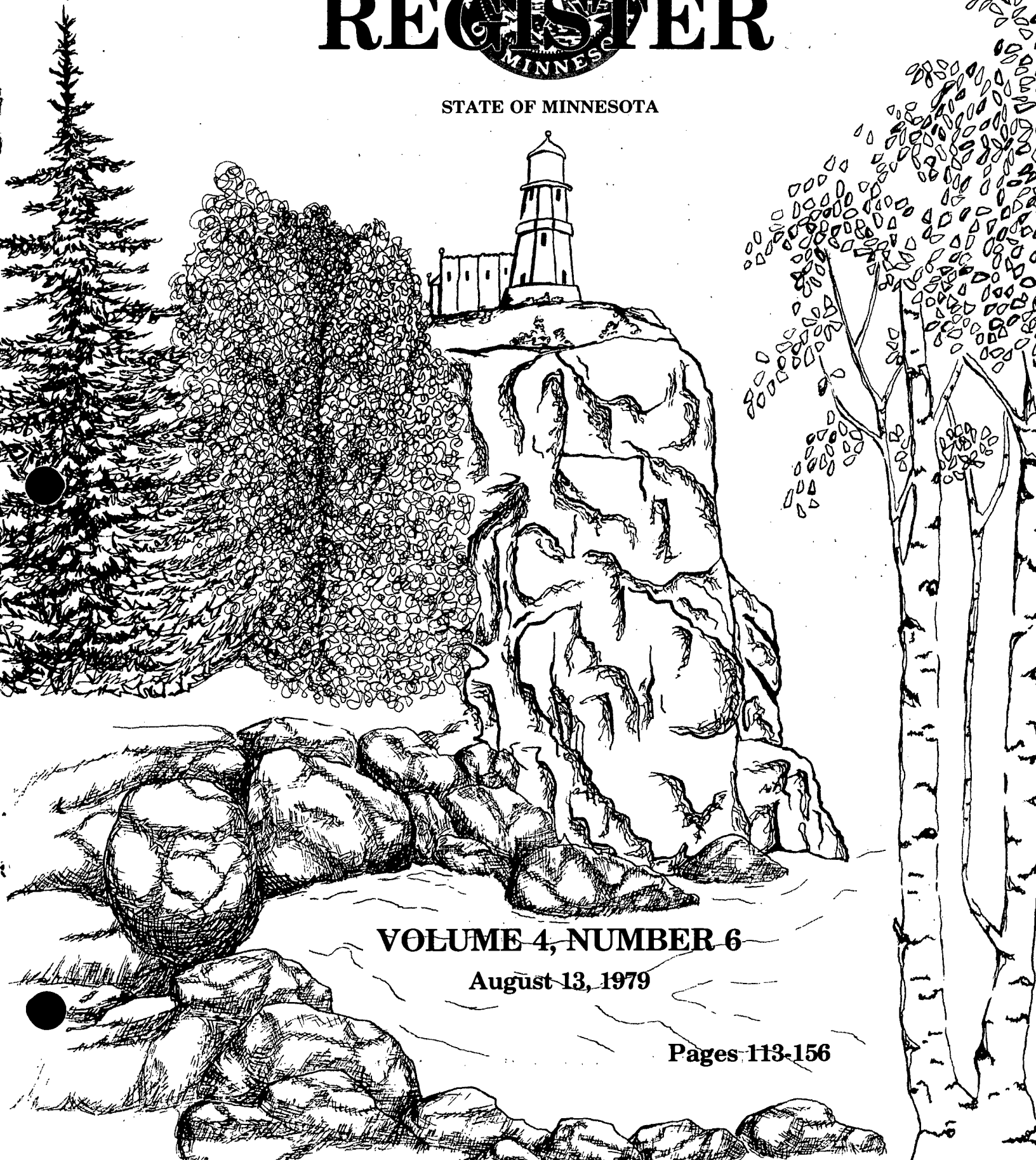




# STATE REGISTER

STATE OF MINNESOTA



VOLUME 4, NUMBER 6

August 13, 1979

Pages 113-156

# STATE REGISTER

## Volume 4 Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices.	Issue Date
<b>SCHEDULE FOR VOLUME 4</b>			
7	Monday Aug 6	Monday Aug 13	Monday Aug 20
8	Monday Aug 13	Monday Aug 20	Monday Aug 27
9	Monday Aug 20	Monday Aug 27	Monday Sept 3
10	Monday Aug 27	Tuesday Sept 4	Monday Sept 10

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

\*\*Notices of Public Hearings on proposed rules are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102.

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The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

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# MCAR AMENDMENTS AND ADDITIONS

The following is a listing of all proposed and adopted rules published in Volume 4 of the *State Register*. The listing is arranged in the same order as the table of contents of the *Minnesota Code of Agency Rules* (MCAR). All adopted rules published in the *State Register* and listed below amend the rules contained in the MCAR set. Both proposed temporary and adopted temporary rules are listed here although they are not

printed in the MCAR due to the short term nature of their legal effectiveness. During the term of their legal effectiveness, however, adopted temporary rules do amend the MCAR. A cumulative listing of all proposed and adopted rules is published each quarter and at the end of the volume year.

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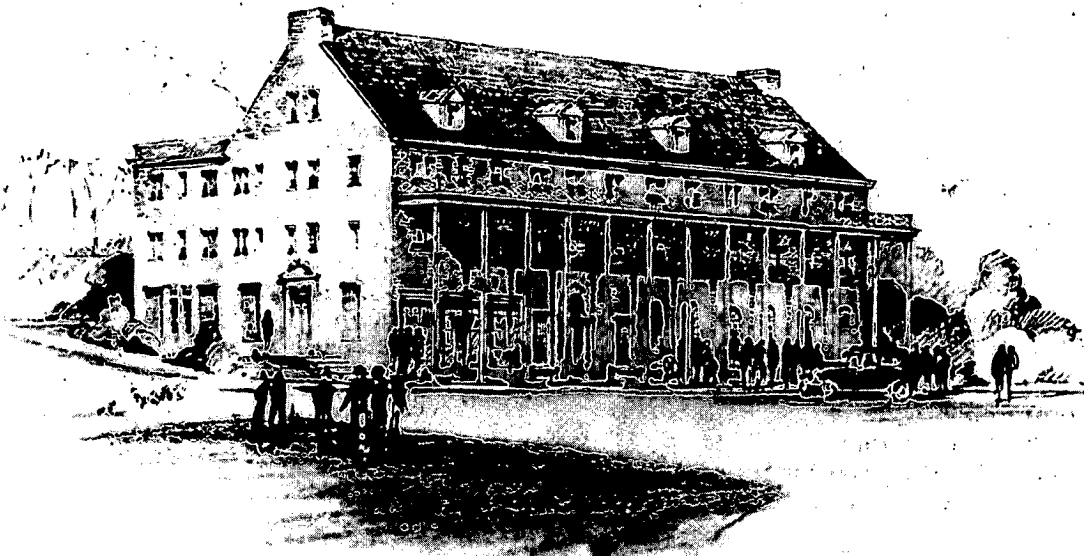
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PROPOSED HOTEL  
 STILLWATER, MINNESOTA  
 WILLIAM M. INGEMANN, ARCHITECT.

THE LOWELL INN at Stillwater, built in 1926 for \$125,000, replaced the old Sawyer House, a hotel built by Henry Sawyer and opened in 1860. This architect's version of the proposed inn appeared in the *St. Paul Dispatch*. (Courtesy of the Minnesota Historical Society)

# RULES

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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 as proposed and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has

been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

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

## Department of Personnel

### Adopted Temporary Rules Governing Travel and Relocation Reimbursement, Probationary Period, Vacation Leave and Holidays

The temporary rules published at *State Register*, Volume 3, Number 48, pp. 2106-2113, June 4, 1979 (3 S.R. 2106) were approved by the Attorney General and became effective July 1, 1979. The adopted rules do not differ from the proposed rules.

# PROPOSED RULES

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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.

## Department of Personnel

### Proposed Amendment of Rules Regarding Personnel Administration

#### Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in Room 83, State Office Building, St. Paul, Minnesota, 55155 on September 12, 1979 commencing at 8:30 a.m. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity

to participate. Statements may be made orally and written material may be submitted at the hearing. In addition, written materials may be submitted by mail to Peter Erickson, Office of Hearing Examiners, Room 300, 1745 University Avenue, St. Paul, Minnesota, 55104, (612) 296-8111. Unless a longer period not to exceed twenty calendar days is ordered by the Hearing Examiner at the hearing, the hearing record will remain open for the inclusion of written material for five working days after the hearing ends. The hearing shall be conducted in accordance with the rules of the Office of Hearing Examiners, 9 MCAR § 2.101 *et seq.*

The proposed amendments, if adopted, would amend 2 MCAR § § 2.009 Labor service; 2.010 Temporary designation of positions in the unclassified service; 2.018 Allocation of position; 2.019 Reallocation of position; 2.024 Work out of class; 2.029 Administration of the wage and salary plan; 2.031

**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

Retroactive pay upon reallocation; 2.039 Eligibility to compete; 2.045 Appointing authority may conduct selection process; 2.046 Rating results of selection processes; 2.061 Reemployment list; 2.065 Removal of names from eligible lists; 2.067 Statement of availability; 2.086 Temporary appointment; 2.087 Emergency appointment; 2.091 Transfers; 2.097 Duration of probationary period; 2.099 Demotions during the probationary period; 2.108 Suspension; 2.109 Layoff; 2.110 Demotion; 2.118 Reinstatement after resignation; retirement or expiration of a leave of absence; 2.119 Restoration of seniority; 2.131 Holidays; 2.133 Absence because of illness or injury for which Workers' Compensation is paid; 2.134 General regulations governing leave of absence with pay; 2.135 Vacation leave; 2.136 Sick leave; 2.138 Other leaves with pay; 2.141 Child bearing/Child rearing leave of absence without pay; 2.181 Expense allowances; 2.182 Relocation expenses; and the definitions of "Agency," "Agency Promotional List," "Allocation," "Open Competitive List," "Permanent Employee," "Reallocation," "Reemployment List," "Statewide Promotion List."

These rules are being amended to correct grammar, clarify meanings, simplify existing procedures, implement Minn. Stat. ch. 43 as amended by Laws of 1979, ch. 332, and convert temporary rules published at *State Register*, Vol. 3, No. 48, p. 2106, June 4, 1979 (3 S.R. 2106) to permanent rules.

Copies of the proposed rules are now available and one free copy may be obtained by writing to the Department of Personnel, 3rd Floor, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota, 55101. Additional copies will be available at the door on the date of the hearing.

The statutory authority to promulgate the proposed rules is contained in Minn. Stat. ch. 43 and Laws of 1979, ch. 332.

Notice: The proposed rules are subject to change as a result of the rules hearing process. The Department therefore strongly urges those who are potentially affected in any manner by the substance of the proposed rules to participate in the hearing process.

Please be advised that pursuant to Minn. Stat. § 10A.03, subd. 1 (1978) lobbyists must register with the State Ethical Practices Board within five days after becoming lobbyists.

" 'Lobbyist' means any individual:

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

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

'Lobbyist' does not include any:

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

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

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

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

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

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

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

Minn. Laws 1979, ch. 59 § 3. Questions concerning lobbyists or their required registration should be directed to the State Ethical Practices Board, Room 41, State Office Building, Wabasha Street, St. Paul, Minnesota 55155, at telephone number (612) 296-5615.

Notice is hereby given that 25 days prior to a hearing, a Statement of Need and Reasonableness will be available for review at the office of the Department of Personnel 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 of Personnel at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the Department of Personnel 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 Department of Personnel. If you desire to be notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report), or to the Department of Personnel (in the case of Personnel's submission or resubmission to the Attorney General).

# PROPOSED RULES

Promulgation of these proposed rule provisions will not result in the expenditure of public monies by local public bodies.

Barbara L. Sundquist  
Commissioner of Personnel

## Amendments as Proposed

**2 MCAR § 2.009 Labor service.** Classes of positions involving unskilled labor, as designated by the Commissioner, shall comprise the labor service.

The Commissioner may at any time review the duties performed by any labor service employee. The appointing authority and the employee shall supply any information requested by the Commissioner in connection with such review. If the Commissioner thereafter determines that the duties performed are not properly those of a position in the labor service, the Commissioner shall take action deemed necessary to comply with the law and these rules.

Any personnel action affecting an employee or a position in the labor service shall be reported to the Commissioner by written notice upon such form as the Commissioner may prescribe.

~~A-~~ Reports of appointment, termination, or interruption of employment in the labor service shall be effected as follows:

A.1- Employees in the labor service who have been employed for a total of six months in a period of twelve consecutive months shall be known as classified tenured laborers and shall receive the same tenure rights and benefits given other classified employees of the state not in the labor service. The appointing authority's certificate that the employee has met these conditions will establish the employee's tenure rights. Such certification shall be in the manner and form prescribed by the Commissioner.

~~B.2-~~ A tenured laborer shall be given written notice of disciplinary action and shall have rights in accordance with law (Minn. Stat. § 43.24).

~~B-~~ ~~Promotion from the labor service. Tenured laborers shall be eligible to compete in promotional selection processes when they meet the requirements specified in the examination announcement.~~

**2 MCAR § 2.010 Temporary designation of positions in the unclassified service.** The Commissioner may authorize the designation of a position in the unclassified service for a limited period of time. The appointing authority shall report to the Commissioner the description of the position and the conditions under which it is to be established, which serve to limit the duration of employment, the expected termination date and the nature of the function to which it is to be as

signed. Any position which has been designated in the unclassified service by the Commissioner, in accordance with this rule, and which will continue for longer than two years, shall be reviewed at the end of the second year by the Commissioner to determine whether it shall continue in the unclassified service. No position, ~~except student worker positions,~~ assigned to the unclassified service in accordance with this rule shall continue longer than three years in the unclassified service and, except as provided by Minn. Stat. § 15.61, no employee shall continue in a position or positions established in the unclassified service under the provisions of this rule to perform the same function in the same agency for a total of more than three years. (Minn. Stat. § 43.05)

**2 MCAR § 2.018 Allocation of positions.** When a new classified or unclassified position is to be established; or a vacant classified or unclassified position is to be filled; ~~or the duties and responsibilities of a classified or unclassified position are changed as a result of changes in the organizational structure of an agency or other action resulting in abrupt changes in the duties and responsibilities,~~ the appointing authority shall notify the Commissioner in the prescribed manner, and the Commissioner shall allocate the position to the appropriate class in the classified service. ~~or If the position is in the unclassified service, where possible, to a comparable class~~ the Commissioner shall compare the position to an appropriate class if such class exists or if not, establish a salary range for the position as provided by law. (Minn. Stat. § 43.064 as amended by Laws of 1979, ch. 332, § 17.)

The Commissioner, after making an allocation or comparison, shall notify the appointing authority of that action. The action shall become ~~immediately~~ immediately effective, but the appointing authority may within ten days file ~~with the Commissioner~~ an application for reconsideration with the Commissioner, together with any written evidence by way of affidavits, statements or exhibits which the appointing authority may desire to have considered. The Commissioner shall act promptly upon that application and shall notify the appointing authority of the final action.

**2 MCAR § 2.019 Reallocation Reclassification of positions.** ~~If, because of changes occurring over a period of time in the kind, responsibility or difficulty of work performed in a classified or unclassified position; it seems to be improperly allocated, or compared, the Commissioner shall, independently or upon request of an appointing authority or permanent employee, investigate the duties of the affected position. Following the investigation, the Commissioner may reallocate, change the allocation of, or recompare the position to an appropriate class. In making a request for a review of a position, the appointing authority or permanent employee shall set forth specifically the changes that have occurred in~~

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## PROPOSED RULES

the particular position which warrant the requested action along with other documentation prescribed by the Commissioner. If the Commissioner determines that a request for the ~~reallocation~~ reclassification of a position is not properly documented, the request shall be returned to the sender within ten days of receipt of the request, and the employee shall be immediately notified of such action. The Commissioner shall notify the affected employee and the appointing authority of the final classification decision.

**2 MCAR § 2.024 Work out of class pay.** When an employee is expressly assigned to perform all the duties of a position allocated to a ~~higher level~~ different classification that is temporarily unoccupied for reasons other than vacation or short periods of sick leave and ~~such work~~ the work out of class assignment exceeds 15 consecutive work days ~~in duration~~, the employee when assigned to work in a lower or equal class shall be paid for all such hours at the employee's current rate of pay; or when assigned to work in a higher class shall be paid for all such hours at a rate within a higher range which is equal to the minimum rate for the higher class or one step higher than the employee's current salary, ~~of the assignment, at the minimum of the salary range for the higher class or receive a one step increase~~; whichever is greater. ~~Appointments to these assignments shall be made in accordance with 2 MCAR §§ 2.081 2.091. If the assignment is to a position at an equal or lower level classification, the employee shall be paid at the employee's current rate of pay.~~

**2 MCAR § 2.029 Administration of the wage and salary plan.** ~~2 MCAR § 2.029, e~~Except for subdivisions F. and G., this rule also applies to those unclassified positions which have been directly compared to the classified service. The following provisions assume that funds are available and expenditures have been authorized by the Commissioner of Finance.

A. Beginning salary. The minimum rate of pay shall normally be paid upon appointment to a class. In schedules A and C, the appointing authority may, however, make an original appointment within the salary range but not to exceed the third salary step.

All original appointments beyond the minimum rate for a class shall be documented in the form prescribed by the Commissioner and shall be based upon the exceptional qualifications of the candidate or the unavailability of candidates at the minimum rate, and consideration shall be given to the salaries of current employees in the same or related classifications.

In the Special Teachers salary schedule, appointments may be made up to and including the sixth step under conditions outlined in the compensation provisions relating to that schedule.

B. Salary on promotion. Promotional increases shall normally be of one or two salary steps, depending on the actual increase in responsibilities assumed upon promotion, unless greater adjustment is necessary to bring the employee's sala-

ry to the minimum of the new pay range. Any promotional increase beyond that provided for above must be approved in advance by the Commissioner based on documentation to support such additional increase. No salary increase may be granted which would place the employee's rate of pay above the authorized salary range.

C. Salary upon reemployment or reinstatement. If a former employee is reemployed or reinstated into a class in which that employee was previously employed, the appointing authority may make an appointment at the same rate of pay the employee had been receiving at the time of separation from the state civil service and/or the class, plus any automatic adjustments that may have been made since the employee left the state civil service and/or the class. Appointments above such rate of pay must be approved by the Commissioner before they can take effect.

D. Salary increases. Salary increases may be granted in accordance with law. (Minn. Stat. §§ 43.12, 43.121-43.122, 43.126-43.127 and other applicable provisions.)

E. Achievement awards. In addition to being eligible for normal salary increases, employees whose positions are assigned to salary Schedule A are eligible for achievement awards based on demonstrated outstanding performance. Increases in this schedule must be submitted and awarded within the context of a results-oriented management or standards of performance system which has been approved by the Commissioner. An achievement award shall be awarded as prescribed by law. Achievement awards shall be administered in a manner that will encourage and recognize excellence among employees. Achievement award increases may be granted up to 30% of the classified and 30% of the unclassified employees whose salary ranges are set by direct comparison to the classified service authorized for the department agency at the beginning of the fiscal year. Unclassified positions where the salaries are set by statute are not to be included in the calculations of the number of allowable increases for unclassified employees.

F. Salary decreases. Salary decreases for just cause may be made to reduce the salary of the employee within the salary range. In the case of a permanent employee, written notice of intent to effect such reduction in pay, and the reasons for such action, shall be given to the employee at least 5 working days prior to the effective date of the reduction and a copy submitted to the Commissioner prior to the effective date of the reduction. The permanent employee so affected may request a hearing before the Board as provided in the law.

G. Salary on transfer. An employee who is transferred to a different department agency in the same class or to a similar class shall receive the salary being paid before such transfer. In any case of transfer, no employee shall receive a rate of pay below the minimum of the range for the class to which such employee has been transferred.

H. Salary on demotion. An employee who has been demoted to a class in a lower salary range shall be paid a salary rate within the range of the class to which such employee has



## PROPOSED RULES

been demoted except as provided ~~in~~ by law. (Minn. Stat. § 43.12, subd. 26.)

I. Total remuneration. ~~Notwithstanding 2 MCAR §§ 2.004 and 2.029, 2 MCAR § 2.029 I.~~ This subdivision applies to all classified and unclassified employees in the executive branch. Except as otherwise provided in these rules, no employee shall receive pay in addition to the salary authorized for services rendered either in the discharge of the assigned ordinary duties, or additional duties which may be performed by the employee or which the employee may undertake or volunteer to perform.

An employee may receive a separate salary from more than one state agency for hours worked during the same pay period under the following conditions:

1. The work assignment performed for another state agency is not part of the employee's normal duties; the employee is qualified to perform the assignment; and the appointing authorities of both agencies and the Commissioner approve the assignment in advance; or

2. ~~An~~ The employee may be is appointed under provisions of these rules to less than full-time positions in more than one state agency, provided the employee has been appointed under the provisions of these rules, and the combined established work schedules do not exceed a normal 40 hour work week.

3- Employees in payroll status in two or more agencies for a total of 75% or more of the time, because of concurrent appointments, shall be eligible for state paid insurance in the same manner as other employees. The state paid premium for such eligible employees shall be borne by the agency in which the majority of the time is worked.

J. Hourly rates. Hourly rates of pay shall be paid in accordance with law. (Minn. Stat. §§ 16.027 and 43.01, subd. 9)

K. Project employment. The Commissioner may authorize a rate of pay which may exceed the maximum of the range provided by not more than 70% where skilled craft employment is on a strictly project basis. In cases of project employment, the employee shall not be entitled to any other benefits.

Project employment for purposes of this rule shall be restricted to a planned work program which normally will normally be completed in a specified time period and is not of a seasonal or regularly recurring nature.

### 2 MCAR § 2.031 Retroactive pay upon reallocation.

Except for reallocations resulting from a position classification study of an agency or subdivision thereof initiated by the Department of Personnel or an appointing authority, if the incumbent of a position which is reallocated upward to a class existing at the time of the request receives a probationary

appointment to the reallocated position, pay for the reallocated position shall commence sixty calendar days prior to the incumbent employee's probationary appointment to that position, but in no event shall such retroactive pay commence earlier than fifteen calendar days after the receipt in the Department of Personnel of a reallocation request determined by the Department of Personnel to be properly documented, and it shall continue from that date for up to a maximum of sixty calendar days or until the effective date of the appointment, whichever occurs first. If more than sixty days after the initial fifteen day period elapse, payment shall be for the final sixty days in the period.

### 2 MCAR § 2.039 Eligibility to compete.

A. Open competitive selection processes. Competitive selection processes shall, after public notice, be open to all applicants who meet the reasonable standards or requirements fixed by the Commissioner with regard to factors that relate to the ability of the candidates to perform the duties of the position with reasonable efficiency and effectiveness. Persons with physical disabilities who, when demonstrated to the satisfaction of the Commissioner, could not be selected in the normal manner, shall be selected in such a manner that will fairly test their ability to perform the duties of the position.

In the case of an applicant who is blind, the ~~d~~Department will provide the applicant with either a braille selection process, or the services of a reader chosen by the applicant with the approval of the ~~d~~Department, or subject to the approval of the applicant, whichever means of screening is available to the ~~d~~Department.

No applicant shall be rejected because the applicant lacks educational qualifications, unless such qualifications relate directly to the duties of the class for which the announcement is made, or where such educational requirements are established by the federal agencies making grants-in-aid or otherwise contributing to state programs.

B. Promotional selection processes. Promotional selection processes shall be open to all ~~permanent or probationary~~ employees in of the state, the agency or other organizational unit for which the selection process is being held who meet the requirements described in the announcements and who hold classified positions in the executive branch of the state civil service, or the Minnesota State Retirement System, or the Teachers Retirement Association, or the Legislative Audit Commission; or who hold unclassified positions in the executive or legislative branches of the state civil service. All unclassified employees appointed for a period in excess of six months, and permanent or probationary employees in the classified service in any branch of state government who meet the established requirements may apply for promotional selection processes for positions designated as managerial or

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~~professional; Emergency; temporary and provisional employees in the classified service; unclassified employees appointed for a period of less than six months; pre-service trainees and interns are not eligible to compete in promotional selection processes, for positions designated as professional or managerial.~~

C. Selection processes for incumbents of reallocated positions. The Commissioner may authorize any appointing authority to promote the incumbent of a reallocated position to a higher class without examination in accordance with law. In the absence of such authorization the incumbent of a position which has been reallocated in accordance with 2 MCAR § 2.019 and 2 MCAR § 2.240 shall be permitted to compete in the selection process for the class to which the position has been reallocated. ~~Provided: (Minn. Stat. § 43.19, subd. 1(2))~~

~~1. The incumbent did not participate in a written or competitive oral examination process for such a position in the six months previous to the date of reallocation;~~

~~2. The reallocation did not result from the assignment of the incumbent to work out of class in a manner so as to bypass the selection process or to a vacancy in a new position which had not been allocated to a class; or from other action taken without regard to the appropriate selection process.~~

If the incumbent of a reallocated position examined in accord with the above successfully completes passes the examination process, notwithstanding the provisions of 2 MCAR § 2.084, the Commissioner may certify only the name of the eligible incumbent, provided the position has been reallocated to another class in the same occupational category as the initial classification.

~~In certifying eligibles to a position reallocated to a class in a different occupational category than the initial classification of the position, the provisions of 2 MCAR § 2.084 shall apply.~~

Where the incumbent of a position which has been reallocated has failed to qualify in the selection process and/or otherwise is ineligible to continue in the position in the new class, the employee must be removed from the position within 30 calendar days from the date of notification to the appointing authority of the incumbent's failure to qualify.

Where the incumbent is ineligible to continue in the position and is not transferred, promoted or demoted, the lay-off provisions of the Personnel Law and Rules apply.

**2 MCAR § 2.045 Appointing authority may develop and/or conduct selection process.** The appointing authority may be authorized to develop selection processes using techniques approved by the Commissioner and/or to conduct selection processes using materials approved by the Commissioner. Such authorization shall be only for classes that are designated by the Commissioner.

The Commissioner shall review the selection process developed and/or administered by the appointing authority for conformance to the law and these rules, and may modify the process used or the classes for which such selection processes

are used when deemed necessary for the best interest of the state service.

### **2 MCAR § 2.046 Rating results of selection processes.**

A. Appropriate scientific techniques and procedures shall be used in scoring the results of selection processes and in determining the relative ranking of competitors. Such techniques may include electronic data processing of test answer or experience and training rating forms filled out by the applicant. The minimum rating for which eligibility may be achieved shall be set by the Commissioner, taking into account the number of vacancies anticipated during the term of the eligible list. Final rank may be based on all factors of the selection process and other qualifying elements as shown on the competitor's application or other verified information. Final ratings of each competitor shall be determined by averaging the earned score of each part of the selection process in accordance with the weights established for each part prior to the date of any part of the selection process. All competitors may be required to obtain at least a minimum rating in each part of the selection process in order to receive a final passing score rating or to be rated on the remaining parts of the process. Where rating procedures involve assignment of a numerical score, a score of 70 is necessary to pass and a score of 100 is the maximum score awarded to any competitor.

B. The Commissioner may announce, in advance of the establishment of an eligible list, the maximum number of competitors who shall have their names placed on the list, or who shall be permitted to compete in any of the separate parts of the selection process. Under such procedure, those considered as having passed and who are permitted to take the remainder of the screening process shall be the set number of candidates scoring highest in the process or part thereof. The Commissioner also may establish a procedure for admitting candidates to a subsequent stage of the selection process in rank-order of score on the previous stage and candidates may be invited to complete the examination process as the need to create or enlarge an eligible list is determined.

C. Competitors failing to qualify as eligible for the class for which the screening process was conducted may, with the approval of the Commissioner, be rated with reference to their eligibility for a lower class for which a selection process is being conducted and in cases where competitors signify their willingness to accept appointment to such lower class. If found eligible, their names of these competitors may then shall be added to the eligible list for such lower class.

**2 MCAR § 2.061 Reemployment list.** The reemployment list shall contain the names of all permanent or probationary employees laid off in the class of employment, and the names of former permanent or probationary employees in the class whose written applications made within three years of separation in good standing are approved by the Commissioner based on considerations of quality of service. The Commissioner shall consider the recommendation of the last appointing authority before approving or disapproving applications

## PROPOSED RULES

~~for reemployment of former employees and shall approve or disapprove each application considering the quality of service as evidenced by service reports submitted by the last appointing authority. Names shall be placed on the reemployment list based on the quality of service as indicated in the individual's performance appraisals. A person may remain on a reemployment list for up to three years and must return to state service employment in the class within four years of separation from the class.~~

The name of a laid-off employee shall be placed on the reemployment list for all classes in which the employee possessed permanent or probationary status prior to layoff and for locations and employment conditions for which the employee is eligible and has expressed a willingness to accept employment. ~~Initial notice of which classes, locations and employment conditions the employee is willing to consider shall be made to the Department of Personnel by the appointing authority at the point notification of layoff is given to the Department. Subsequent changes in availability for classes, locations, or employment conditions shall be made any time within three years of the date of layoff by the laid-off employee.~~ When notice of layoff is given to the department, the appointing authority shall also notify the department of the classes, locations and employment conditions which the employee is willing to consider. The laid off employee may make changes in availability for classes, locations or employment conditions at any time within three years from the date of layoff.

**2 MCAR § 2.065 Removal of names from eligible lists.** In addition to the causes stated in Minn. Stat. § 43.14, the Commissioner may remove names from eligible lists permanently or temporarily for any of the following reasons:

A. Appointment through certification from such list to fill a permanent position.

B. Appointment to fill a permanent position through certification from a list for another class at the same or higher salary. If an employee is on more than one eligible list at the same or higher salary, the employee may be kept on other eligible lists by a written request to the Commissioner.

C. Failure to respond within seven days from the date of mailing to a written inquiry of the Commissioner relative to availability for appointment or failure to respond within seven days from the date of mailing to a written inquiry of an appointing authority sent by certified mail relative to availability for employment.

D. Failure to respond within two days to a telegraph inquiry from the Commissioner relative to availability for appointment.

E. Declination of appointment under such conditions as

the eligible previously indicated would be acceptable.

F. Failure to report for duty or for scheduled employment interview within the time prescribed by the appointing authority.

G. Expiration of term of eligibility on the eligible list.

H. Failure to maintain a record of current address with the ~~Department~~. For this purpose, the return of a letter by the postal authority, if properly addressed to the last address on the records, shall be deemed sufficient grounds for such removal of the name from the eligible list.

I. In the case of agency promotional lists, appointment or transfer of an employee to a new agency or another duly established organizational unit.

J. In the case of promotional lists, upon termination in the state service.

K. In the case of promotional lists upon certification to three separate positions except that the name of an individual so removed shall continue to be referred to positions in the class in the ~~department~~ agency which gave the individual a satisfactory or better rating in the selection process for such class.

L. Upon certification at least seven times to the same or different appointing authorities where no appointment is made.

M. Subsequent documentation that the candidate on the eligible list does not meet the requirements of the position(s) to which such candidate may be certified.

**2 MCAR § 2.067 Statement of availability.** Whenever an eligible submits a statement restricting the conditions under which that individual will be available for employment the eligible's name shall be withheld from all certifications which do not meet the conditions specified. An eligible may file a new statement any time during the duration of an eligible list, modifying any prior statement regarding conditions under which the eligible will be available for employment, except that if such statement results in the withdrawal of the eligible's name from the certification outstanding at the time of receipt of statement, it may be deemed a declination of appointment. If such statement would result in the addition of the eligible's name to a certification outstanding at the time of receipt of the statement, it may be added at the request of an appointing authority.

**2 MCAR § 2.086 Temporary appointment.** Temporary appointments shall; ~~when practicable,~~ be made from eligible lists in accordance with Minnesota Statutes. ~~If after the Commissioner has made a reasonable effort to certify eligibles for temporary appointments from existing eligible lists and has found it impractical to make such certification, the Com-~~

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missioner may authorize the temporary appointment of an individual designated by the appointing authority. (Minn. Stat. § 43.20, subd. 5 as amended by Laws of 1979, ch. 332, §45)

**2 MCAR § 2.087 Emergency appointment.** Emergency appointments shall be made in accordance with Minnesota Statutes. (Minn. Stat. § 43.20, subd. 3 as amended by Laws of 1979, ch. 332, § 44) An emergency appointment is an appointment for a period not exceeding ten consecutive working days made under conditions necessitating immediate action to provide for carrying on work that must be continued in the public interest. (Minn. Stat. § 43.20, subd. 3)

Prior approval shall not be required in the case of emergency appointments, but each such appointment shall be reported to the Commissioner before payment for services can be made.

In any case in which a need for action in filling a vacancy shall have been known, or could have been known by the exercise of due diligence far enough in advance to afford opportunity for appropriate action under some other provision of this law and these rules, no emergency shall be deemed to exist, and no emergency appointment shall be made.

## 2 MCAR § 2.091 Transfers.

A. An employee may be transferred to a position in the same class in a different department, agency, or organization unit, with the approval of the Commissioner and the appointing authorities concerned. Transfers of an employee may be made from a position in one class to a position in another class only if it is determined by the Commissioner that the employee to be transferred possesses satisfactory qualifications and if the Commissioner is satisfied that such transfer is in the best interests of the service. The Commissioner may require written examinations or other evidence for the purpose of determining qualifications for transfer.

B. No transfer or change in work assignment imposed as a penalty or which otherwise prejudices any employee, and without the employee's voluntary consent, shall be approved unless the Commissioner is satisfied that such action is necessary in the best interest of the state service.

C. Seniority shall be transferred in all cases of transfer within the same department agency, or in cases of transfer by the Commissioner of Administration, but shall not be transferred in other cases of inter-departmental transfer.

D. A transferred probationary or permanent employee may be required to serve a full probationary period beginning on the date of transfer at the request of the receiving appointing authority. The agency shall file notice of this requirement shall be filed in writing with the Commissioner and copies shall provide a copy of the notice shall be given to the employee prior to completion of the transfer. In the absence of such notice, transfer of a probationary employee will not affect the running of the probationary period, and transfer of a permanent employee shall be with such status and not subject

to a probationary period. When a probationary period is required in the case of a transfer of a permanent employee, such employee shall have a thirty calendar day trial period in the new position before the employee may be dismissed (except for just cause) demoted, or transferred without the employee's consent. Upon dismissal during the probationary period for cause other than misconduct or delinquency on the part of the employee during the probationary period and after the thirty calendar day trial period, the employee shall be restored to the position held prior to transfer.

E. The Commissioner may enter into arrangements with public personnel agencies in other jurisdictions for the purpose of effecting transfer of employees. The Commissioner shall not approve any transfer of an employee from a jurisdiction without a federally approved merit system to a grant-in-aid agency. Such Transferred employees shall accrue annual and sick vacation leave in accordance with these rules and may be credited with on the basis of their accumulated service in the agency from which transfer is made, for purposes of determining vacation accrual rate. and shall Transferred employees may be required to serve a new probationary period and may be credited with accumulated sick leave as provided in 2 MCAR § 2.136.

F. Any state employee who is transferred on a temporary basis to a non-state agency shall continue to accrue benefits, seniority and retirement of a state employee.

**2 MCAR § 2.097 Duration of probationary period.** All original and promotional appointments shall be tentative subject to the probationary period as follows: determined by the Commissioner of Personnel.

A. Employees in salary schedules A, B, and C shall serve a probationary period in working hours as follows:

A- Half to full time employees in salary schedule A shall serve a probationary period of six calendar months. Less than half time employees shall serve a probationary period of nine calendar months.

B- Half to full time employees in salary schedule B shall serve a probationary period of two calendar months. Less than half time employee shall serve a probationary period of three calendar months.

G- Half to full time employees in salary schedule C shall serve a probationary period of four calendar months. Less than half time employees shall serve a probationary period of six calendar months.

Salary Schedule	Hours of Satisfactory Service
A	1044 working hours
B	348 working hours
C	696 working hours

For purposes of this rule, working hours shall include hours actually worked, excluding overtime, except that working hours shall include overtime hours actually worked if the employee is required to liquidate the overtime in compensatory time off. Working hours shall also include paid holidays;

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and paid leave taken in increments of less than the employee's normal work day.

~~B. D.~~ Teachers, institutional education administrators, and educational supervisors shall serve a probationary period of one year.

C. ~~E.~~ Employees in the management compensation schedule shall normally serve a probationary period of twelve months. An appointing authority may reduce the length of an individual period to not less than nine months, provided the employee has demonstrated the ability to effectively perform the duties and responsibilities of the position and the training requirements established pursuant to Minn. Stat. § 43.32, subd. 9 of ~~2~~ MCAR § 2.166 have been met. With the approval of the Commissioner of Personnel, the probationary period may be extended to provide sufficient time for individual managers to complete mandatory minimum training requirements provided the total probationary period does not exceed two years.

D. The appointing authority may require employees who are transferred from another jurisdiction to serve a probationary period.

E. The following general provision regarding probationary periods shall apply:

1. Unpaid leave, to the extent that it exceeds ten or more work days, shall be added to the length of the probationary period for those employees covered by paragraphs B and C above.

2. The probationary period shall include all regular service, excluding time served in emergency, provisional, or temporary employment.

3. An employee who is promoted prior to the completion of the probationary period to a higher position in the same occupational field and in the same ~~department~~ agency shall complete the probationary period in the lower position by service in the higher position. The appointing authority shall certify that employee for permanent status in the lower position at the end of the specified probationary period for such class, or its equivalent period following the employee's original appointment to the position. In the absence of certification, the employee shall be deemed to possess permanent status.

4. When a probationary employee is granted a leave of absence to accept a position in the unclassified service, the unfulfilled portion of the probationary period in the classified service may be completed by service in the unclassified service position, provided that: subject to a) There is a positive recommendation of by the appointing authority and approval approved of by the Commissioner; and b) provided that the work in the unclassified position is within the same ~~department~~ agency and general occupational field and is at least equivalent in difficulty and responsibility to the work in the position in the classified service. Classes shall be considered to be in the same occupational field when the appointing

authority determines, after an analysis of the positions involved, that it is possible to evaluate the probability of satisfactory service in one class by observing service in the other class.

5. All employees appointed appointments from eligible lists other than the layoff list shall be subject to a probationary period beginning the date of the new appointment.

6. An appointing authority may require ~~E~~ employees transferred from the jurisdiction of ~~one~~ another appointing authority to ~~that of another appointing authority~~ may be to serve subject to a probationary period as provided by this ~~section of the rules.~~

~~For the purposes of this rule, classes shall be considered to be in the same occupational field when the appointing authority determines, after an analysis of the positions involved, that it is possible to evaluate the probability of satisfactory service in one class by observing service in the other class.~~

7. An employee demoted during or at the end of the probationary period shall have the time in the higher class count toward the completion of any previously uncompleted probationary period in the class to which the employee is demoted.

~~2 MCAR § 2.099 Demotions during the probationary period. Demotions of probationary employees shall be subject to the provisions of these rules.~~

~~An employee demoted during or at the end of the probationary period shall have the time in the higher class count toward the probationary period in the class to which such employee is demoted.~~

**2 MCAR § 2.108 Suspension.** An appointing authority may suspend an employee without pay for just cause.

Any permanent employee who is suspended for thirty days or less shall, before the action is taken, be presented with a statement in writing setting forth the reasons for the suspension. The employee may use the grievance procedure in 2 MCAR § § 2.175-178, including appeal to the Commissioner.

Any permanent employee who is suspended for more than thirty days shall, at least five days before the effective date of the suspension, be presented with a statement in writing setting forth the reasons for the suspension. A copy of the statement shall be immediately submitted to the Commissioner. Any permanent employee ~~who~~ is suspended without pay for more than thirty days may appeal to the Personnel Board within thirty days after the effective date of ~~such action~~ the suspension.

No seniority shall be acquired during the period of suspension.

If it is proved to the appointing authority's satisfaction that the employee was unjustifiably suspended, any employment rights and benefits that the employee would have if the suspension had not occurred will be returned to that employee.

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**2 MCAR § 2.109 Layoff.** The appointing authority may lay off an employee in the classified service by reason of abolition of the position, shortage of work or funds, or other reasons outside the employee's control which do not reflect discredit on the service of the employee.

The appointing authority may assign ~~D~~ duties formerly performed by laid off employees ~~may be assigned~~ to other permanent employees, ~~who, in the opinion of the Commissioner, hold positions in an appropriate class.~~ A permanent employee assigned duties formerly performed by a laid off employee may submit a request for reclassification of his/her position under the provision of 2 MCAR §2.019.

A. Order of layoff. Layoff of probationary or permanent employees shall be made in inverse order of seniority by employment conditions in the class of work and agency or other organizational unit involved, provided, however, that for positions within a class requiring special licensure, certification or registration and for positions which consist of a formally recognized option within a class, seniority shall be applied within the area of specialization. Except as provided above, no probationary or permanent employee shall be laid off from any position while any provisional or temporary employee is continuing in a position of the same class in the agency or other organizational unit involved.

~~Where it is determined that~~ When two or more persons in the class in the agency or organizational unit in which layoff is being made have equal seniority, the order of layoff ~~in such tie cases~~ shall be in inverse order of the date of acquisition of permanent status in the class, except where otherwise provided in written contracts with exclusive bargaining representatives.

Where the determination of seniority as provided in this rule does not establish definite seniority differentials, the order of layoff shall be determined by the average of the last two service ratings, if there are two, or the last such rating if there is only one, and the employee with the lowest such average or rating shall be laid off first. If no service ratings are available, the appointing authority shall determine the order of layoff shall be determined by the appointing authority in such a manner so as to insure ensure the retention in the state service of those employees deemed most valuable, except where otherwise provided in written contracts with exclusive bargaining representatives.

B. Seniority. Seniority for purposes of layoff or recall from layoff shall be the length of service in a specific class in a specific agency or organizational unit. Leave without pay and trainee appointments, except as provided elsewhere in these rules, and service with a different agency or organizational unit, shall not count towards seniority in the class, agency, or organizational unit in which the layoff is taking place. No seniority shall be gained as a result of an emergency appointment. No seniority shall be gained as the result of a provisional appointment except for the continuance of seniority in the lower class upon provisional promotion to a higher class pending probationary appointment in accord with Minn. Stat.

ch. 43 and these rules. No seniority shall be gained as a result of a temporary appointment except if the person appointed to a temporary position has status in another class, such employee's status and seniority will accrue in the class from which the employee was appointed. If an employee receives a probationary appointment with no break in service after working in a trainee class or under a provisional appointment to the same or related classification in the same agency, his/her seniority shall be credited back to the date of the trainee or provisional appointment.

Seniority of an employee in the class to which that employee is being demoted shall be limited to service in the agency. Seniority shall include the total time of ~~the employee's prior seniority in the class from which the employee was demoted,~~ employment in all related higher or equally paid classes in which the employee has served within the agency, as well as other classes which the Commissioner determines as being sufficiently similar to the class to which demotion is occurring ~~occurs~~. Seniority shall begin on the date of original appointment and thereafter such seniority shall be increased each calendar day without interruption except:

1. Upon termination.
2. Upon interruption of service in the agency for any reason other than leave of absence or layoff.
3. Upon expiration of eligibility for reappointment from the layoff list.

~~In the case of employees in a trainee class or an employee working under a provisional appointment, seniority shall be credited back to the date of hire at the time the employee begins to serve a probationary period in the same or a related classification in the same department.~~

C. Limited interruption of employment. Any interruption in employment not in excess of 15 calendar days, because of adverse weather conditions, shortage of materials or equipment, or for other unexpected or unusual reasons, shall not be considered a layoff.

D. Layoff notice. ~~The appointing authority shall notify the employee to be laid off at least 15 days before the effective date of such layoff in writing, and shall certify to the Commissioner the reasons for such layoff. In any case, when an appointing authority fails to certify before the effective date thereof that the layoff was for reasons not reflecting to the discredit of the employee, it shall be deemed a dismissal and shall be subject to the rules regarding dismissal. At least 15 days prior to the effective date of layoff, the appointing authority shall provide written notice of layoff to each employee who is to be laid off. The appointing authority shall notify the Commissioner in writing of the reasons for the layoff. If the appointing authority fails to notify the Commissioner that layoff was for reasons not reflecting on the discredit of the employee before the effective date of the layoff, the layoff shall be deemed a dismissal and shall be subject to the rules regarding dismissal.~~

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In case of seasonal, intermittent, part time or other occasional appointment of employees with classified status, the appointing authority may indicate to the employee and the Commissioner at the time of the appointment the approximate date of termination of employment, and such notices shall be considered to meet the requirements of law. (Minn. Stat. § 43.23, subd. 2)

E. Names of laid off employees to be placed on eligibility lists. The names of permanent or probationary employees laid off or demoted in lieu of layoff shall be placed in order of seniority on the layoff list for the class and agency or other organizational unit from which the layoff took place. The names of affected employees also shall have their names be placed also on the reemployment list.

F. Organizational units. An appointing authority may propose subdivision of the agency into organizational units for the purpose of employment or layoff by submitting to the Commissioner a written plan for such subdivision, together with reasons therefor. The Commissioner shall consider such proposals and the needs of the state service, and may establish organizational units within agencies. Such organizational units may be established on the basis of geographic areas, function, class of employment, or funding when there are special Federal grants, and may be different for different classes of employment. The Commissioner shall notify the appointing authority of establishment of organizational units and such units shall thereafter be used for employment or layoff.

The appointing authority shall post a copy of such notice or shall notify affected employees of the establishment of such organizational units.

The Commissioner may cancel established organizational units upon notice to the appointing authority at any time the Commissioner deems such action to be in the best interest of the state service.

**2 MCAR § 2.110 Demotion.** The appointing authority may demote an employee for just cause.

A permanent employee shall, before the action is taken, be furnished with a statement in writing setting forth the reasons for the demotion. The employee shall be permitted five days time to reply in writing or upon request to appear personally and reply to the head of the department agency. A copy of the statement and employee's reply, if any, shall be filed with the Commissioner prior to the effective date of the demotion. A permanent employee, upon written request, may demand a hearing within 30 days of the effective date of the action before the Board. (Minn. Stat. § 43.24)

If at any time during the probationary period the appointing authority determines an employee's performance does not

meet work standards, the appointing authority may demote the employee to a position in the class and agency from which the employee was promoted. No employee serving a probationary period following transfer or promotion shall be demoted except for just cause or without the employee's consent during the first 30 calendar days of the probationary period. (Minn. Stat. § 43.21; Minn. Stat. § 43.19, subd. 3 as amended by Laws of 1979, ch. 332, § 43)

If a demotion is grieved and it is proved to the appointing authority's satisfaction that the employee was unjustifiably demoted, the appointing authority shall restore any employment rights and benefits that the employee would have had if the demotion had not occurred, will be returned to the employee.

Any permanent or probationary employee about to be laid off shall be demoted to replace the employee with least seniority in the next lower class in which that the employee previously served, unless the employee elects to be laid off. In either event, the name of such the employee shall be placed on ~~an~~ any appropriate reemployment lists as provided by 2 MCAR § 2.061.

An appointing authority, with the consent of the affected employee, may demote in lieu of layoff, a permanent or probationary employee not covered in the preceding provision. Such action shall not entitle the employee to a hearing in the demotion, but the employee's name shall be placed on the layoff list and upon written request may be placed on the reemployment list of the class from which that employee was demoted. No employee so demoted shall displace a permanent or probationary employee except in order of seniority as determined by these rules.

**2 MCAR § 2.118 Reinstatement after resignation, retirement, voluntary demotion, or expiration of a leave of absence.** Upon written approval of the Commissioner, an appointing authority may reinstate a former probationary or permanent employee to a position in a former class within one year of the date of resignation, retirement, voluntary demotion, or expiration of leave of absence. Seniority upon reinstatement shall be calculated as provided in 2 MCAR § 2.119. No such former employee shall be reinstated directly as provided in this rule if a layoff list exists for the class for the agency or organizational unit; but such former employee may make application to have their his/her name placed on the reemployment list, as provided by these rules.

**2 MCAR § 2.119 Restoration of seniority.** An employee who has been employed continuously by the state and who voluntarily left employment with one agency to enter employment with another agency shall have the seniority at the time of termination of services in the first agency reinstated upon reemployment in that agency. An appointing authority, who

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reemploys an employee who has been employed continuously by the state and who left the employment of the agency, shall reinstate the seniority that existed at the time the employee left the agency.

Any employee who was mandatorily retired at age 65 prior to January 1, 1979, shall have all seniority existing at the time of the mandatory retirement restored upon the employee's return to state service in any employment status in which seniority is accrued.

Except as provided above, Sseniority of a former employee who was reinstated or appointed from a reemployment list shall begin on the date of reemployment in the state service. Seniority at the time of termination may be restored by the appointing authority upon the written request of the employee.

**2 MCAR § 2.131 Holidays.** Holidays will be observed as prescribed by the legislature. (Minn. Stat. § 645.44, subd. 5)

This rule applies to all classified employees and, notwithstanding 2 MCAR § 2.004, all full-time unlimited unclassified employees in the executive branch of government, except non-tenured laborers;; temporary employees;; emergency employees; student workers appointed after January 1, 1980; and project employees. Intermittent employees shall become eligible for holidays after completion of 100 working days in any twelve month period. Interns do not receive holiday pay. Holiday leave provisions may be established by the appointing authority for employees not covered by this rule, provided they are not specifically excluded from coverage.

The following days are holidays and an alternate day off shall be granted for work done on these days, except where payment is allowed under the overtime provisions of 2 MCAR § 2.130.

New Year's Day	.....	January 1
Washington's and Lincoln's Birthday	.....	Third Monday in February
Memorial Day	.....	Last Monday in May
Independence Day	.....	July 4
Labor Day	.....	First Monday in September
<del>Columbus Day</del>	.....	<del>Second Monday in October</del>
Veterans Day	.....	November 11
Thanksgiving Day	....	Fourth Thursday in November
Day After Thanksgiving	..	Fourth Friday in November
Christmas Day	.....	December 25
Employee's Birthday	.....	Employee's Birthdate

Where a collective bargaining agreement specifies holidays, covered employees shall receive only the holidays set forth in that agreement.

Medical doctors compensated under the provisions of Minn. Stat. § 43.126 shall observe a floating holiday in lieu of the birthday holiday.

A. When New Year's Day, Independence Day, Veterans Day, or Christmas Day or the employee's birthday fall on

Sunday, the following day shall be considered the official holiday for employees. When these holidays fall on Saturday, the preceding day shall be considered the official holiday for employees. An employee, regardless of work schedule, shall receive the same number of holidays as an employee whose regular work week is Monday through Friday. Where seven day a week schedules are in effect, the actual holiday shall be observed as the holiday for employees working within such schedule. When any of the above holidays fall on an employee's regularly scheduled day off, the employee's scheduled work day which is closest to the holiday, which is not a holiday, shall be scheduled as a holiday for that employee unless other arrangements are agreed to between the appointing authority and the employee. When an employee has days off that are not consecutive and the holiday falls on one of the scheduled days off, either the date before or the day after the holiday(s) shall be observed as the holiday at the appointing authority's discretion unless other arrangements are agreed to between the appointing authority and the employee. When an employee has three or more consecutive days off and a holiday falls on one or more of the scheduled days off, either the day(s) before or the day(s) after the consecutive days off or any combination thereof shall be observed as the holiday(s) at the appointing authority's discretion unless other arrangements are agreed to between the appointing authority and the employee.

For purposes of this rule, when a workshift includes consecutive hours which fall in two calendar days, that workshift shall be considered as falling on the calendar day in which the majority of hours in the shift fall. When a workshift includes an equal number of consecutive hours in each of two calendar days, that workshift shall be considered as falling on the first of the two calendar days.

When an employee's birthday falls on any of the other holidays listed above, the employee's first scheduled work day following the holiday which is not a holiday, shall be observed as the birthday holiday. Except in leap years, when an employee's birthday falls on February 29, March 1 shall be observed as the birthday holiday. An eligible employee whose birthday falls during a period of seasonal layoff shall be entitled to be paid for the birthday holiday during the first payroll period after return from layoff.

B. The appointing authority in those agencies an agency which remains open on a holiday to the public for performance of public business may designate a sufficient number of employees to maintain the continuity of the agency's operations on such days.

C. Holidays which occur within the employee's vacation or sick leave period will not be charged to the employee's vacation or sick leave time.

D. Employees must be on the payroll on the work day immediately preceding and the work day immediately following a holiday to be eligible for such holiday.

For the purpose of determining eligibility for holiday pay, "on the payroll" shall mean those who are in pay status on paid leave or actively working.



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E. Employees who normally work less than full-time or and eligible intermittent employees are compensated for shall have their holidays pay prorated on the following basis:

Hours that would have been worked during the pay period had there been no holiday	Holiday hours earned for each holiday in the pay period
<del>0-9</del> <u>Less than 9.5</u>	0
<del>10-19</del> <u>At least 9.5, but less than 19.5</u>	1
<del>20-29</del> <u>At least 19.5, but less than 29.5</u>	2
<del>30-39</del> <u>At least 29.5, but less than 39.5</u>	3
<del>40-49</del> <u>At least 39.5, but less than 49.5</u>	4
<del>50-59</del> <u>At least 49.5, but less than 59.5</u>	5
<del>60-69</del> <u>At least 59.5, but less than 69.5</u>	6
<del>70-79</del> <u>At least 69.5, but less than 79.5</u>	7
<del>80</del> <u>At least 79.5</u>	8

Eligible ~~intermittent~~ intermittent employees shall receive a holiday if they work the day before and the day after a holiday. If such intermittent employee works on a holiday, that employee will be reimbursed for the holiday in addition to the pay for the time worked. This pay shall be in accordance with the above schedule. Seasonal employees are entitled to holidays as defined in this rule.

With the approval of the appointing authority, part-time employees may be allowed to arrange their work schedules, in payroll periods that include a holiday, to avoid any reduction in salary due to a loss of hours because of the proration of holiday hours, provided such rescheduling does not result in the payment of overtime.

Any eligible employee mandatorily retired on a holiday or holiday weekend shall be entitled to be paid for the holiday(s).

Holiday pay shall be computed at the employee's normal day's pay (i.e., the employee's regular hourly rate of pay multiplied by the number of hours in his/her normal work day), and shall be paid in cash.

Any employee who works on a holiday shall be paid cash at the employee's appropriate overtime rate for all hours worked in addition to holiday pay described in this section, or at the discretion of the appointing authority, shall be paid in cash at the employee's appropriate overtime rate for all hours worked in addition to an alternate holiday in lieu of holiday pay provided in this section. Such alternate holiday shall be granted within thirty days of the pay period in which the holiday occurs, but if there is no agreement as to the date of the alternate holiday between the appointing authority and the employee, such holiday shall be paid in cash.

F. Employees who observe religious holidays on days which do not fall on a Sunday or a legal holiday shall be entitled to such days off to observe the religious holiday upon 21 days advance written notice to the appointing authority. Such days off to observe these religious holidays shall be taken without pay, or upon the election of the employee, may be charged against accumulated vacation leave. If the appointing authority can arrange to have the employee work an

equivalent number of hours at another time during the fiscal year to compensate for the days lost for observance of religious holidays, these holidays may be taken against such hours actually worked.

## 2 MCAR § 2.133 Absence because of illness or injury for which worker's compensation is paid by the state.

A. Hazardous occupation injuries. Employees of the state corrections and welfare institutions; the School for the Deaf; the Braille and Sight Saving School; the Department of Veterans' Affairs; highway state patrol officers troopers; conservation officers and crime bureau agents who incur a disabling injury in the ordinary course of employment may be eligible for injured on duty pay. In order to be eligible for such pay, employees must have been acting in a reasonable and prudent manner in compliance with established rules and procedures of the appointing authority when the injury is incurred. Such injuries must be the direct result of aggressive and/or criminal and/or overt intentional acts, or their consequences, by a person ~~in~~ who is a resident or is under the custodial control of a correctional, educational, veterans' or welfare institution; or the injury must have occurred while attempting to apprehend, restrain, or take into custody an institutional inmate or resident, or suspected violator of the law.

Eligible employees shall receive compensation in an amount equal to the difference between the employee's regular rate of pay and benefits paid under Worker's Compensation. Such injured on duty pay shall not exceed an amount equal to 240 times the employee's regular hourly rate of pay ~~for~~ per disabling injury, and shall not affect the employee's regular accrued vacation, sick leave, or over-time credits.

B. Other job-related injuries. Notwithstanding 2 MCAR § 2.004, any classified or unclassified employee in the executive branch may elect to use accumulated vacation or sick leave or both during a period of absence due to compensable illness or injury. Such leave may be used on the following basis:

1. Transfer of the worker's compensation benefits to the State to be credited to the employee's sick leave or vacation accrual in proportion to the amount of compensation received and accept sick leave or vacation time for the compensable sickness or injury;

or

2. Keep the worker's compensation benefits and receive from the State an additional compensation from the accumulated sick leave or vacation leave:

but

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## PROPOSED RULES

in either case, the total rate of compensation may not exceed the regular compensation of the employee. (Minn. Stat. § 176.021, subd. 5)

An employee so absent shall be entitled to immediate return to actual employment upon appropriate release from worker's compensation status.

**2 MCAR § 2.134 General regulations provisions governing leaves of absence with pay.** As far as practicable, grants of requests for leaves shall be made prior to the beginning of the period of absence, and no payment for any absence shall be made until leave is properly approved by the appointing authority.

Deductions from leave accumulations for an employee on leave with pay shall be made on a working day basis and no charge shall be made from leave accumulations for holidays or non-work days occurring at the beginning or during a period of leave with pay. No charge will be made for holidays or non-work days occurring at the end of a period of leave with pay if the employee returns on the first day thereafter or is granted additional leave without pay. If the employee is granted additional leave without pay, such employee will not be credited for a holiday occurring at the end of the period of leave with pay unless and until that employee returns to work at the expiration of the leave without pay.

Vacation and sick leave hours shall not be used in the payroll period in which they are earned, but shall be credited to the employee's records at the end of that payroll period. ~~Accrual of vacation leave and sick leave during the period of~~

~~leave of absence with pay shall occur only if the employee returns to employment on the first working day following the expiration of such leave with pay, or is granted additional leave without pay. If the employee is granted additional leave without pay, the employee will not be credited with vacation or sick leave accruals for the period of leave with pay unless and until returning to work at the expiration of the leave without pay. An employee on layoff does not continue to earn vacation and sick leave during such layoff.~~

An employee on layoff does not earn vacation and sick leave.

**2 MCAR § 2.135 Vacation leave.** This rule applies to all classified state employees in the executive branch except for non-tenured laborers; emergency employees; project employees; student workers appointed after January 1, 1980; or temporary appointment employees and also applies to all full-time unclassified employees appointed for a period in excess of 6 months in the executive branch except those listed in 2 MCAR § 2.004. Intermittent employees shall become eligible after completion of 100 working days in any twelve month period. Interns shall not accrue vacation leave. Vacation leave provisions may be established by the appointing authority for those unclassified employees listed in 2 MCAR § 2.004 and for other employees who are not covered by this rule provided they are not specifically excluded from coverage.

Each eligible ~~non managerial~~ employee shall earn accrue vacation with pay according to the rate listed below:



THE RED RIVER VALLEY of northwestern Minnesota is the home of the Northern Pocket Gopher, a furry miner whose habit of eating plant roots and tubers makes it an unwelcome pest. Its mounds can also interfere with haying activities on farms.

# PROPOSED RULES

## HOURS OF VACATION ACCRUED DURING EACH PAYROLL PERIOD OF CONTINUOUS SERVICE

No. Hours Worked During Pay Period	0 thru <del>5</del> 3 yrs. if appointed on or after 7/1/79	<u>0 thru 3 yrs. if appointed before 7/1/79</u>	<u>After 3 thru 5 years</u>	After 5 thru 8 years	After 8 thru <del>18</del> 12 years	After <del>18</del> 25 12 thru 25 20 years	Over <del>25</del> 20 years
<del>0-9</del> <u>Less than 9.5</u>	<u>0</u>	0	<u>0</u>	0	0	0	0
<del>10-19</del> <u>At least 9.5, but less than 19.5</u>	<u>.50</u>	<del>¾</del> <u>.75</u>	<u>.75</u>	1	<del>¾</del> <u>1.25</u>	<del>1½</del> <u>1.50</u>	<del>1½</del> <u>1.50</u>
<del>20-29</del> <u>At least 19.5, but less than 29.5</u>	<u>.75</u>	1	<u>1</u>	<del>¾</del> <u>1.25</u>	<del>1¾</del> <u>1.75</u>	2	2
<del>30-39</del> <u>At least 29.5, but less than 39.5</u>	<u>1</u>	<del>1½</del> <u>1.50</u>	<u>1.50</u>	2	<del>2¾</del> <u>2.75</u>	3	3
<del>40-49</del> <u>At least 39.5, but less than 49.5</u>	<u>1.50</u>	2	<u>2</u>	<del>2½</del> <u>2.50</u>	<del>3¼</del> <u>3.50</u>	<del>3¾</del> <u>3.75</u>	4
<del>50-59</del> <u>At least 49.5, but less than 59.5</u>	<u>2</u>	<del>2½</del> <u>2.50</u>	<u>2.50</u>	<del>3¼</del> <u>3.25</u>	<del>4½</del> <u>4.50</u>	<del>4¾</del> <u>4.75</u>	5
<del>60-69</del> <u>At least 59.5, but less than 69.5</u>	<u>2.25</u>	3	<u>3</u>	<del>3¾</del> <u>3.75</u>	<del>5¼</del> <u>5.25</u>	<del>5¾</del> <u>5.75</u>	6
<del>70-79</del> <u>At least 69.5, but less than 79.5</u>	<u>2.75</u>	<del>3½</del> <u>3.50</u>	<u>3.50</u>	<del>4½</del> <u>4.50</u>	<del>6¼</del> <u>6.25</u>	<del>6¾</del> <u>6.75</u>	7
<del>80 and over</del> <u>At least 79.5</u>	<u>3</u>	4	<u>4</u>	5	7	<del>7½</del> <u>7.50</u>	8

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# PROPOSED RULES

Medical Doctors Compensated Under the Provisions  
of Minn. Stat. § 43.126 Shall Accrue  
Vacation with Pay According to the Rate  
Listed Below:

<u>No. of Hours Worked During Pay Period</u>	<u>0 thru 3 Years</u>	<u>3 thru 5 years</u>	<u>5 thru 12 years</u>	<u>After 12 years</u>
<u>Less than 9.5</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<u>At least 9.5, but less than 19.5</u>	<u>1</u>	<u>1.25</u>	<u>1.50</u>	<u>1.75</u>
<u>At least 19.5, but less than 29.5</u>	<u>1.25</u>	<u>1.50</u>	<u>2</u>	<u>2.25</u>
<u>At least 29.5, but less than 39.5</u>	<u>2</u>	<u>2.25</u>	<u>3</u>	<u>3.50</u>
<u>At least 39.5, but less than 49.5</u>	<u>2.50</u>	<u>3</u>	<u>4</u>	<u>4.50</u>
<u>At least 49.5, but less than 59.5</u>	<u>3.25</u>	<u>3.75</u>	<u>5</u>	<u>5.75</u>
<u>At least 59.5, but less than 69.5</u>	<u>3.75</u>	<u>4.50</u>	<u>6</u>	<u>6.75</u>
<u>At least 69.5, but less than 79.5</u>	<u>4.50</u>	<u>5.25</u>	<u>7</u>	<u>8</u>
<u>At least 79.5</u>	<u>5</u>	<u>6</u>	<u>8</u>	<u>9</u>

When sick leave and/or vacation leave is used in conjunction with the Workers' Compensation benefit, an eligible employee receiving Workers' Compensation benefits shall accrue vacation leave for the total number of hours compensated by Workers' Compensation, sick leave and vacation leave.

Changes in the rate of accumulation for eligible employees shall be made effective at the beginning of the next payroll period following completion of the specified amount of service.

Service shall begin on the date of state employment. Time on suspension or non-medical leave of absence without pay, if at least one full payroll period in duration, except as otherwise provided by law or these rules, shall not be counted in determining the date of completion of a full year. An eligible employee, being who is paid for less than the full payroll period of 80 hours, will have vacation accrual pro-rated for that payroll period. A ~~V~~vacation leave shall not be granted or accrued before completion of six calendar months of service. Upon completion of such period, vacation leave shall accrue to the employee from the beginning of the period of continuous service; date of hire or in the case of intermittent employees, from the date of eligibility. The appointing authority may permit employees transferred to the classified state civil service from another jurisdiction under the provisions of 2 MCAR § 2.091 E to accrue vacation leave on the basis of their

length of service in the agency from which the transfer was made.

~~Department or agencies~~ The appointing authority may determine the time and establish schedules governing the use of vacation leave, except that in no instance will vacation leave be granted in increments of less than one-half hour except to permit utilization of lesser fractions that have been accrued.

Unused vacation leave may be accumulated to a total of ~~224~~ 240 working hours. Supervisors should make every effort to schedule vacation leaves for their employees on a regular basis each calendar year in order to reduce the possibility of an employee losing vacation leave because of a maximum accumulation having been exceeded. An eligible employee on military leave, as provided by these rules, shall not be limited to the maximum accrual of vacation leave. Such employee may immediately upon reinstatement from military leave take all vacation in excess of the maximum accumulation. As an alternative, the employee may elect to be credited with the vacation leave in excess of the maximum accumulation, but such leave shall be taken at a time determined by the appointing authority within two years of the date of reinstatement.

If an employee becomes ill or disabled while on vacation, such leave shall be changed to sick leave effective the date of illness or disability, upon notice to the employee's appointing authority. The appointing authority may require the em-

# PROPOSED RULES

ployee to furnish a medical statement from a medical practitioner as soon as practicable.

Any eligible employee who is separated from the state service by layoff, resignation, death, or otherwise, shall be paid for the number of working hours of unused vacation leave accumulated to that employee's credit. An intermittent employee's accrued but unused vacation leave shall be liquidated by cash payment on the last payroll period in June of each fiscal year.

An employee who is transferred or accepts employment under the jurisdiction of a new appointing authority, or in the unclassified service of the state, or an unclassified employee who transfers to the classified service, without interruption of services to the state shall be entitled to credit of accumulated unused vacation leave earned in the ~~employee's~~ former employment. Notwithstanding 2 MCAR § 2.004, any state employee except an elected employee who is separated from the state service or who is transferred or accepts employment under a new appointing authority, is entitled to pay for any accumulated vacation leave. (Minn. Stat. § 43.222-43.224) Department heads and deputies of departments listed in Minn. Stat. § 15A.081, subd. 1 plus the Department of Military Affairs, shall earn vacation pay at the rate of six hours per full payroll period for the first five years of continuous state service; eight hours per full payroll period after five years of

continuous state service; and nine hours per full payroll period after twelve years of continuous state service. ~~Covered department heads and deputies who currently are eligible to receive more than six hours per full payroll period shall continue to accrue at the higher rate.~~

Employees in positions designated as managerial shall accrue vacation leave in accordance with a schedule established by the Commissioner.

**2 MCAR § 2.136 Sick leave.** This rule applies to all classified state employees in the executive branch except for non-tenured laborers; emergency employees; project employees; student workers appointed after January 1, 1980; or temporary appointment employees and also applies to all full-time unclassified employees appointed for a period in excess of 6 months in the executive branch except those listed in 2 MCAR § 2.004. Intermittent employees shall become eligible for purposes of this rule after completion of 100 working days in any twelve month period. Interns shall not accrue sick leave. Sick leave provisions may be established by the appointing authority for those unclassified employees listed in 2 MCAR § 2.004 and for other employees who are not covered by this rule provided they are not specifically excluded from coverage. Sick leave shall be ~~earned~~ accrued by each eligible employee according to the rate schedule indicated below:

Hours of Sick Leave Accrued During Each Payroll Period of Continuous Service

Number of Hours Worked During Pay Period	Less than 900 hours	900 hours and maintained
<del>0-9</del> <u>Less than 9.5</u>	0	0
<del>10-19</del> <u>At least 9.5, but less than 19.5</u>	<del>¼</del> <u>.75</u>	<del>¼</del> <u>.25</u>
<del>20-29</del> <u>At least 19.5, but less than 29.5</u>	1	<del>½</del> <u>.50</u>
<del>30-39</del> <u>At least 29.5, but less than 39.5</u>	<del>1½</del> <u>1.50</u>	<del>¾</del> <u>.75</u>
<del>40-49</del> <u>At least 39.5, but less than 49.5</u>	2	1
<del>50-59</del> <u>At least 49.5, but less than 59.5</u>	<del>2½</del> <u>2.50</u>	<del>1¼</del> <u>1.25</u>
<del>60-69</del> <u>At least 59.5, but less than 69.5</u>	3	<del>1½</del> <u>1.50</u>
<del>70-79</del> <u>At least 69.5, but less than 79.5</u>	<del>3½</del> <u>3.50</u>	<del>1¾</del> <u>1.75</u>
<del>80 and over</del> <u>At least 79.5</u>	4	2

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Changes in the rate of accumulation for eligible employees shall be made effective following the payroll period in which the 900 hour maximum accrual is attained.

An eligible employee ~~being who is~~ paid for less than a full payroll period of 80 hours will have sick leave pro-rated for that payroll period, ~~unless the~~ An employee is on Workers' Compensation, ~~in which case sick leave would be~~ will accrued sick leave based on ~~for~~ the total hours compensated by Workers' Compensation, sick leave, and vacation leave ~~provided that sick leave or vacation leave is used in conjunction with the Workers' Compensation benefit.~~ Unused sick leave hours may be accumulated to a total of 900 working hours. When the maximum limitation has been accumulated, the rate of accumulation will be reduced to two hours per full payroll period, and these hours shall be placed in a lapsed sick leave bank.

Any employee who has such lapsed sick leave recorded may apply to the appointing authority to have the lapsed sick leave restored in the event of an extended illness. The appointing authority may authorize use of all or any part of the lapsed sick leave after thorough investigation, including submission of complete medical reports providing both a diagnosis and prognosis of the illness. The appointing authority shall report to the Commissioner all instances of lapsed sick leave restored in such form as prescribed by the Commissioner.

Time off on authorized sick leave will be deducted from the first 900 hours. ~~Once the employee no longer possesses 900 hours of sick leave, four working hours for each full payroll period will be accumulated until the 900 maximum limit is again obtained.~~

Full Time Employees Shall  
Earn Sick Leave on the Following Basis Each Payroll Period:

<u>Sick Leave Balance</u> <u>at Start of</u> <u>Payroll Period</u>	<u>Number of</u> <u>Hours Credited</u> <u>to Balance</u>	<u>Number of</u> <u>Hours Credited</u> <u>to Bank</u>
<u>896 or less</u>	<u>4</u>	<u>0</u>
<u>897</u>	<u>3</u>	<u>1</u>
<u>898</u>	<u>2</u>	<u>2</u>
<u>899</u>	<u>1</u>	<u>2</u>

Employees may utilize their allowance of sick leave, without regard to length of service, on the basis of application and approval by the appointing authority, where absence is necessitated by inability to perform the duties of the position by reason of illness, pregnancy or pregnancy-related problems, or disability; by necessity for medical, dental, or chiropractic care; by exposure to contagious diseases under the circumstances in which the health of employees with whom they are associated or members of the public with whom they deal may be endangered by their attendance on duty; or by illness in their immediate family for such periods as their attendance shall be necessary. ~~Employees may also utilize not more than three days sick leave for the birth or adoption of a child.~~ Sick leave to arrange for the birth or adoption of a child shall be limited to not more than three consecutive work days. The term "immediate family" shall be limited to the spouse, minor or dependent children, or parent living in the household of the employee and where the parent has no other person to provide the necessary nursing care. Either the appointing authority or the Commissioner may require medical examination, medical certificate, or statement from a chiropractor, as deemed necessary for approving the utilization of sick leave. A written statement from a Christian Science practitioner that the employee is a Christian Scientist and is undergoing treatment may be accepted in lieu of a medical statement. Use of a reasonable period of sick leave shall be authorized in case of death of a spouse, the parents of a spouse, and the parents, grandparents, guardian, children,

brothers, sisters, or wards of the employee. In no instance will sick leave be granted in increments of less than 1/2 hour except to permit utilization of lesser fractions that have been accrued.

An employee incurring an on the job injury shall be paid his/her regular rate of pay for the remainder of the workshift. Any necessary deductions from accrued sick leave for employees so injured shall not commence until the first scheduled work day following the injury.

Employees receiving injury on duty pay shall not have this time deducted from their regular accrued sick leave balance.

A former state employee who is reappointed within four years of separation from the state service under the provisions of the act and these rules except as a provisional, temporary or emergency appointee, may have ~~their~~ his/her previously accumulated, unused balance of sick leave ~~revived and credited to that employee~~ restored upon approval of the new appointing authority.

~~An employee who transfers to the jurisdiction of another appointing authority without interruption in service to the state shall be entitled to a credit in the new employment for the accumulated unused sick leave earned in the former employment.~~

~~Employees in the unclassified service of the state who are subsequently appointed to a position in the classified service, or vice versa, without an interruption in service shall have their accumulated but unused sick leave balance posted to~~

## PROPOSED RULES

~~their credit in the records of the employing department provided such sick leave is accrued in accordance with the provisions of these rules. An employee who is transferred or accepts employment under the jurisdiction of a new appointing authority, or in the unclassified service of the state, or an unclassified employee who is appointed to the classified service, without interruption of services to the state shall be entitled to credit of accumulated unused sick leave earned in the former employment.~~

An employee of a ~~merit system~~ another jurisdiction or the federal competitive service with probationary or permanent status may be ~~transfer~~ transferred under the provisions of 2 MCAR § 2.091 E, or be appointed to a position in the state service. The appointing authority ~~and~~ may be credited the employee with the amount of sick leave accumulated ~~not to exceed 12 days, at the time of transfer, but not more than 12 days.~~ Such credit shall be reduced proportionately as sick leave is accumulated in the state service.

**2 MCAR § 2.138 Other leaves with pay.** Notwithstanding 2 MCAR § 2.004, any classified or unclassified employee in the executive branch shall be granted leave of absence with pay for:

A. Service upon a jury. Compensation shall be at the employee's regular base rate of pay less the fee received for jury duty, exclusive of expenses paid by the court. Employees whose scheduled shift is other than a day shift shall be reassigned to a day shift during the period of service upon a jury. When not impaneled for actual service and only on call, the employee shall report to work.

B. Appearance before court, legislative committee, or other judicial or quasi-judicial body ~~as a witness in an action involving the federal government, State of Minnesota, or a political subdivision thereof,~~ in response to a subpoena or other direction by proper authority for job related purposes other than those instituted by the employee or his exclusive representative. The employee shall receive regular pay less any fee received, exclusive of court paid expenses for serving as a witness, as required by the court.

C. Attendance in court in connection with an employee's official duty. Such attendance shall include the time required in going to the court and returning to the employee's headquarters.

D. Time required to report and be processed through pre-induction examination(s) conducted by the armed forces preliminary to military service.

E. Educational purposes, if such education is required by the appointing authority.

F. Voting pursuant to Minn. Stat. § ~~204.15~~ 204A.36.

G. Preparation for and participation in world, Olympic or Pan American games pursuant to Minn. Stat. § 15.62, subd. 3 as amended by Laws of 1979, ch. 208, § 1.

Any voluntary absence to appear and testify in private litigation not as an officer of the state but as an individual, shall be taken as an annual vacation leave, leave of absence without pay, or as a deduction from authorized accumulated overtime.

**2 MCAR § 2.141 Child bearing/child rearing leave of absence without pay. Maternity/Paternity or adoption leave of absence without pay.** A child bearing/child rearing maternity/paternity or adoption leave of absence shall be granted, ~~when requested,~~ to a permanent, probationary, or unclassified natural parent or adoptive parent in the classified or unclassified service for a period not to exceed 6 months, when requested in conjunction with the birth or adoption of a child. Child bearing/child rearing Maternity/Paternity or adoption leave may be extended up to a total maximum of one year by mutual consent between the employee and the appointing authority.

**2 MCAR § 2.181 Expense allowances.**

A. Means of travel.

1. State-owned vehicles. An employee may be permanently assigned a state-owned vehicle when required by law or if circumstances make such assignment necessary when recommended by the appointing authority and approved by the Commissioner of Administration.

~~Departments~~ Agencies operating vehicles not in the Central Motor Pool shall operate them on a pool basis following rules of the Department of Administration for the operation of such state-owned vehicles.

2. Privately-owned ~~automobiles~~ vehicles and aircraft. The compensation for use of a personal automobile is ~~46~~ 19 cents per mile when a motor pool vehicle is not available. Mileage shall be paid based on the most direct route according to Transportation Department records. Deviations from the shortest direct route, such as vicinity driving or driving from the employee's residence where the employee's residence becomes the point of departure, shall be shown on the expense account as a daily total, with a separate explanation outlining the reasons for such mileage. No additional reimbursement will be made for incidental expenses to the operation or maintenance of a personal automobile for state business except for payment of toll charges and parking.

The employee who elects to use a personal car on official state business with the approval of the appointing authority when traveling within the state in cases where a motor pool vehicle is available shall be reimbursed at the rate of ~~44~~ 14 cents per mile. The higher rate may be paid if the use of the motor pool vehicle would have resulted in a greater cost to the state than the reimbursement of the personal car rate.

Employees who use a specially equipped personal van or

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## PROPOSED RULES

van-type vehicle on official state business shall be reimbursed for mileage at the rate of 31 cents per mile. In order to qualify for this reimbursement rate, the vehicle must be equipped with a ramp, lift, or other level changing device designed to provide access for a wheelchair, and the vehicle must be operated by the handicapped employee from the wheelchair.

The reimbursement for mileage shall be adjusted as follows:

A "base rate" gasoline price shall be established by computing the average price per gallon of gasoline delivered to the Central Motor Pool during the month of April, 1977. A "new rate" shall be calculated in the same manner for each month commencing in July, 1977. The difference, if any between the "base rate" and the "new rate" shall be added to the sum of any changes in federal or state gasoline taxes levied on or after April 1, 1977, and such total shall be referred to as the "adjusted difference." Effective the second month following the computation of the "new rate," mileage reimbursement rates shall be increased or decreased by 1 cent for each full 10 cent increase or decrease in the "adjusted difference." In no event shall such mileage rates be less than the rates of 16 cents or 11 cents as set forth above.

The appointing authority may authorize travel in personal aircraft when it is deemed in the best interest of the state. Mileage reimbursement in such cases shall be 25 31 cents per mile and shall be based on the shortest route based on direct air mileage between the point of departure and the destination.

3. Out-of-state travel. Payment for expenses for transportation by personal vehicle for out-of-state travel shall be made on the basis of a single coach air fare for each vehicle used.

If available, motor pool vehicles or state-owned vehicles may be used for out-of-state travel. When a central motor pool vehicle is used, reimbursement will be made to the Central Motor Pool. The expense of such vehicles shall be charged against the out-of-state authorization of the department agency.

When personal vehicles are used in driving to out-of-state locations not available by commercial transportation, travel reimbursement shall be made on an actual mileage basis in accordance with these rules.

Any in-state travel expense directly related to an out-of-state trip shall be charged against the annual out-of-state travel allowance for the department agency involved.

4. Commercial transportation. State employees may travel in-state and out-of-state by commercial transportation when authorized by the department agency head. Air transportation shall be by coach class except in those instances where such space is not available. When an employee has a reservation for a flight that is not going to be used, such employee shall be accountable for the cancellation of such reservation. Air charter service may be used for in or out-of-state travel where such charter service is more practical than

commercial transportation. The appointing authority may reimburse the employee for the use of a public bus on state business, where the use of the bus results in less cost to the state than the use of a state or personal vehicle.

5. Motorcycle reimbursement. Reimbursement for use of a motorcycle on official state business, when authorized in advance by the appointing authority, shall be at the rate of 8 10 cents per mile. This rate shall not be subject to the escalator provision of 2 MCAR § 2.181 A.2.

B. Meals and lodging.

1. Employees shall claim reimbursement only for the amount actually paid for meals when in a travel status. The amount must be reasonable, taking into consideration the location in which the meal is obtained.

Maximum reimbursement, including sales tax for meals within the state, shall be \$2.45 \$3.00 for breakfast, \$2.95 \$4.00 for lunch, and \$5.00 \$7.00 for dinner.

Maximum reimbursement, including sales tax for meals outside the state and or on trains shall be \$3.20 \$4.00 for breakfast, \$3.70 \$5.00 for lunch, and \$7.90 \$9.00 for dinner.

The maximum reimbursement for meals shall be increased based upon the food away from home component of the consumer's price index for urban wage earners and clerical workers for Minneapolis-St. Paul, new series index (1967-100).

The base period for any adjustment shall be the July, 1977 index and the April, 1978 index. For each full 1-5 points rise in the food away from home component of the index during the base period, the maximum reimbursement for dinner shall be increased 5 cents effective July 1, 1978. The maximum reimbursement for breakfast and lunch shall each also be increased by one half of the amount of the increase for dinner. If the increased maximum reimbursements for breakfast and lunch results in an amount not equally divisible by five the maximum reimbursement for breakfast shall be rounded down to the next amount divisible by five, and the maximum reimbursement for lunch shall be rounded up to the next amount that is equally divisible by five.

Reimbursement for an official breakfast, luncheon, dinner, or banquet meeting shall be the actual cost of the meal.

An employee in a travel status between employee's work station and a field assignment may claim reimbursement for meals under the following circumstances:

a. Breakfast, providing the employee leaves home before 6:00 a.m. and is away from the permanent or temporary station.

b. Dinner, providing such employee returns home after 7:00 p.m. and is away from the permanent or temporary station.

c. Employees may be reimbursed for noon meals if the employee is in a travel status. Employees stationed in the seven-county metropolitan area shall not be reimbursed for



## PROPOSED RULES

meals obtained in the seven-county metropolitan area except when properly authorized as a special expense in section D below. In other areas the cost of a noon meal shall only be reimbursed where such employee would not ordinarily have incurred such a cost and the employee is considered in a travel status. Any request for reimbursement under this section shall include a statement in writing that the employee has complied with provisions of this section of the rules.

Because of variances in in-state and out-of-state hotel or motel accommodations, no fixed amounts are prescribed. It is the responsibility of the appointing authority to instruct the employee to use good judgment in incurring lodging costs. Charges shall be reasonable and consistent with the facilities available. The appointing authority may authorize the use of rental housing where the use of regular hotel or motel accommodations would result in a greater cost to the state.

### C. Other fees and expenses.

1. Parking fees. Employees using state-owned or private vehicles shall be reimbursed on an actual expense basis. Charges shall be necessary and reasonable, and consistent with the facilities available. When receipt or other evidence of payment is issued to the employee, such receipt must be submitted with the expense reimbursement request.

2. Telephone calls. ~~Telephone calls between state offices and cities shall be made using the state telephone network if at all possible. When the state telephone network is not readily available, employees should use a WATS line where such lines are available. Use of either the state telephone network or the WATS line is explained in the state telephone directory.~~

~~In cases where~~ When it is necessary to place a regular work related long distance call, the employee should request that the operator bill the call to the home office telephone number. ~~If a~~ An employee who pays cash for a work related long distance call, may obtain reimbursement for such calls ~~may be obtained by using an employee expense report.~~

~~State personnel who must frequently place long distance telephone calls may be eligible for a telephone credit card. The procedure for obtaining a state telephone credit card is explained in the state telephone directory.~~

3. Personal expenses. Personal expenses for purposes of this rule are defined as dry cleaning, laundry, and baggage handling. Employees continuing in a travel status in excess of one week who do not return home during that week may claim reimbursement not to exceed ~~\$3.50~~ \$7.00 per week for laundry or not to exceed ~~\$2.00~~ \$6.00 for dry cleaning and pressing expenses for each week after the first week. If an employee returns home during a period of time in which he/she ~~an~~ employee continues in a travel status, the employee is not

eligible for reimbursement for laundry, dry cleaning or pressing in the subsequent week. ~~after such return.~~ Receipts must accompany the claim for reimbursement. The employee's judgment is to be used regarding baggage handling expense. No reimbursement shall be made for personal phone calls, valet service, or similar personal expenses.

D. Special expenses. Special expenses shall require prior approval of the appointing authority and the approval of the Commissioner of Personnel, who shall issue guidelines regarding eligible special expenses. This section also applies to any state board, council, or commission member.

E. Station assignments. The appointing authority shall assign employees permanent or temporary stations with such assignments to be in the best interest of the state and travel origin and records shall be based on these permanent or temporary assigned stations. ~~A department head~~ An appointing authority reporting deviation from this provision shall submit a request in accordance with the rules relating to special expenses. Employees away from such designated stations on unfinished assignments may be allowed mileage reimbursement for trips to their stations on alternate weekends. An employee may return to the station each weekend at state expense if the cost of such return is less than that of remaining in the field.

### F. Payment of expenses.

1. Expense accounts. Expense accounts for all state employees shall be submitted to the Commissioner of Finance on the prescribed form (see Accounting Procedures Manual, Section E-2). If a receipt is required and the receipt has been lost or is otherwise unavailable, an affidavit stating the facts covering the expenditure shall accompany the expense account.

~~A department~~ An agency may be billed directly for expenses such as registration or conference fees, travel agencies, hotels and motels. Such billings shall include the name of the employee and the nature and date of the expense. Payment shall be processed promptly and charged to the allotment classification for travel.

2. Advances. ~~A department~~ An agency may upon request advance an estimated amount for approved travel expenses, if greater than \$50.00, to an employee who will be traveling on state business.

The authority for advance of travel expense payments may not exceed the maximum allowance permitted under state travel regulations.

In the case of travel expense advances ~~departments~~ agencies having imprest cash funds shall make the advance from such accounts if possible. In other instances, ~~departments~~ agencies shall prepare a statement with supporting expense

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## PROPOSED RULES

voucher clearly stating the advance is being made under provisions of Minn. Stat. § 43.33. In all cases after the actual expense is determined, a final employee report for the trip and/or period for which the advance was made shall be prepared and forwarded to the Department of Finance. The advance payment transaction date and transaction number must be shown on the final employee expense report. The final expense voucher shall include the number of the state warrant covering the advance payment. If additional payment is due the employee, an additional state warrant shall be prepared in the usual manner. If an advance payment exceeds the actual expenses, the employee shall return the excess which shall be deposited in accordance with provisions established by the Commissioner of Finance.

G. Insurance. ~~Department heads shall require proof of automobile liability insurance in the minimum amount required by law before approving travel involving private automobile mileage allowance.~~

Any employee flying a personal aircraft on official state business must show proof of adequate liability insurance coverage by a firm licensed to do business in Minnesota. Such coverage shall be in an amount of \$50,000 minimum for each passenger seat, \$50,000 per person, and \$150,000 per accident for public liability for bodily injury, and \$50,000 property damage.

It shall be the responsibility of the employee to immediately notify the appointing authority of any change in insurance coverages under such employee's ~~automobile and~~ aircraft liability insurance.

H. Automobile leasing. An employee may be reimbursed for car rental expenses where the use of a state car in the conduct of state business is not possible and the use of a rental car is the only or the least expensive method of transportation. An employee using such rental car must indicate the need for the rental and attach an itemized statement for the rental upon requesting reimbursement.

### 2 MCAR § 2.182 Relocation expenses.

A. Authorization. An employee shall be reimbursed for relocation expenses under the provisions of this rule if the conditions of 2 MCAR § 2.182 B.6. are met and if:

1. The appointing authority determines that an employee is required to be transferred or reassigned to a different work station, when the transfer or reassignment is not for the employee's sole benefit, or:

2. The employee must change residence as a condition of employment, or:

3. The employee accepts an appointment at a higher salary range, or:

4. The employee is reassigned, transferred or demoted to a vacant position in the employee's ~~state department or~~ agency due to the abolishment, transfer of the function to another governmental jurisdiction or private enterprise, removal to a new location or to another state agency of all or a

major portion of the operations of the employee's appointing authority.

An employee transferred under these conditions shall receive prior authorization before incurring any expenses authorized by this rule.

An employee who is demoted during the probationary period after the trial period, shall receive those relocation expenses provided in 2 MCAR § 2.182 B.3. and 4.

Relocation expenses authorized by this rule may be paid to a person initially accepting employment in the state service with the advance approval of the Commissioner. Payment shall be made only after the person becomes a state employee.

#### B. Relocation expenses covered.

1. Travel status. An employee transferred or reassigned at the convenience of the state service as defined in paragraph A. above shall be considered in a travel status for a period of up to ~~sixty~~ sixty ninety calendar days and shall be authorized to be reimbursed for return to such employee's original work station once a week. During the first ~~sixty~~ sixty ninety calendar days the state may also reimburse the cost of transporting the employee's spouse twice during such period, including the cost of mileage, meals and lodging, but not to exceed a total period of seven calendar days. In addition, the state may reimburse the employee's family for reasonable transportation costs to the new work station at the point that the move is made, including mileage, meals and lodging. Such expenses shall be reimbursed consistent with these rules.

2. Realtor's fees. The state may pay the cost of realtor's fees on the home being sold by the employee but in no case shall such payment exceed \$3,000.00.

3. Moving expenses. The state shall pay the cost of moving and packing of household goods. The employee shall obtain two or more bids for packing and moving of household goods. Approval shall be given by the appointing authority before authorizing a mover to pack and ship household goods. The state shall also pay for the cost of moving house trailers where that is the domicile of the employee, including the cost of transporting blocks, skirts, or other attached fixtures. The employee shall obtain two or more bids.

4. Miscellaneous expenses. The employee shall be reimbursed up to a maximum of ~~\$250.00~~ \$350.00 for miscellaneous expenses directly related to a move. Such expenses shall be reimbursed when supported by documentation. These expenses may include such things as disconnecting and connecting appliances and/or utilities, or other costs associated with the purchasing or rental of a new residence not covered elsewhere in this rule.

5. Liability. Neither the State of Minnesota nor any of its agencies shall be responsible for loss or damage to any employee's household goods or personal effects as a result of such transfer.

6. Eligibility. In order to be eligible for any payment of moving expenses or to be eligible for reimbursement of any

## PROPOSED RULES

expenses under this section, the new permanent work station shall be at least 35 miles from the current work station or ~~to~~ the change in residence must be required by an the appointing authority as a condition of employment- and the change in residence must be completed within 6 months of the effective date of the appointment to the new position, unless an extension of time is approved by the appointing authority.

**2 MCAR § 2.201 “Agency”** means a department, ~~division, commission, board, institution, or other branch of the state service, in which all positions are under the same appointing authority.~~

**2 MCAR § 2.202 “Agency Promotional List”** means an eligible list of ~~permanent and probationary~~ employees of the agency or duly established organizational unit established by competitive examination from which promotions ~~are~~ may be made.

**2 MCAR § 2.203 “Allocation”** means the ~~original~~ assignment of a new or vacant ~~an~~ individual position to an appropriate class, ~~or changes in assignment resulting from changes in the organizational structure of an agency or abrupt changes in the duties of a position,~~ on the basis of the kind, difficulty, and responsibility of the work performed in the position.

**2 MCAR § 2.226 “Open competitive list”** means an eligible list established by open competitive examination from which original appointments ~~are~~ may be made.

**2 MCAR § 2.232 “Permanent employee”** means an employee in the classified service who has ~~been appointed to a position after~~ successfully ~~completing~~ completed the initial probationary period.

**2 MCAR § 2.240 “Reallocation” “Reclassification”** means a ~~reassignment~~ reallocation, or change in allocation of an individual position by raising it to a higher class, reducing it to a lower class, or moving it to another class at the same level ~~on the basis.~~ A reclassification shall be considered a “reallocation” when the reclassification is the result of significant changes over a period of time in the kind, difficulty, or responsibility of the work performed in such position ~~which have occurred over a period of time.~~ A reclassification shall be considered a “change in allocation” when the reclassification is the result of changes in the organizational structure of an agency or abrupt changes in the duties and responsibilities of the position. A reclassification shall also be considered a change in allocation if it is the result of assignment of the incumbent in a manner so as to bypass the selection process.

**2 MCAR § 2.241 “Reemployment List”** means a list of current or former permanent or probationary employees laid off, demoted in lieu of layoff, or separated from the state civil service and/or the class in good standing whose written applications for consideration for reemployment in the class have been approved by the Commissioner in accordance with 2 MCAR § 2.061.

**2 MCAR § 2.244 “Statewide Promotional List”** means an eligible list of ~~permanent and probationary~~ state employees established by competitive examination from which promotions may be made to any state agency. ~~agencies other than the one in which the eligible is employed.~~

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## **Department of Public Welfare**

### **Proposed Rule 20 Governing the Administration of Specified Therapies to State Hospital Patients**

#### **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, in the Minnesota Veterans Home, Building 15, Auditorium Chapel, East 51st Street at Minnehaha, Minneapolis, Minnesota on September 20, 1979, commencing at 9:00 a.m.

All interested or affected persons will have an opportunity to participate concerning the proposed rule captioned above. 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 Steve Mihalchick, Office of Hearing Examiners, 1745 University Ave., St. Paul, Minnesota, 55104, (612) 296-8112, either before the hearing or within five (5) working days after the close of the hearing. The hearing examiner may keep the record open for a longer period not to exceed 20 calendar days. All such statements will be entered into and become part of the record.

The proposed rule will govern the administration of specified treatment modalities to committed patients residing in state hospitals. The proposed rule would require specific court authorization prior to administration of functional neurosurgery (psychosurgery), electroconvulsive therapy, coma therapy, aversive therapy utilizing the injection of any chemical substance, and medically prescribed maintenance therapy using drugs set forth in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1970.

The proposed rule goes on to provide procedures to be followed in the event it is determined that a certain treatment modality is medically indicated for the committed patient. Factors to be considered in determining medical indications are specified. In cases where judicial authorization is necessary, procedures to be followed to obtain such authorization are outlined. The proposed rule does not affect the administration of generally recognized treatment modalities not specified.

The authority for this proposed rule is based upon Minn. Stat. § 246.01 and the Minnesota Supreme Court decision on Price v. Sheppard, 307 Minn. 250, 239 N.W. 2d 905 (1976).

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to Ronald C. Young, M.D., Medical Director, Department of Public Wel-

fare, Centennial Building, St. Paul, MN 55155, Telephone: (612) 296-3058. Additional copies will be available at the door on the date of the hearing.

Notice is hereby given that 25 days prior to the hearing a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include 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 proposed rule/rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

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

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 commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including 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, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

July 25, 1979

Arthur E. Noot  
Commissioner of Public Welfare

#### **Rule as Proposed**

##### **12 MCAR § 2.020 Procedures governing the administration of specified therapies to state hospital patients.**

A. Introduction. This rule governs the administration of

## PROPOSED RULES

the treatment modalities specified in part B. of this rule to committed patients residing at state hospitals.

### B. Regulated treatments.

1. The following treatments must be administered pursuant to the provisions of parts C. through E. of this rule:

a. functional neurosurgery (psychosurgery) including the ablation or destruction of histologically normal brain cells by any medical or surgical procedure;

b. electroconvulsive therapy, or any other convulsive therapy;

c. coma therapy (including insulin);

d. injection of any chemical substance as an aversive therapy;

e. medically prescribed maintenance therapy using substances set forth in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 812. Provided, however, that this rule shall not apply to the prescription of any substance set forth in Schedule II when:

(1) such prescription is made for the treatment of Parkinsonism, epilepsy, hyperperistalsis, narcolepsy, or hyperkinesia, or

(2) such prescription is necessary for the preoperative or postoperative care of the patient.

### C. Procedures

1. None of the treatment modalities listed in part B. shall be administered to a patient committed to a state hospital unless the medical director of the state hospital, on the basis of consultation with the patient's treating physician, has determined in accordance with the provisions of part D. of this rule that the treatment modality is medically indicated for the committed patient; and

a. the order committing the patient to the state hospital authorizes administration of the proposed treatment modality; or

b. in the case of committed adult patients, written consent is obtained on a form which specifies the nature, purpose, risks and effects of the proposed treatment and advises the patient of the right to consult with any other persons regarding this decision and to withdraw consent at any time. The consent must include a certification by the medical director of the state hospital or the patient's treating physician that the patient has read and understands the terms of the document and that the patient is sufficiently competent to give an informed consent to the proposed treatment; or

c. in the case of a committed mentally retarded resident, written consent is obtained from the closest responsible relative on a form which specifies the nature, purpose, risks and effects of the proposed treatment and advises the

relative of the right to withdraw consent at any time. The consent must include a certification by the medical director of the state hospital or the resident's treating physician that the relative has read and understands the terms of the document. If the retarded resident also is under guardianship or conservatorship of the Commissioner, Department of Public Welfare, Minn. Stat. § 252A.11 (1978), the Commissioner must give the above consent as provided in subd. 1(a) or (g) in addition to the relative's consent. A certification shall be made by the medical director of the state hospital or the resident's treating physician that the retarded resident has received an explanation of the proposed treatment to the extent of the retarded resident's understanding; or

d. judicial authorization for the administration of the proposed treatment is granted by a court of competent jurisdiction pursuant to the provisions of part E. of this rule.

D. Factors to be considered in determining medical indications.

1. In assessing whether any of the treatment modalities listed in part B. are medically indicated for a committed patient, the medical director and the patient's treating physician shall consider the following factors in relation to such patient:

a. the extent and duration of changes in mental activity and behavior patterns effected by the treatment;

b. the risks of adverse side effects;

c. the experimental nature of the treatment;

d. its acceptance by the medical community of this state; and

e. the extent of intrusion into the patient's body and the pain connected with the treatment.

### E. Hearings.

1. In cases where the provisions of part C. 1.d. of this rule apply, none of the treatment modalities specified in part B. of this rule shall be administered absent judicial authorization. The state hospital medical director or his designee shall petition the probate or the county court of the county of the patient's settlement for such authorization. Where necessary and appropriate, this court may arrange to have the matter heard in the county of the patient's presence.

a. The petition shall state the nature of the proposed treatment, describe its purpose, recite the risks and effects of the procedure and recite the findings of the medical director or treating physician as provided in parts C. and D. of this rule.

b. The petition shall request the appointment of a guardian ad litem to represent the patient.

c. A copy of the petition shall be supplied to the welfare department in the county of the patient's settlement in advance of the hearing.

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# SUPREME COURT

## Decisions Filed Friday, August 3, 1979

Compiled by John McCarthy, Clerk

**49157/196** **Russell Goodman, Appellant, vs. State of Minnesota, Department of Public Safety, Ramsey County.**

A suspension of driver's license pursuant to Minn. St. § 171.16, subd. 1, does not necessarily terminate after 30 days if the license was originally ordered suspended until parking fines were paid.

Affirmed. Sheran, C. J.

**48758/66** **Conrad Villarreal vs. Albert Lea Electro Plating, Inc., et al, Relators, Washington National Insurance Company, intervenor, Insurer. Workers' Compensation Court of Appeals.**

On an appeal by relators from an award of workers' compensation benefits where the findings of the compensation judge and court of appeals fail to specify precise facts concerning statutory notice of personal injury or occupational disease, the case must be remanded for clarification.

Remanded. Rogosheske, J.

**49082/137** **June Ann Abbott, Appellant, vs. Lowell Dean Abbott. Clay County.**

In a proceeding for modification of the alimony provision of a divorce decree, the evidence supports the trial court's finding of a substantial change in the economic circumstances of petitioner's former wife but, by reason of factual findings having no evidentiary support and a failure to properly apply our holding in Sieber vs. Sieber, 258 N.W. 2d 750 (Minn. 1977), concerning the effect of the existence of a meretricious relationship, the trial court erred in determining the extent to which the former wife's need for support is diminished.

Reversed and remanded. Rogosheske, J. Took no part, Otis, J.

**48946/215** **Joseph D. Losinski vs. American Dry Cleaning Company, Appellant, Mary C. Losinski, personal representative to the estate of Joseph Leo Losinski, deceased, et al. Winona County.**

The trial court erred in applying the principle of implied ratification where the articles of incorporation specifically provided that a sale of substantially all the corporate assets required authorization by the vote or written consent of the holders of a majority of the shares.

Reversed. Rogosheske, J. Took no part, Scott, J.

**49148/271** **In the Matter of the Application of Edward Bartell and Barko Hydraulics, Incorporated, for a Permit to Place Fill in the Bed of Lake Superior, Appellants, vs. State of Minnesota. St. Louis County.**

The Federal Water Pollution Control Act Amendments of 1972, which added § 404 (Pub. L. No. 92-500, § 404, 86 Stat. 884), did not preempt state authority to regulate the dumping of fill material into navigable public waters.

Issues concerning the enforceability of the Department of Natural Resources' order to remove illegally placed fill from public waters and to restore the lakebed to its prefilled condition, including failure to join an indispensable party and failure to file a notice of lis pendens, are without merit or prematurely raised.

Further administrative proceedings are required where the record is inadequate to establish the amount of fill subject to a removal order and the extent to which removal is required for restoration of the lakebed.

Remanded. Rogosheske, J. Took no part, Otis, J.

**49244/256** **County of Ramsey and Ramsey County Welfare Board vs. County of Sherburne and Sherburne County Welfare Board, Appellants. Ramsey County.**

The county of financial responsibility under Minn. St. § 256D.18 of an unemancipated and unabandoned minor is not determined by the county in which the minor is physically present; it is determined by the county of residence of the minor's parents.

Affirmed. Peterson, J.

**48517/57** **Agnes Golden, Appellant, vs. Junior Ray Golden, Ramsey County.**

Where, in very limited cases, a defendant in a paternity action introduces strong evidence which, if believed, would tend to exclude all reasonable probability of his parenthood of the child upon the ground of nonaccessibility, the matter was properly submitted to the jury for the ultimate resolution with proper instructions by the trial court on the presumption of legitimacy.

Affirmed. Todd, J.

**49256** **Dwight W. Kelsey, petitioner, Appellant,**  
**49354/49** **vs. State of Minnesota, State ex rel. Frank Wood, Warden. Washington County.**

Habeas corpus is normally not available as a remedy if the petitioner is confined pursuant to a final judgment of a competent court having jurisdiction over him, but henceforth at least in the absence of an amendment to the post conviction remedy act making the postconviction remedy available for this purpose, habeas corpus may be used as a means of reviewing allegations of the failure of parole authorities to follow applicable statutory and constitutional principles in denying parole.

## SUPREME COURT

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Affirmed in part and reversed in part. Yetka, J. Concurring specially, Scott, J., Todd, J., Wahl, J.

**48691/199 National Texture Corporation, formerly CLEMCO, Inc., vs. Richard H. Hymes, Appellant. Hennepin County.**

Where a law firm represents a business and an officer of that company consults the firm in order to apply for a patent in his own name and a dispute arises after the officer has left the company as to who owns the patent, the law firm should be disqualified from representing the company absent consent of both parties.

In the above-described situation, the former officer shall have the right to discovery of the company's and the law firm's records and to question their employees on the issues of ownership of the patent and distribution of royalties.

Reversed and remanded. Yetka, J. Took no part, Todd and Scott, JJ.

**49015/210 Victoria Elevator Company of Minneapolis and Victoria Grain Company of Minneapolis, as assignee and successor in interest to Victoria Elevator Company of Minneapolis vs. Meriden Grain Co., Inc., et al, Harold D. Schroeder, Appellant. Steele County.**

Where an individual sets up a corporation that continues a previously existing business operated as a sole proprietorship and in which he and his wife are sole shareholders;

where he fails to distinguish between property owned by himself as an individual and property owned by the corporation;

where he combines individual and corporate tax returns;

where he lists individually owned real estate on a corporate income tax return and takes depreciation thereon on behalf of the corporation; and

where he misrepresents corporate assets to state and federal agencies —

such individual is not entitled to the limited liability of the corporation and can be held liable individually for its debts.

Affirmed. Yetka, J. Took no part, Todd, J.

**48409/213 State of Minnesota vs. James E. Lee, Appellant. Olmsted County.**

It was not error for the trial court to refuse to instruct the jury on the lesser included offense of manslaughter arising from an alleged heat of passion killing since there were no words or acts likely to provoke a person of ordinary self-control under like circumstances to cause the death of another. Further, because the jury found the requisite premeditation and intent, there was no prejudice to the defendant.

Where defendant admits having a shotgun and shooting and

killing a deputy sheriff, and where the introduction of the shotgun at trial would not affect the outcome of the case, then as a matter of law the defendant was not prejudiced by admission of the weapon and it is not necessary to determine whether his Fourth Amendment rights were violated.

The trial court did not err in admitting into evidence a witness's testimony that defendant stated, about 4 weeks before the shooting, that if he were ever stopped by a policeman, the defendant would shoot him.

The evidence supports the verdict that defendant is guilty beyond a reasonable doubt.

Defendant was not denied a fair trial when the lower court refused to explain to the jury the consequences of a verdict of not guilty by reason of insanity because the assessment of punishment is a matter of law within the exclusive province of the court.

Affirmed. Yetka, J. Concurring specially, Otis, J.

**47837 State of Minnesota, Appellant, vs. Bernard Clark, Jack Fulstrom, et al. Becker County. 47849/189**

The Nelson Act did not disestablish the White Earth Indian Reservation, and thus the state's jurisdiction to regulate Indian activities within the boundaries of that reservation is limited to that granted by Public Law 280.

Affirmed. Scott, J. Concurring specially, Todd, J., Yetka, J., Peterson, J. Otis, J. Took no part, Kelly, J.

**49711/Sp. Russell Case vs. Hart Motor Express, Inc., Relators, State Treasurer, Custodian of the Special Compensation Fund. Workers' Compensation Court of Appeals.**

Under Minn. St. 1967, § 176.131, subd. 4, automatic registration of an employee as physically impaired could be effected by the filing of a chiropractor's reports with the Industrial Commission if such reports were sufficient to furnish actual notice to the custodian of the Special Compensation Fund that the employee was physically impaired.

Reversed and remanded. Wahl, J.

**48550 State of Minnesota vs. Harold Vernon, Appellant, (48550) and State of Minnesota vs. 48871 Jeffrey E. Carlson, Appellant, (48871 and 48880/88 48880) and Jeffrey E. Carlson, Appellant, and State of Minnesota, vs. Dennis Henry Finlay, Appellant, (49788). Hennepin County and Ramsey County.**

The legislature's determination that cocaine has a high potential for abuse and that abuse may lead to severe psychological dependence has not been rebutted by overwhelming evidence to the contrary.

Cocaine may be regulated as a narcotic for purposes of prescribing criminal penalties for its possession and distribution, though by pharmacological standards it is not a narcotic.

Affirmed. Kennedy, J.

## SUPREME COURT

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**49329/252-1/2** In the Matter of the Application for the Discipline of Richard Lee Primus, an Attorney at Law of the State of Minnesota. Supreme Court.

Attorney was disbarred on finding of misconduct including misappropriation of clients' funds which the supreme court held constituted willful misconduct involving moral turpitude, indicating unfitness to practice law and justifying disbarment.

Judgment of disbarment entered. Per Curiam.

**48975/299** In the Matter of the Application for the Disbarment of Roger Charles Hennings, an Attorney at Law of the State of Minnesota. Supreme Court.

The present record mandates that respondent be disbarred from the practice of law in the state of Minnesota.

Disbarred. Per Curiam.

## Order Filed Wednesday, July 25, 1979

**49629/185** In the Matter of the Application for the Discipline of Seth Robert Phillips, an Attorney at Law of the State of Minnesota. Supreme Court.

In an attorney disciplinary matter, a stipulated disposition was rejected by supreme court because stipulation provided no remedy for former clients of attorney to whom he owes money or an accounting, and court held it would either accept an amended stipulation or refer matter to a referee for hearing. Sheran, C. J. Took no part, Rogosheske, J.

## STATE CONTRACTS

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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 contract person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

## Department of Commerce Consumer Utility Division

### Notice of Request for Proposals for Cost of Capital/Rate of Return Consulting in the Matter of the Request by Continental Telephone Corp. for a General Rate Increase

Response requested by August 24, 1979.

#### I. Introduction

The Office of Consumer Services of the Minnesota Department of Commerce, which is statutorily charged with representing the interests of the state's residential utility consumers in Public Service Commission pro-

ceedings, is soliciting proposals from qualified consultants to perform work in connection with the petition of Continental Telephone Company of Minnesota, Inc., for authority to increase its rates. The petition is currently before the Minnesota Public Service Commission and a hearing in the matter has been ordered.

#### II. Requisite Qualifications

Respondents must be able to demonstrate substantial experience and expertise in the economic and regulatory aspects of the telephone industry. Specifically, respondents must have experience in preparation and presentation of testimony before regulatory agencies regarding capital structure, cost of capital and rate of return.

#### III. Scope of Work

A. Assist the Office of Consumer Services in preparing for, and in conducting cross examination of witnesses presenting direct, rebuttal, and surrebuttal testimony for the Company and other intervenors regarding capital structure and cost of capital issues. The witness filing



direct testimony on behalf of the Company on this issue is Joseph F. Brennan, President of Associated Utility Services, Inc. Cross-examination of Company witnesses is expected to begin on September 17, 1979.

B. Prepare and present prefiled direct, rebuttal, and surrebuttal testimony on the above-noted issues. This will include appearing before a Hearing Examiner for purposes of cross examination by parties to the proceeding. The deadline for filing intervenor testimony is expected to be October 19, 1979.

C. Assist in preparation of the Brief, Reply Brief, Exceptions to the Hearing Examiner's Report, and Reply Exceptions. It is expected that initial briefing will occur in late December 1979 and early into mid-January 1980.

D. Assist in preparation of the oral argument before the Commission.

E. Assist in any post-Order motions and appeals to the courts. The Commission's Initial Order must be issued by May 10, 1980.

**IV. Format for Proposal**

The respondent's proposal should include a summary of the respondent's qualifications and experience. The proposal should attempt to address, as specifically as possible, all work tasks to be performed throughout the proceeding and identify personnel who will be responsible for performing the work. Cost estimates should be as detailed as possible and should include estimates for professional services and out-of-pocket expenses, such as travel, lodging, etc.

If you have any questions regarding the foregoing, please contact Mr. Eldon Spencer at (612) 296-6032.

Responses to this Request for Proposals must be submitted by August 24, 1979, to:

Eldon J. Spencer, Jr., Supervisor  
Residential Utility Consumer Unit  
Office of Consumer Services  
Minnesota Department of Commerce  
128 Metro Square Building  
Seventh and Robert Streets  
St. Paul, Minnesota 55101

**Estimated Cost: \$10,000.**

**Department of Commerce  
Insurance Division**

**Notice of Availability of Contract  
for Actuarial, Accounting,  
Financial Analysis, and Rate of  
Return Consultants**

The Insurance Division of the Department of Commerce advises that it is considering contracting with certain sources for expert assistance in a Workers' Compensation rate hearing to be held pursuant to chapter 79 of the Laws of Minnesota 1978.

The areas of expertise are the following:

**A. Actuarial.**

1. Examine the filings as respects:
  - a. The law amendment calculation.
  - b. The experience based rate change, including, but not limited to:
    - (1) Actual data separately evaluated between paid losses and outstanding losses.
    - (2) The development factors, correlated if possible, to cyclical periods of reserve strengthening activity.
    - (3) Trend factors, and their causation from sources such as inflationary influences on losses and inflationary influences on premiums via payroll escalation.
    - (4) The loading of rates for expenses. The statutory limitation of expense provisions would be specifically considered.
  - c. The methods and criteria used to assign credibility to class relativities, and hence the spread of rate changes to industry and class.
  - d. The effects of premium discount, experience modification, retrospective ratings, policyholder dividends, etc.
2. Review of the work of actuaries and other professionals retained by the Bureau will avoid the costly and time consuming process of starting from ground zero. The review will be directed toward determining the degree to which the methods being proposed fulfill the objectives of the ratemaking exercise. Alternative methods will be explored and suggested where appropriate.

**B. Accounting.**

Assistance in connection with the determination of insurance company net worth for purposes of determining rates of return, assistance in connection with the determination of the capital needed to write workers' compensation insurance, assistance in connection with the proper determination of net

## STATE CONTRACTS

income for purposes of calculating rates of return, assistance to the State's attorneys in connection with the analysis of testimony and the preparation of cross examination in areas involving the expertise of accountants and, in general, guidance and counsel relating to accounting matters associated with the hearing.

### C. Financial Analysis.

Assistance in developing a model which will provide a framework through which the rate of return earned by insurers on workers' compensation in Minnesota may be calculated and also forecasted based on alternative investment strategies and from loss and expense data supplied by other consultants and staff.

### D. Rate of Return.

Provide testimony on the appropriate rate of return which may be earned on Workers' Compensation insurance based on the relative risk of that insurance with alternative investment opportunities.

Interested parties desiring consideration should submit a resume of their office and work before September 3, 1979. This is not a request for proposals. Send your response to Thomas L. O'Malley, Assistant Insurance Commissioner, 500 Metro Square Building, 7th and Robert Streets, Saint Paul, Minnesota 55101, telephone (612) 296-3588.

## Pollution Control Agency Water Quality Division

### Notice of Request for Proposals for the Development of Study Plans for an Assessment of the Safety of Minnesota's Two Nuclear Power Plants

The Pollution Control Agency seeks proposals for the development of study plans to assess the safety of Minnesota nuclear power plants. The study plans are to address two different safety issues: (1) the safety of the Prairie Island Nuclear Power Plant in light of its general similarity to the Three Mile Island Nuclear Plant, and (2) the overall safety of both the Prairie Island and Monticello nuclear facilities in light of known or suspected generic weaknesses associated with their designs and operational procedures. The final product would be two study plans; one identifying the steps necessary to complete a safety assessment of the Prairie Island Plant, and the other study plan identifying the steps necessary to complete a safety assessment of the Monticello Plant and further activities that the state could or should undertake in reviewing the general safety of nuclear power in Minnesota.

Estimated Cost: \$20,000

The deadline date for proposals is September 10, 1979.

For more information, please contact:

Mr. Tim K. Scherkenbach  
Pollution Control Agency  
Division of Water Quality  
1935 W. County Road B-2  
Roseville, MN 55113

## Department of Corrections Correctional Industries

### Notice of Availability of Contract for Technical Services

The Correctional Industries Division of the Minnesota Department of Corrections requires professional/technical expertise to assist with the development of a comprehensive catalog of the products and services available through the industry programs at the institutions. We wish to establish a contract for producing the material for this catalog of approximately 60 pages. Each page will describe a product or service of the Minnesota Correctional Industries located at Stillwater, Lino Lakes, St. Cloud, Shakopee, and Sauk Centre. The plate-making for and the printing of the catalog will be done at the Lino Lakes facility with the expense of these two functions assumed by Minnesota Correctional Industries.

Listed below is the range of responsibilities projected for the proposed contract:

1. After consultation with the responsible M. C. I. managers, prepare the editorial content for each product or service including its specifications.
2. Type-set the approved editorial material.
3. The product photographs needed for the catalog will be provided by the contractor. Photographs are to be made on location at the producing facility.
4. Air brush those photographs where it is necessary to delineate the various planes of the product.
5. Produce line sketches where a photograph will not properly represent a non-product service.
6. Have the material for each page approved by the Director of Correctional Industries.
7. Prepare the composite plate negatives to be used by the Lino Lakes facility in making the printing plates.
8. Print the name of the catalog and the M. C. I. logo on the front cover of 500 8½ x 11 plastic loose leaf binders. The contractor will supply the binders.

Proposals must include expected compensation. Any questions, as well as the response to this Request for Proposals, must be directed to the following:

## STATE CONTRACTS

Conrad J. Solberg  
Director of Correctional Industries  
Minnesota Department of Corrections  
430 Metro Square  
St. Paul, Minnesota 55101  
Phone: (612) 296-4027

Final date for submission is September 4, 1979.

### **Department of Public Welfare Moose Lake State Hospital**

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

Notice is hereby given that the Moose Lake State Hospital, Department of Public Welfare, is seeking the following services for the period October 1, 1979 through June 30, 1980. These services are to be performed as requested by the Administration of the Moose Lake State Hospital:

1. Services of a Psychiatrist to perform consultation services in Psychiatry one day each week at the Moose Lake State Hospital. Other consultations will occur via phone or mail as needed and as deemed appropriate. The estimated amount of the contract will not exceed \$14,400.00.

Responses for the above services must be received by September 1, 1979. Direct inquiries to:

Frank R. Milczark  
Chief Executive Officer  
Moose Lake State Hospital  
1000 Lakeshore Drive  
Moose Lake, MN 55767  
(218) 485-4411, Ext. 242

### **Department of Transportation Bridges and Structures**

#### **Notice of Availability of Contract for Minnesota Consulting Engineers**

The Mn/DOT requires the services of a qualified Consultant to provide engineering services for the design of the bridge project described below.

Br. No. 69100A T.H. 2 W.B. to T.H. 35 N.B.

Br. No. 69100B T.H. 35 S.B. to T.H. 2 E.B.

Br. No. 69100C T.H. 35 N.B. to T.H. 2 E.B.

Br. No. 69101 T.H. 2 W.B. over T.H. 35 N.B. Ramp

In Duluth—Minnesota approach to the Arrowhead Bridge.

Estimated fee range: In excess of \$75,000.

The work will start in the next few months with approximately one year anticipated for completion.

Firms desiring consideration should express their interest to Mn/DOT before 4:30 p.m. September 4, 1979. Identify personnel to conduct the project and include resume of their training and work experience. Minnesota firms will be given first consideration.

The Bridge Contractor Selection Committee will solicit a proposal from the list of responders after screening and interviews.

Send response to:

K. V. Benthin  
Bridge Engineer  
Room 610D  
Transportation Bldg.  
St. Paul, Minnesota 55155

### **Department of Transportation Office of State Aid**

#### **Notice of Availability of Contract for Wayside Design Services**

The Washington County Highway Department in cooperation with the Office of State Aid, Minnesota Department of Transportation, requires the services of a qualified consultant to design a way-side recreation area at Point Douglas, Washington County.

The design shall consist of the design of a bathhouse sanitary facility, well, interpretive center-sanitary facility, landscaping, picnic area, 150 car parking lot, turnlanes, fencing, sea wall, rip-rap and grading.

The estimated costs of these services is \$20,000.00 Payment for these services shall be based on actual costs plus a net fee for profit.

Please indicate interest, no later than September 3, 1979, to:

Mr. Charles J. Swanson  
Washington County Engineer  
11660 Myeron Road North  
Stillwater, Minnesota 55082  
Phone (612) 439-6058

# OFFICIAL NOTICES

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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.

## Department of Commerce Insurance Division

### Notice of Intent to Solicit Outside Information on Proposed Rules Governing Workers' Compensation Self-Insurance for Employers, Group Employers, and Third-Party Administrators

Notice is hereby given that the Department of Commerce, Insurance Division, is considering the promulgation of proposed temporary rules governing Workers' Compensation self-insurance, Workers' Compensation group self-insurance, and Workers' Compensation group self-insurance third-party administrators, pursuant to requirements set forth in Minn. Stat. § 176.181, subd. 2 (1978) as amended by chapter 3, section 50, Special Session 1979. In order to adequately determine the nature and utility of such rules, the Commerce Department, Insurance Division, hereby requests information and comments from all interested individuals or groups concerning the subject matter of the proposed rules.

All interested or affected persons/or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to Mr. Berton W. Heaton, Insurance Analyst, Insurance Division, Department of Commerce, Fifth Floor, Metro Square Building, Saint Paul, Minnesota 55101. Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-8592, or in person at the above-referenced address.

The proposed temporary rules, if adopted, would require employers who desire to be self-insured or group self-insured for Workers' Compensation liability imposed by chapter 176 to meet certain requirements. In addition, third-party group self-insured administrators would have to meet certain requirements before they could be licensed. Under present law, all employers except the state and its municipal subdivisions, must be insured or selfinsured. By act of the Legislature in Special Session, chapter 3 (1979), the jurisdiction over licensure of self-insureds was transferred from the Department of Labor and Industry to the Insurance Division of the Department of Commerce.

Therefore, pursuant to the requirements of this legislation, the Insurance Division is seeking information and comment prior to its promulgation of temporary rules. These rules will specify the criteria to be considered by the Insurance Division in requests for Workers' Compensation licensure of self-insured employers, employers forming group self-insurance plans, and third-party self-insured administrators.

## Department of Health Emergency Medical Services Section

### Notice of Filing of Application and Notice of Public Hearing

Notice is hereby given that on June 20, 1979, North Memorial Medical Center filed application with George R. Pettersen, M.D., Commissioner of Health, for a license to operate a land emergency ambulance service with a base of operation in both the Community of Long Lake and the Community of Minnetonka, Minnesota. This notice is made pursuant to Minn. Stat. § 144.802 (Supp. 1977). Please be advised that subd. 2 of that statute states, in part: "The Commissioner may grant or deny the license 30 days after notice of the filing has been fully published. If the Commissioner receives a written objection to the application from any person within 20 days of the notice having been fully published, the license shall be granted or denied only after a contested case hearing has been conducted on the application. The Commissioner may elect to hold a contested case hearing if no objections to the application are received. If a timely objection is not received, the Commissioner may grant or deny the requested license based on the information contained in the license application. If licensure is denied without hearing, the applicant, within 30 days after receiving notice of denial, may request and shall be granted a contested case hearing upon the application, at which hearing all issues will be heard de novo. Any objections to this service, pursuant to Minn. Statutes Section 144.802 (Supp. 1977) may be made in writing to George R. Pettersen, M.D., within the time period outlined by statute."

Notice is hereby further given that the Commissioner of Health has determined that a contested case hearing shall be held to determine whether the public convenience and necessity require the above-referenced proposed ambulance service. This proceeding has been initiated pursuant to and in satisfaction of the requirements of Minn. Stat. § 144.802 and

## OFFICIAL NOTICES

pursuant to the Administrative Procedure Act and the Rules for Contested Cases of the Office of Hearing Examiners, rules HE 201-222.

1. It is ordered and notice is hereby given that a hearing will be held on this matter at the Gray Fresh Water Biological Institute, 2500 Shadywood Road (Intersections of Cty. Rd. 15 & 19), Navarre, MN, on September 6, 1979, commencing at 9:30 a.m. All interested persons are hereby urged to attend. Failure to do so may affect your rights in this matter. The issues to be determined are whether the public convenience and necessity require the above-referenced proposed ambulance service and whether or not an ambulance service license should be granted to this Service.

2. Mr. George Beck, Minnesota Office of Hearing Examiners, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104 (telephone: 612-296-8108) will preside at this hearing.

3. Any party will be given the opportunity to be heard orally, to present witnesses and to submit evidence, written data, statements or arguments in these proceedings. The hearing and the decision will be controlled by the Administrative Procedure Act and the Rules of the Minnesota Office of Hearing Examiners, rule HE 201-222. The Commissioner of Health will request that the Chief Hearing Examiner assign a court reporter to transcribe the testimony taken at the hearing.

4. The Hearing Examiner may hear testimony and receive exhibits from any person at the hearing, or allow a person to note his appearance, but no person shall become, or be deemed to have become, a party by reason of such participation.

5. All parties are hereby informed of their right to be represented by counsel in these proceedings.

6. William G. Miller, Special Assistant Attorney General, 232 Minnesota Health Department Building, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440 (telephone: 612/296-5500), or Diane Newberg, Section of Emergency Medical Services, Minnesota Department of Health, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440 (telephone: 612-296-5281), may be contacted for further information on this matter, for discovery pursuant to rule HE 214, or for an explanation of the process by which one can intervene as a party in this matter.

### **Pollution Control Agency Notice of Intent to Solicit Outside Opinion Regarding Review of the Existing Rule APC 1 Ambient Air Quality Standards**

Notice is hereby given that the Minnesota Pollution Control Agency (MPCA) will be reviewing its existing Rule APC 1 "Ambient Air Quality Standards" which sets forth

primary (health-related) and secondary (welfare-related) standards for atmospheric concentrations of hydrogen sulfide, photochemical oxidants, carbon monoxide, hydrocarbons, sulfur oxides, particulate matter, and nitrogen oxides. Non-attainment of ambient air standards are the basis for requiring emission reductions.

The state ambient standards for photochemical oxidants and for sulfur oxides are currently more restrictive than the ambient standards set by the United States Environmental Protection Agency (U.S. EPA). In addition, the one hour standard for carbon monoxide is more restrictive than the U.S. EPA standard.

The Minnesota Association of Commerce and Industry (MACI) has petitioned the Agency to amend the ambient standards for photochemical oxidants and sulfur oxides to be consistent with U.S. EPA standards. The MPCA staff and the Agency Board have agreed to review portions of Rule APC 1 with respect to photochemical oxidants and sulfur oxides in a public hearing.

The MPCA is interested in soliciting information and comments on the appropriateness of the existing photochemical oxidants and sulfur oxides ambient standards as well as comments on any other portion of Rule APC 1.

A public information meeting will be held at 9:30 a.m. on September 19, 1979, in the Board Room of the Pollution Control Agency at 1935 West County Road B-2, Roseville, Minnesota 55113. Agency staff will explain Rule APC 1 at this meeting. Relevant documents which interested persons may wish to review include the following:

1. *Revisions to the National Ambient Air Quality Standards for Photochemical Oxidants*. Federal Register, Vol. 44, No. 28—Thursday, February 8, 1979.
2. *Sulfur Oxides*. National Research Council, National Academy of Sciences, Washington, D.C., 1978.
3. Transcript: *Hearing on Proposed Ambient Air Quality Standards and Air Pollution Control Regulations for Minnesota*, December 16, 17, 18, 19, 23, 24.
4. Transcript: *Supplement to Hearing on Proposed Ambient Air Quality Standards and Air Pollution Control Regulations for Minnesota*.
5. *Air Quality Criteria for Carbon Monoxide*, U.S. Department of Health, Education, and Welfare, Washington, D.C., March 1970.
6. *Air Quality Criteria for Photochemical Oxidants*, U.S. Department of Health, Education, and Welfare, Washington, D.C., March 1970.
7. *Air Quality Criteria for Hydrocarbons*. U.S. Department of Health, Education, and Welfare, Washington, D.C., March 1970.
8. *Air Quality Criteria for Nitrogen Oxides*, Environmental Protection Agency, Washington, D.C., January 1971.
9. *Air Quality Criteria for Sulfur Oxides*, U.S. Department

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of Health, Education, and Welfare, Washington, D.C., January 1969.

10. *Air Quality Criteria for Particulate Matter*, U.S. Department of Health, Education and Welfare, Washington, D.C., January 1969.
11. *Air Pollution Hearing*, March 25, 1970, Amendments to APC 1.

These documents are available for review at the Agency's Air Quality Division.

Written technical statements and comments will be accepted for consideration until October 13, 1979, and should be addressed to:

Gary Eckhardt  
Division of Air Quality  
Minnesota Pollution Control Agency  
1935 West County Road B-2  
Roseville, Minnesota 55113

Oral statements of technical information and comments will be accepted during regular business hours over the telephone at (612) 296-7333.

Inquiries which are of a non-technical nature or which relate to the public hearing process should be addressed to:

Gail Gendler  
Public Information Office  
Minnesota Pollution Control Agency  
1935 West County Road B-2  
Roseville, Minnesota 55113  
(612) 296-7283

The Agency staff will review these comments, develop additional information, and make its recommendation(s) to the Minnesota Pollution Control Agency Board. The Notice for Hearing on Rule APC 1 will be published in the *State Register* in November. All written statements received as a result of this "Notice of Intent to Solicit Outside Opinion" will become part of the hearing record.

August 6, 1979

## Pollution Control Agency

### In the Matter of the Revocation of Permit SW-A 8483 Issued November 9, 1978, to Jack Lesmeister for the Construction and Operation of a Livestock Feedlot, Poultry Lot, or Other Animal Lot and the Need for a Variance from Rule SW 54(2) (c) and (e)

#### Notice of and Order for Hearing

It is hereby ordered and notice is hereby given that a

public hearing concerning the above-entitled matter will be held by the Minnesota Pollution Control Agency (MPCA) pursuant to Minn. Stat. § 115.03, subd. 1(h) (1978), Minn. Rules MPCA 9(b) and Minn. Rules SW 53 (7) on September 19, 1979, at the University of Minnesota, Morris Campus, Edson Auditorium, Morris, Minnesota, commencing at 10:30 a.m. If necessary, the hearing shall be continued at 9:00 a.m. on September 20, 1979, and thereafter until all parties have had an opportunity to present their case.

The purpose of the hearing is to consider the request of petitioners Richard Hagstrom and others for the revocation of the permit issued to Jack Lesmeister for the construction and operation of a livestock feedlot in the Northeast ¼ Section 24, Morris Township, Stevens County, Minnesota. The feedlot permit was issued by the MPCA to Mr. Lesmeister on November 9, 1978. Petitioners allege that the permit was obtained through misrepresentations by Mr. Lesmeister; that the proposed facility constitutes a potential pollution hazard to the land, air or waters of the State; and that the proposed facility would be in violation of Minn. Rules SW 52-54. Specifically, the hearing will consider these allegations and will consider the need for variances from Minn. Rule SW 54(2) (c) and (e).

A prehearing conference is scheduled for August 20, 1979, at 10:00 a.m. through a telephone conference call. Please be advised that during the prehearing conference the Hearing Examiner may clarify, modify, or amend the issues to be heard in this matter. Additionally, the prehearing conference may result in the establishment of foundation for exhibits and identification of witnesses. Furthermore, the prehearing conference may lead to settlement of the matter. Those interested in participating in the prehearing conference should be at the Office of Mr. Thomas Athens, attorney for Jack Lesmeister, 18 North 10th Street, Wheaton, Minnesota, or at the Office of H. Morrison Kerschner, attorney for Richard Hagstrom, Rufer, Hefte, Pemberton, Schulze, Sorlie & Sefkow, Fergus Falls, Minnesota, or at the Office of Robert C. Moilanen, Special Assistant Attorney General, MPCA, 1935 West County Road B2, Roseville, Minnesota, 55113, no later than 10:00 a.m. on August 20, 1979. An additional prehearing conference may be scheduled after August 20, 1979, if requested by the parties.

The permit, comments received and other documents may be inspected and copied, at the Minnesota Pollution Control Agency, 1935 W. County Road B2, Roseville, Minnesota, any time between 9:30 a.m. and 3:30 p.m., Monday through Friday. Additionally, a copy of the permit will be available at the Minnesota Pollution Control Agency Regional Office, 116 Front Street, Detroit Lakes, Minnesota, and at the Minnesota Pollution Control Agency Regional Office, Cline Pharmacy Building, Marshall, Minnesota. A copy of the permit will be mailed to any interested person upon written request. Further information regarding the proceedings may be obtained by

## OFFICIAL NOTICES

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contacting Mr. Wayne P. Anderson at the above address. Questions concerning the issues raised in this Order or concerning informal disposition or discovery may be directed to Special Assistant Attorney General Robert C. Moilanen, Minnesota Pollution Control Agency, 1935 W. County Road B2, Roseville, Minnesota, 55113, (612) 296-7702.

The hearing will be held before Mr. Allan Klein, 1745 University Avenue, St. Paul, Minnesota 55104, (612) 296-8104, a Hearing Examiner appointed by the Chief Hearing Examiner of the State of Minnesota. All parties have the right to be represented throughout the proceeding by legal counsel, by themselves, or by a person of their choice (if such representation is not otherwise prohibited as the unauthorized practice of law). The hearing will be conducted pursuant to the contested case procedures set out in Minn. Stat. §§ 15.0411 through 15.042 (1978), 9 MCAR §§ 2.201-2.299 and Minn. Rules MPCA 1-13, to the extent that the latter rules do not conflict with 9 MCAR § 2.201-2.299. The above-cited procedural rules are available for inspection at the Office of Hearing Examiners and the Minnesota Pollution Control Agency or may be purchased from the Documents Section of the Department of Administration, 140 Centennial Building, St. Paul, Minnesota 55155, (612) 296-2874. The rules provide generally for the procedural rights of the parties.

Any person desiring to intervene as a party must submit to the Hearing Examiner and serve upon all existing parties a Petition to Intervene, pursuant to 9 MCAR § 2.210, by September 9, 1979. The Petition must show how that person's legal rights, duties and privileges may be affected by the decision in this case. The Petition must also set forth the grounds and purpose for which intervention is sought and indicate the petitioner's statutory right to intervene if one should exist. A party to a case has the right to present evidence, rebuttal testimony, and argument with respect to the issues and to cross-examine witnesses. Further, parties may be entitled, pursuant to 9 MCAR § 2.216, to issuance of subpoenas requiring the attendance of witnesses and the production of documents relevant to any matter involved in the hearing. Interested persons may present oral or written statements at the hearing without becoming parties at the discretion of the Hearing Examiner in accordance with 9 MCAR § 2.210(e), but may not cross-examine witnesses. At the present time, the representatives of parties to this proceeding who should be served with such Petition to Intervene are:

Mr. Morrison Kerschner  
Attorney for Richard Hagstrom  
Rufner, Hefte, Pemberton, Schulze, Sorlie & Sefkow  
Fergus Falls, Minnesota 56537

Mr. Thomas Athens  
Attorney for Jack Lesmeister  
18 North 10th Street  
Wheaton, Minnesota 56296

Mr. Robert Moilanen  
Attorney for Minnesota Pollution Control Agency Staff  
1935 W. County Road B2  
Roseville, Minnesota 55113

All persons are advised that, if they intend to appear as parties at the hearing scheduled for September 19, 1979, at 10:30 a.m., a Notice of Appearance form must be completed and returned to the Hearing Examiner within 20 days of the date of service of the Notice of and Order for Hearing. A Notice of Appearance form is enclosed with all Orders mailed and may also be obtained through contacting Mr. Robert Moilanen at the above address. **SHOULD A PARTY FAIL TO APPEAR AT THE HEARING, THE ALLEGATIONS MADE IN THIS ORDER MAY BE TAKEN AS TRUE.** Persons attending the hearing should bring all evidence bearing on the case including any records or other documents.

If persons have good reason for requesting a delay of the hearing, the request must be made in writing to the Hearing Examiner at least five days prior to the hearing in accordance with 9 MCAR § 2.217 E. A copy of the request must be served on the Agency and any other parties.

August 3, 1979.

## **Department of Public Welfare Department of Health Department of Public Safety**

### **Merit System**

#### **Notice of Intent to Solicit Outside Opinion Concerning Merit System Rules**

Notice is hereby given that the Minnesota Department of Public Welfare (12 MCAR), the Minnesota Department of Health (7 MCAR) and the Minnesota Department of Public Safety (11 MCAR) are considering proposed amendments to those rules affecting their compensation plans and salary schedules.

If adopted, these rule changes will alter the salaries paid to those personnel in agencies under the jurisdiction of the Merit System which have not negotiated a compensation plan with a bargaining unit's exclusive representative. The jurisdiction of the Merit System includes most County Welfare Agencies and Human Services Boards, some County and Local Emergency Services Agencies, and some County and Local Public Health Agencies.

## OFFICIAL NOTICES

The proposed rule changes are:

12 MCAR § 2.840

7 MCAR § 1.314

11 MCAR § 1.140

The Minnesota Department of Public Welfare, the Minnesota Department of Health and the Minnesota Department of Public Safety are also considering proposed amendments to those rules affecting:

- (1) the annual salary survey;
- (2) the establishment of a salary schedule for a new classification by agencies with an exclusive representative;
- (3) the salary adjustment for 1980.

If adopted, these rules will alter various personnel policies in agencies under jurisdiction of the Merit System.

The proposed rule changes are:

12 MCAR § 2.494 Compensation plan.

D. Adjustment of the Official Salary Schedule of the Minnesota Merit System.

E. Negotiation of a salary schedule.

7 MCAR § 1.239 Compensation plan.

D. Adjustment of the Official Salary Schedule of the Minnesota Merit System.

E. Negotiation of a salary schedule.

11 MCAR § 1.094 Compensation plan.

D. Adjustment of the Official Salary Schedule of the Minnesota Merit System.

E. Negotiation of a salary schedule.

12 MCAR § 2.516 Salary adjustments and increases.

B. Adjustments to be made in accordance with Merit System Official Compensation Plan.

7 MCAR § 1.260 Salary adjustments and increases.

B. Adjustments to be made in accordance with Merit System Official Compensation Plan.

11 MCAR § 1.116 Salary adjustments and increases.

B. Adjustments to be made in accordance with Merit System Official Compensation Plan.

Additionally, the Minnesota Department of Public Welfare and the Minnesota Department of Health are considering proposed amendments to those rules affecting their position classification specifications.

If adopted, these rule changes will create new position classifications and will alter existing position classification specifications under the jurisdiction of the Merit System.

The proposed rules creating new classes are:

12 MCAR § 2.655 Nutrition Project Director.

12 MCAR § 2.656 Nutrition Project Assistant Director.

12 MCAR § 2.619 Housing Coordinator.

7 MCAR § 1.269 Nutrition Assistant.

The proposed rules altering existing position classification specifications are:

12 MCAR § 2.693 Homemaker/Home Health Aide.

12 MCAR § 2.578 Financial Assistance Supervisor I.

12 MCAR § 2.579 Financial Assistance Supervisor II.

All interested or affected persons are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

Ralph W. Corey, Supervisor  
Minnesota Merit System  
Fourth Floor, Centennial Office Building  
658 Cedar Street  
St. Paul, Minnesota 55155

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-3996.

All statements of information and comment must be received by August 27, 1979. Any written material received by the Department shall become part of the hearing record.

Under the provisions of Minn. Stat. § 10A.01, subd. 11 (1974), any individual representing persons or associations attempting to influence administrative action, such as the promulgation of these proposed rules and amendments, must register with the Ethical Practices Board as a lobbyist within five days of the commencement of such activity by the individual. The Ethical Practices Board is located at Room 401, State Office Building, St. Paul, Minnesota 55155.

## Minnesota State Retirement System Regular Meeting of the Board of Directors

Regular quarterly meeting of the Board of Directors, Minnesota State Retirement System, will be held on Friday, August 17, 1979, at 9:00 a.m. in the office of the System, 529 Jackson Street, St. Paul, Minnesota.



**Office of the Secretary of  
State  
Election and Legislative  
Manual Division**

**Notice of Vacancy in Multi-  
Member Agency — Application  
and Appointment Procedures**

Notice is hereby given to the public that vacancies have occurred in a multi-member state agency, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul, Mn. 55155; (612) 296-2805. Application deadline is Tuesday, August 28, 1979.

**Building Code Standards Committee:** Two vacancies open immediately: one vacancy for a member representing the electrical professions, for a term expiring January 7, 1980; one vacancy for a member representing local government for a term expiring January 3, 1983. These members must reside in the second or sixth congressional districts. The committee advises the Commissioner of Administration on the building code. It meets quarterly. Members receive \$35 per diem. The appointing authority is the Commissioner of Administration. For specific information, contact Don Pates, 408 Metro Square, St. Paul, Mn. 55101; (612) 296-4626.

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