hospital.

Services of a pathologist to perform pathological services and autopsies; and provide a consultant to review institution's laboratory tests, check quality control and provide consultation and supervision to the institution's laboratory. The estimated amount of the contract will not exceed \$16,750.

Responses for the above services must be received by May 12, 1980. Direct inquiries to:

Linda A. Brill, Accounting Officer
Fergus Falls State Hospital
Box 157
Fergus Falls, MN 56537
(218) 739-2233, ext. 376

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.

Health Department

Application for Licensure to Operate A Life Support Transportation Service

On April 9, 1980, a complete application for a license to operate a proposed life support transportation service with a base of operation at Fulda, Minnesota, was submitted by Randy Larsen, City of Fulda, and received by the Department of Health. This notice is given pursuant to Minn. Stat. § 144.802 (1979), which requires that the commissioner shall publish the notice, at the applicant's expense, in the *State Register* April 21, 1980 and in the appropriate newspapers. Each municipality, county, community health service agency and any other person wishing to comment on this application to the Health Systems Agency (Minnesota Health Systems Agency Six) shall do so before the close of business on May 22, 1980.

After a public hearing has been held in one of the municipalities in which the service is to be provided, Minnesota Health Systems Agency Six shall recommend that the commissioner either grant or deny a license or recommend that a modified license be granted. The Health Systems Agency shall make the recommendations and reasons available to any individual requesting them.

Within 30 days after receiving the recommendation, the commissioner shall grant or deny the license to the applicant.

Any objections to or statements of support for this application pursuant to Minn. Stat. § 144.802, may be made in writing to Robert Freisinger, Resources Development Director, Minnesota HSA Six, 208 East Third, P.O. Box 156, Redwood Falls, MN 56283.

Higher Education Coordinating Board

Notice of Intent to Solicit Outside Information Regarding Proposed Amendment of Rules Governing Scholarship and Grants-in-aid; Private College Contract; state Work-study; Minnesota Medical and Osteopathic Loan; Minnesota Foreign Student Assistance; Veterans' Dependents Student Assistance; Part-time Student Grant; Private Institution Registration; and Area Vocational-Technical Institute Tuition Subsidy Programs

Notice is hereby given that the Minnesota Higher Education Coordinating Board is seeking information or opinions from sources outside the agency in preparing to propose the amendment of rules governing the Scholarships and Grants-in-aid Program (presently 5 MCAR §§ 2.0101-2.0108), the Private College Contracts Program (presently 5 MCAR §§ 2.0201-2.0300), the Work-Study Grants Program (presently 5 MCAR §§ 2.0301-2.0310), the Loans to Medical and Osteopathy Students Program (presently 5 MCAR §§ 2.0401-2.0407), the Minnesota Foreign Student Assistance Program (presently 5 MCAR §§ 2.0601-2.0607), the Minnesota Veterans' Dependents Student Assistance Program (presently 5 MCAR §§ 2.0701-2.0800), the Part-Time Student Grant Program (presently 5 MCAR §§ 2.0801-2.0806), the Private Institutions Registration Program (presently 5 MCAR §§ 2.0901-2.1000), and the Area Vocational-Technical Institute Tuition Subsidy Program (presently 5 MCAR §§ 2.1001-2.1008). Any interested persons may submit data or views on this subject in writing or orally to:

Mary Samoszuk
MN Higher Education Coordinating Board
400 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101
(612) 297-2036

Any written material received by the agency shall become a part of the hearing record in the event amended rules governing this subject are promulgated.

Department of Revenue Income Tax Division

Notice of Intent to Solicit Outside Opinion Regarding Rules Concerning the Deduction for Contribution to Individual Housing Accounts

The Income Tax Division of the Department of Revenue is beginning to draft rules concerning the deduction for contributions to individual housing accounts contained in Laws of 1980, ch. 512.

The department invites interested persons or organizations to provide information, comments, and advice on the subject.

Comments should be submitted in writing or orally within 30 days to Gary P. Mesna, Attorney, Income Tax Division, Department of Revenue, Centennial Office Building, St. Paul, Minnesota 55145 or (612) 296-3439.

Written statements will be made part of the public hearing record.

Errata

The notice of adoption of Clean Indoor Air rules published at *State Register* Volume 4, Number 40, pp. 1608-1609 (April 7, 1980) contained the following errors:

1. The notice stated that rules 7 MCAR §§ 1.442-1.444 were adopted. That statement should have included rule 7 MCAR § 1.441, which was adopted without amendment.
2. At 7 MCAR § 1.443 C., the numbers "2." and "3." should have been underlined.
3. At 7 MCAR § 1.444 B.1., first line, change "7 MCAR § 1.443 C.B.1." to read "7 MCAR § 1.443 ~~C.~~ B. 1."
4. At 7 MCAR § 1.444 C.1. Offices., paragraph one appears struck out. That paragraph should be underlined.

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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.

Perspectives—Publication about the Senate. Contact Senate Information Office.

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, Room 8 State Capitol, St. Paul, MN.

This week—weekly interim bulletin of the House. Contact House Information Office.

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