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### Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
SCHEDULE FOR VOLUME 5			
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30	Monday Jan 12	Monday Jan 19	Monday Jan 26

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

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

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

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

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a **NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION**. Such notices are published in the **OFFICIAL NOTICES** section. Proposed rules and adopted rules are published in separate sections of the magazine.

#### The **PROPOSED RULES** section contains:

- Calendar of Public Hearings on Proposed Rules.
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

#### The **ADOPTED RULES** section contains:

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

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

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

Issues 1-13, inclusive

Issue 39, cumulative for 1-39

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# PROPOSED RULES

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Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

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

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

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 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

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## Minnesota State Retirement System Board of Directors

### Proposed Amendment and Adoption of Revised Rules of the Board of Directors of the Minnesota State Retirement System

#### Notice of Intent to Adopt Amendments without A Public Hearing

Notice is hereby given that the Board of Directors of the Minnesota State Retirement System is proposing to adopt amendments to the above cited rules without a public hearing.

All parties are advised that they have 30 days from the date of this notice to submit comments on the proposed rules. The proposed rules may be modified based upon the data and views submitted.

No public hearing will be held unless seven or more persons make a written request for a hearing within the 30 day period.

The Board of Directors' authority to adopt such rules is set forth in Minnesota Statutes § 352.03, subd. 4 (4).

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

Persons who wish to submit comments, written requests for a public hearing, requests for copies of this notice, the proposed rules, the Statement of Need, or who wish to be advised of the submission of this material to the Attorney General, should submit such comments or requests to:

Paul L. Groschen  
Executive Director  
Minnesota State Retirement System  
529 Jackson Street  
St. Paul, Minnesota 55101

Paul L. Groschen, Executive Director  
Minnesota State Retirement System

#### Amendments as Proposed

MSRS 1 [Proposed for repeal.]

~~MSRS 2~~ MCAR § 3.0001 Election of board of directors.

A. State employee member. The procedure for the biennial election of the four state employee members of the board of directors as provided in ~~Minnesota Statutes 1974, Section~~ Minn. Stat. § 352.03, and laws amendatory thereof, shall be as follows:

Any employee covered by the system who desires to be a candidate for membership on the board of directors shall file ~~notice of his candidacy~~ a nominating petition signed by ten (10) employees covered by the system with the executive director of the system not later than ~~November~~ October first of each odd numbered year, ~~or the name of any employee covered by the system may be filed by a group of 10 or more employees who desire to do so.~~ A candidate may not withdraw his candidacy after October 15. If the employees whose names are thus filed are eligible to election or reelection as a member of the board of directors as provided by Minnesota Statutes 1974, Section Minn. Stat. § 352.03, and laws amendatory thereof, their name and the name of the department in which they are employed shall be printed in alphabetical order upon the ballots sent to employees covered by the system as hereinafter provided. The name of any employee covered by the system may be written in on the ballot ~~in the space~~ provided for that purpose.

Between ~~January 2 and 5, inclusive,~~ December 26 of each ~~even~~ odd numbered year and the following January 5 inclusive, the executive director shall send by mail, express, or regular messenger service notices of election to be held, ballots and envelopes to the respective heads of departments and state agencies having employees who are covered by the system. The heads of departments and state agencies shall deliver or cause to be delivered to each such employee who receives salary or wages from which deductions are made for the system on the department's or agency's payroll abstract covering the last full pay period ending in December a notice of election that two members are to be elected to the board of directors, each such notice to be accompanied by a ballot and two envelopes. Department heads shall also mail such election material to their employees on approved leave of absence or seasonal layoff during the last full pay period in December and shall certify to the executive director the names of the employees to whom ballots were mailed. The Minnesota State Retirement System shall reimburse the departments for the cost of the postage for such mailing. Each employee participating in the election shall place the ballots, not exceeding two, imprinted with the names of the candidates of their choice, or shall write or indicate by appropriate mark on the blank ballot provided for that purpose the names, not exceeding a vote for a total of two candidates of any state employees covered by the system for whom he wishes to vote for directors, place the ballots in the envelope marked "ballots" (upon which there shall be no writing except the printed word "ballots" and the words "insert ballots and seal" on the flap); thereafter seal and place in the envelope, likewise sealed, addressed to "Tellers, Minnesota State Retirement System," at its office in St. Paul, Minnesota 55101.

~~He~~ The employee shall write his or her name, department, home address, and social security number in the upper left-hand corner of the envelope addressed to said tellers, and return it to the office of the system not later than February 1, in each even numbered year. If the employee so elects, he or she may place the tellers envelope in another envelope and mail or deliver this to the retirement system. Ballots in envelopes postmarked any time up to midnight on February 1 of each even numbered year shall be counted, as shall ballots in envelopes received at the office of the system by messenger service up to the close of office hours on February 1 of each even numbered year, or, if February 1 falls on a Saturday or Sunday, postmarked any time up to midnight or received up to the close of office hours on the following Monday of each even numbered year, provided instructions hereinbefore prescribed have been complied with. Heads of departments and agencies shall promptly notify the executive director of the retirement system that notices, ballots, and envelopes have been delivered to such employees as herein before required.

The name and social security number in the upper left-hand corner of envelopes addressed to the tellers shall be checked against the department payroll abstract or facsimile listing indicated by the name of the department on the envelope (the abstract covering the last full pay period ending in December) and certified listing of those on seasonal layoff or leave of absence and if the name of the employee on the envelope is found on such payroll abstract or facsimile listing and deductions are taken for the retirement fund which are not deductions in error from the salary of an employee not covered by the system, or if the employee is on approved leave of absence or seasonal layoff during the pay period, the envelope and abstract or facsimile listing shall be so noted as "found", and if the name of the employee does not appear thereon, the envelope shall be marked "not found." The envelopes noted as "found" shall be placed in one container and those marked "not found" in another. At ~~nine~~ eight o'clock in the forenoon on the third Thursday in February in even numbered years, three tellers appointed by the board of directors shall meet and verify the notations on the sealed envelopes addressed to the tellers who shall then remove and set aside the sealed ballot envelopes of those employees verified as eligible to vote. After the verification above required is completed, the small envelopes containing the ballots shall be opened and ballots tabulated by the tellers. The two candidates receiving the highest number of votes shall be the elected members of the board of directors for a term of four years as provided by Minnesota Statutes 1974 Section 352.03, Subdivision 4, Minn. Stat. § 352.03, subd. 1 and laws amendatory thereof. In the case of a tie vote as to any candidates, the election shall be resolved by lot.

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

## PROPOSED RULES

B. Highway patrolmen's fund member. As provided in Minnesota Statutes 1974 Section Minn. Stat. § 352B.29, the members of the highway patrolmen's retirement fund shall elect one of their membership to serve as a member of the board of directors. The election of such board member shall be separate and distinct, but shall be conducted at the same time by the same tellers and shall follow the same procedure as prescribed herein 2 MCAR § 3.0001 A. The term of the first highway patrolmen fund member so elected shall terminate on the first Monday in March 1978. Such members shall serve for a term of four years and until the successor is elected and has qualified.

C. Retired employee member. As provided in Minn. Stat. § 352.03, retired state employees shall elect one retired state employee to serve as a member of the board of directors. The election of such board member shall be separate and distinct but shall be conducted at the same time by the same tellers and shall follow the same procedure as prescribed in 2 MCAR § 3.0001 A. except as follows:

Retired employees who are eligible for election to the board and eligible to vote for a candidate for the board shall be any person receiving an annuity from MSRS as of January 1 of each even numbered year.

Between July 1 and August 15, of each odd numbered year the director shall mail a notice of election to all eligible retired employees giving them notice of election and instructions for becoming a candidate for membership on the board.

Any eligible retired employee who desires to be a candidate for membership on the board of directors must submit a nominating petition, signed by ten (10) or more eligible retired employees to the executive director of the system not later than October 1 in each odd numbered year. If the retired employees whose names are thus filed are eligible to election as a member of the board of directors their names shall be printed in alphabetical order upon the ballots sent to retired employees as hereinafter provided.

No nominee may withdraw his candidacy after October 10th. The name of any eligible retired employee of the system may be written in on the ballot in the space provided for that purpose.

In January of each even numbered year, the executive director shall mail ballots and envelopes to the retired employees eligible to vote. The election material shall be mailed to the last address given to the system by the retired employee for the mailing of the annuity checks unless the retired employee notifies the system in writing by November 1st of a different address to be used for this purpose. The name and social security number in the upper left-hand corner of the envelopes addressed to the tellers shall be checked against the annuity abstract or facsimile listing covering the annuity payments for January of each even numbered year.

MSRS 3 [Proposed for repeal.]

MSRS 4 [Proposed for repeal.]

~~MSRS 6~~ 2 MCAR § 3.0002 Form and manner of applications and requests.

~~(a)~~ All applications to the executive director shall be made in writing upon such forms and in such manner as he may require.

~~(b)~~ All matters which are to have the attention of the Board of Directors must be in writing and shall be considered by the Board at its next regular meeting.

~~(c)~~ All applications for annuity and refundment shall be subscribed to before a notary public, or other person having statutory authority of a notary public, or shall affix his acknowledgment or jurat thereto.

MSRS 7 [Renumbered as 2 MCAR § 3.0003.]

MSRS 8 [Proposed for repeal.]

MSRS 10 [Proposed for repeal.]

MSRS 11 [Proposed for repeal.]

~~MSRS 12~~ 2 MCAR § 3.0004 Closing of office on normal workday—effect of. In the event the office of the system is closed by executive order, strike or work stoppage on a normal workday, so that there is no mail delivery to the office of the system on the day following or preceding a legal holiday, any application for an annuity or disability benefit mailed in an envelope having a postmark which indicates the application would have been received at the office of the system on the day on which the office was closed by executive order, shall for the purpose of determining when the annuity or disability benefit begins to accrue, be deemed to have been received on the first normal workday when the office was closed or the date the application was notarized, whichever is later.

If there is no postmark or if the postal employees are on strike and the application is notarized on or after the date the office was closed or the beginning of the postal employees strike, the date of notarization shall be used.



~~MSRS 13~~ 2 MCAR § 3.0005 Annuities paid under "savings clause."

In cases where employees covered by the system had ten or more years allowable service credit as a member of the State Employees Retirement Association on July 1, 1957, and they receive payments as authorized by law in a sum equal to the retirement allowance computed by the law in effect before July 1, 1957, and until such time as they are eligible to receive a social security benefit (Primary Insurance Amount), under existing law at age 62, and they continue to work in non-government employment thereby increasing their social security benefit (PIA) above the amount to which they were entitled at age 62, the additional amount, if any, payable from the retirement fund shall not be reduced. Likewise there shall be no reduction in the additional amount received from the retirement fund by reason of any subsequent increase in the social security benefit (PIA) authorized by the social security act; except that any increase in a retired employees social security benefit (PIA) resulting from employment by the state or by a political subdivision after retirement shall reduce the additional amount specified in section 352.115, subdivision 5.

No increase in the social security benefit (PIA) authorized by social security due to an automatic or summary recalculation shall reduce the amount of benefits payable from any retirement fund or plan administered by the system.

~~MSRS 14~~ 2 MCAR § 3.0006 Annuity, benefit and refund checks—mailing provisions.

Upon request of a retired, disabled or former employee, member or participant and upon completion of such forms as the director may require, the director may mail the annuity, benefit or refund check to a banking institution, savings association or credit union for deposit to such employee's account or joint account with his spouse. No checks covering an annuity or disability benefit shall be mailed outside the United States. Refund checks, however, may be mailed to a foreign country at the written request of the former employee.

MSRS 15 [Renumber as 2 MCAR § 3.0007.]

MSRS 16 [Proposed for repeal.]

MSRS 19 [Renumbered as 2 MCAR § 3.0008.]

~~MSRS 20~~ 2 MCAR § 3.0009 Continuation of coverage.

(a) An employee covered by the system who for the convenience of the employer is temporarily employed in a classification other than that in which he is regularly employed, and who is on authorized leave of absence from his regular employment, shall have deductions taken from his salary for the retirement fund while thus temporarily employed.

(b) Any employee of a "sending agency" under the provisions of ~~Extra Session Laws 1967, Chapter 46, Minn. Stat. §§ 15.51 through 15.59~~ and acts amendatory thereof, shall, if he is an employee covered by the system at the time he is detailed to a "receiving agency", as therein defined, continue to be covered by the system and deductions shall be made from his salary and deposited in the retirement fund the same as though he continued his work in the "sending agency." Employee contributions, employer contributions, and employer additional contributions, shall be made in all respects as provided in ~~section 352.041, subdivisions 2 and 3.~~ Minn. Stat. § 352.041 subd. 2 and 3.

~~MSRS 21~~ 2 MCAR § 3.0010 Military service.

A. Proof of service.

(a) Upon reinstatement from leave of absence as provided in ~~Minnesota Statutes 1974, sections~~ Minn. Stat. §§ 192.261 and 192.262, and laws amendatory thereof, an employee who has been on leave of absence to serve in the military forces of the United States or of the State of Minnesota who desires to obtain credit for his period of active military service is required to supply to the executive director a certified copy of the record of his discharge or other form of release by proper authority from military service. A photocopy of either document will be accepted provided the original is submitted for comparison with the photocopy; the original will then be returned to the employee and the photocopy placed on file in the office of the retirement system.

B. Death in service.

(b) Any duly designated beneficiary of an employee covered by the system making application for refundment of the sum in the retirement fund to the credit of such employee who dies while in military service of the United States or of the State

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

## PROPOSED RULES

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of Minnesota is required to submit official notice of death as issued by the government of the United States or of the State of Minnesota as the case may be. A photocopy of such official notice will be accepted as proof of death for the files of the system, provided the original notice is submitted for comparison with the photocopy and its authenticity duly verified.

~~MSRS 22~~ 2 MCAR § 3.0011 Payment on omitted salary deductions. If a department fails to take deductions from the salaries of employees as provided by ~~Section~~ Minn. Stat. § 352.04, or fails to provide the proper information so that deductions may be initiated, the 6 per cent payment in lieu of interest required by ~~Minnesota Statutes 1974, Section 352.04, Subdivision 8, Minn. Stat. § 352.04 subd 8,~~ and laws amendatory thereof, shall not be charged if the period such deductions were not taken was four or less pay periods.

~~MSRS 23~~ 2 MCAR § 3.0012 Verification of date of birth. Verification of date of birth should be filed with the executive director by all employees ~~with at least 19 years of allowable service who are 57 or more years of age or with at least 9 years of allowable service who are 61 or more years of age~~ one year prior to the date they became eligible by reason of age and service to receive a retirement annuity and by employees applying for a total and permanent disability benefit or for a refundment with interest as provided by ~~Minnesota Statutes 1969, Section 352.22, Subdivision 2~~ Minn. Stat. § 352.22 subd 2 and laws amendatory thereof. In no event shall any annuity or benefit be paid until acceptable verification of date of birth is on file in the office of the system.

MSRS 24 [Renumber as 2 MCAR § 3.0013.]

MSRS 25 [Renumber as 2 MCAR § 3.0014.]

## ADOPTED 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 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.

## Minnesota State Retirement System Executive Director

### Adopted Rules Relating to the Minnesota State Deferred Compensation Plan

The rules published and proposed at *State Register*, Volume 4, Number 42, pp. 1665-1676, April 21, 1980 (4 S.R. 1665) are now adopted with the following amendments:

#### Amendments as Adopted

2 MCAR § 3.5001 A. Establishment of plan. This plan shall be known as the Minnesota Public Employees' Deferred Compensation Plan ("plan") and is hereby created in accordance with Minn. Stat. § 352.96 ~~and section 457 of the United States Internal Revenue Code.~~ This plan shall constitute a continuation of the Minnesota Deferred Compensation Plan, approved by the Attorney General and filed with the Secretary of State and the Commissioner of Administration, November 24, 1975.

2 MCAR § 3.5002 A. ~~4. "Code" means the Internal Revenue Code of 1954, as amended from time to time, or any successor statute.~~

2 MCAR § 3.5002 A. ~~4. 5.~~ "Compensation" means any remuneration payable to an individual who performs service for the employer which is reportable as taxable income ~~for purposes of the code.~~

2 MCAR § 3.5002 A. ~~5. 6.~~

2 MCAR § 3.5002 A. ~~6. 7.~~ "Deferred compensation account" means the account established for the investment of deferred compensation. It shall include the supplemental investment account and the fixed and variable annuity account.

a. "Supplemental investment account" means the Minnesota Supplemental Retirement Investment Fund as established by Minn. Stat. ~~S. S. 11.18 and 11.19~~ § 11A.17 and managed by the board.

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

2 MCAR § 3.5002 A. [Rules 8 through 10 are renumbered 7 through 9.]

2 MCAR § 3.5002 A. ~~10. 11.~~ "Includable compensation" means the compensation remaining after any deferrals through this plan and/or any amount of compensation excluded from taxable income as a result of contributions made for the benefit of an employee under section 403 (b) of the code a tax sheltered annuity or mutual fund shares held in a custodial account.

2 MCAR § 3.5002 A. [Rules 12 through 19 are renumbered 11 through 18.]

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

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

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

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

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

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

2 MCAR § 3.5005 A.3. Accounting dates and investment fund valuation. The supplemental investment account is to be valued by the board as of each accounting date in accordance with the provisions of Minn. Stat. ~~S. S. 11.18 and 11.19~~ § 11A. 17. Any withdrawals or distributions shall be made in cash. The amount paid upon such withdrawal or distribution shall be based upon the account's value as of the accounting date.

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

2 MCAR § 3.5005 A.4. Administrative expense. ~~The director shall establish and levy a charge to be made against~~ Two percent (2%) shall be deducted each pay period from the deferred compensation invested in the supplemental investment account to pay administrative costs. The director shall review the charge levied annually and if such levy proves to be excessive or insufficient to pay all necessary costs of administration, the director shall adjust the charges accordingly after review of the necessity for the change by the Legislative Auditor.

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

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

## ADOPTED RULES

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2 MCAR § 3.5005 D.3. ~~Financial~~ Unforeseeable emergency.

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

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

2 MCAR § 3.5005 G. ~~Financial hardship~~ Unforeseeable emergency. A distribution of all or a portion of a participant's deferred compensation account or a change in method of distribution to a participant notwithstanding the fact that distribution has commenced shall be permitted in the event the participant is faced with an unforeseeable ~~financial~~ emergency.

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

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

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

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

2 MCAR § 3.5006 ~~C. Severability. If any provision of this plan shall be for any reason invalid or unenforceable, the remaining provisions shall, nevertheless, continue in effect and shall not be invalidated thereby. If the Internal Revenue Service finds any of the provisions of this plan to be inconsistent with section 457 of the code or other regulations of the United States Treasury the director shall have the authority to amend by administrative order any of the provisions of this plan to bring them into compliance with the code or regulations.~~

2 MCAR § 3.5006 ~~C. D.~~

2 MCAR § 3.5007 A. Amendment of plan. The director acting for the employer shall have the authority to propose amendments to this plan from time to time consistent with the provisions of Minn. Stat. § 352.96 ~~and the code and regulations of the U.S. Treasury.~~ No amendment or modification shall adversely affect the rights of participants or their beneficiaries to the receipt of compensation deferred prior to such amendment or modification unless required by state or federal law to maintain the tax status of the plan and any compensation previously deferred.

2 MCAR § 3.5007 B.3. Any election of the method of distribution of benefits made under the prior plan shall be void, and a participant or beneficiary may elect the form of distribution in accordance with 2 MCAR § 3.5005 E. and F.

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

## SUPREME COURT

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### Decisions Filed Friday, November 28, 1980

Compiled by John McCarthy, Clerk

49138/Sp. State of Minnesota vs. Donald Marburger, Appellant. Itasca County.

Petitioner, seeking postconviction relief in the form of a new trial, failed to meet his burden of proving inadequate representation.

Trial court did not abuse its discretion in admitting evidence of prior act of misconduct which was relevant to the charge against defendant.

Evidence of defendant's guilt of charge of felonious theft of electricity was sufficient.

Affirmed. Sheran, C. J.

**50990/Sp. State of Minnesota vs. Joe Lee Smith, Appellant. Hennepin County.**

Evidence on the issue of identification was legally sufficient.

When a criminal defendant who is represented by counsel fails to testify, the presumption on any subsequent direct appeal is that the defendant personally made the decision upon the adequate advice of counsel, absent something in the record to the contrary.

Defendant, by failing to object, is deemed to have forfeited his right to have this court consider on appeal the propriety or adequacy of the trial court's instruction of the evidence of defendant's flight following the offense.

Minn. Stat. § 609.04 (1978) bars convicting a defendant twice for the same offense (or an offense and a lesser included offense) on the basis of the same act. Accordingly, one of defendant's two convictions for criminal sexual conduct in the first degree based on a single act is vacated.

One conviction affirmed, one vacated. Sheran, C. J.

**51168/Sp. Nancy Lee Knapp, judgment creditor, vs. Paul Herbert Johnson, judgment debtor, Appellant, Ivan J. Gerber, Trustee for Gerber Jewelers, Profit Sharing Trust, Garnishee. Ramsey County.**

Affirmed. Amdahl, J.

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## STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over \$2,000.

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

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### Department of Education Vocational-Technical Education Division

#### Notice of Availability of Contract to Execute Phase I of the Development of a Postsecondary Vocational Student Accounting System

The Minnesota Division of Vocational-Technical Education is accepting proposals to execute Phase I of the Development of a Postsecondary Vocational Student Accounting System. Phase I requires that a systems study and evaluation report and a systems design manual be written. The contract will also require that a plan for Phase II and preferred organizational relationships be defined.

The contract period will begin approximately February 10, 1981 and end approximately May 15, 1981. Contracted services and expenses are not to exceed \$25,000.00.

Interested persons may request further information from:

Ronald C. Dreyer, Management Information Specialist  
Department of Education  
Division of Vocational-Technical Education  
551 Capitol Square Building  
550 Cedar Street  
St. Paul, Minnesota 55101  
Telephone: (612) 296-2421

## **STATE CONTRACTS**

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### **Minnesota Energy Agency Administration Division**

#### **Notice of Request for Proposals for Financial Audit of the Minnesota Energy Agency**

The Minnesota Energy Agency, Administration Division, is seeking individuals or organizations to perform a financial audit for state fiscal years 1979 and 1980. This audit will be performed within guidelines established in Office of Management and Budget Circular A102, Attachment P. These services, which will be performed under contract, are outlined in detail on the Request for Proposals (RFP) Statement of Work. The formal RFP may be requested and inquiries should be directed to:

Mary M. Elverum  
Minnesota Energy Agency  
Administration Division  
980 American Center Bldg.  
150 East Kellogg Blvd.  
Saint Paul, MN 55101  
612/296-8276

It is anticipated that the activities to accomplish this audit will not exceed a total of \$8,000. The deadline for the submission of completed proposals will be the close of the working day January 16, 1981.

Contractors with the Minnesota Energy Agency must apply for a Certificate of Compliance from the Minnesota Department of Human Rights. All bidders must submit, along with their proposal to the Minnesota Energy Agency, a statement indicating that they have applied. Applications can be obtained by written request from the Minnesota Department of Human Rights, 240 Bremer Building, St. Paul, MN 55101.

### **Crime Control Planning Board**

#### **Notice of State Contract For Consultant Services**

The Crime Control Planning Board is seeking one individual to work extensively with state and local law enforcement officials to better develop their capability to meet training standards set by the Police Officers Standards and Training (POST) Board and identify other needs of law enforcement officials to improve their delivery of services to citizens of Minnesota. This individual must also provide to the governor and legislature through formal hearings, information, justification and clarification for law enforcement items listed in the 1980 Crime Control Planning Board's Agenda.

The estimated cost of the contract is \$15,300 which includes \$4,800 in travel expense reimbursements. The project must be completed by June 30, 1981, at which time a report on law enforcement problems and recommendations for improvement will be submitted.

Extensive experience in police work both at the street level and administrative level is required. Must have background in state and local government work. Desire experience in testifying before legislature.

Interested individuals should send resume to:

Tom Green, Assistant Director  
Crime Control Planning Board  
444 Lafayette Road  
St. Paul, MN 55101  
Telephone: 612/296-6770

### **Department of Transportation Planning Division**

#### **Notice of Availability of Contract for Evaluation of Railroad Bridges**

The Minnesota Department of Transportation (Mn/DOT) requires the services of a qualified consultant to conduct a general engineering inspection of five or six bridges to determine if there are problems which should influence our comparison of alternate north/south rail lines for a future grain train mainline between the Twin Cities and Mason City, Iowa. The proposed scope of services is as follows:

**TASK 1—PERFORM INSPECTION FOR THE FOLLOWING FIVE (5) BRIDGES:**

1. Boom Island Bridge (BN)—Minneapolis—over the Mississippi River
2. MN&S Bridge (MN&S)—Savage—over the Minnesota River
3. OM15 Bridge (Milwaukee R.)—St. Paul—over the Mississippi River
4. Hoffman Avenue Bridge (C&NW)—St. Paul—over the Mississippi River
5. Inver Grove Bridge (RI)—Inver Grove Heights—over the Mississippi River

Inspection shall include:

1. Obtain and review available data including as-built plans, design data, inspection reports, future renovation planned, etc. from the railroad companies.
2. Meet with Corps of Engineers and Coast Guard to review navigational, hydraulic, erosion and other concerns relating to the existing crossings as well as determine plans or criteria for future upgrading of the crossing or waterway. Determine potential for flooding of structure or approaches.
3. Perform brief visual inspection of the structure to determine the general condition of superstructure, piers, abutments, fenders, bank erosion, etc.
4. Estimate the current live load capacity and life expectancy of each structure based on as-built plans, visual field inspection, available inspection reports and structural computations.
5. Estimate of maintenance and rehabilitation costs necessary to accommodate a given design loading (Cooper's E-60 to E-80) selected by the State for a 30 year period.
6. Prepare a summary report documenting the inspection and structural analysis to include:
  - a. Documentation of existing structure
  - b. Documentation of plans for major rehabilitation or reconstruction
  - c. Summary of structural inspection and analysis
  - d. Preliminary estimate of cost of maintenance or rehabilitation required for 30 year life expectancy for desired loadings
  - e. Discuss potential modifications to the Inver Grove Bridge (#5 above) so as to replace the swing span with a fixed span at present track elevations. Document the impact of such a fixed span on all river traffic including the Delta Queen.

**TASK 2—PERFORM INSPECTION FOR THE FOLLOWING ADDITIONAL BRIDGE**

1. M&SL Bridge (C&MW)—Chaska—over the Minnesota River

Inspection shall include items 1 through 6d as defined above and include in same report as Task 1.

NOTE: It is assumed that Task 2 will be performed in addition to Task 1 if desired and not separately by itself.

Estimated Cost for the project—up to \$10,000.00

This is a request for proposals. Firms desiring to compete should submit their proposals, brochures and/or experience resume before January 30, 1981. There is no additional written information to this request for proposals.

Please send your proposals to:

John Walley, Project Manager, or  
Melvin Loesch  
Rail Planning Unit  
Room 820  
Transportation Building  
St. Paul, Minnesota 55155  
Telephone (612) 296-1603 (1618)

# 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.

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## Minnesota Water Resources Board

### Notice of Hearing on the Proposed "Carnelian-Marine Lakes Watershed District"

A hearing on a petition for the establishment of the "Carnelian-Marine Lakes Watershed District" will begin at 1:30 p.m. on Tuesday, January 6, 1981, in the Auditorium of Stillwater Senior High School, 523 West Marsh Street, Stillwater, Minnesota.

A complete Notice of and Order for Hearing will be published in the December 18 and 25, 1980, editions of the Stillwater Gazette. Copies of the complete notice are also available from the Minnesota Water Resources Board's office at 555 Wabasha Street, St. Paul, Minnesota, 55102 (612) 296-2840.

## Ethical Practices Board

### Advisory Opinion #76 Regarding Noncampaign Disbursement

The full text of the opinion is available upon request from the office of the Ethical Practices Board, 41 State Office Building, St. Paul, MN 55155, (612) 296-5148.

Approved by the Ethical Practices Board on December 18, 1980

Issued to:

Representative Glen H. Anderson  
291 State Office Building  
St. Paul, MN 55155

#76. The purchase of flags for schools by a candidate's principal campaign committee should be reported as a miscellaneous noncampaign disbursement.

## State Board of Investment

### Notice of Special Meeting

The State Board of Investment will meet Tuesday, December 30, at 2:00 P.M. in the State Capitol, Room 130.

## Department of Agriculture Agronomy Services Division

### Notice of Special Local Need Registration For Lorsban 4E

Pursuant to Minn. Stat. sec. 18A.23 and 3 MCAR sec. 1.0338 B, the Minnesota Department of Agriculture on December 16, 1980, issued a Special Local Need Registration for Lorsban 4E manufactured by Dow Chemical Corporation, Midland, Michigan.

Commissioner of Agriculture, based on information in the application, has deemed it in the public interest to issue such a registration, and has deemed that the information in the application indicates that the pesticide does not have the potential for unreasonable adverse environmental effects.

In addition to the uses prescribed on the product label, this Special Local Need Registration permits the use of this pesticide to control cutworms on sugarbeets.

The application and other data required under Minn. Stat. secs. 18A.22, subd. 2 (a-d), 18A.23, and 40 CFR 162.150-162.158, subpart B relative to this registration (identified as SLN # MN 80-0020) is on file for inspection at:



Minnesota Department of Agriculture  
Pesticide Control Section  
90 West Plato Blvd.  
Saint Paul, Minnesota 55107  
Phone: (612) 296-8379

A federal or state agency, a local unit of government, or any person or group of persons filing with the Commissioner a petition that contains the signatures and addresses of 500 or more individuals of legal voting age, have thirty (30) days to file written objections with the Commissioner of Agriculture regarding the issuance of this Special Local Need Registration. Upon receipt of such objections and when it is deemed in the best interest of the environment or the health, welfare, and safety of the public, the Commissioner of Agriculture shall order a hearing pursuant to Minn. Stat. ch. 15, for the purpose of revoking, amending, or upholding this registration.

December 19, 1980

Mark W. Seetin, Commissioner  
Minnesota Department of Agriculture

## **Department of Agriculture Agronomy Services Division**

### **Notice of Special Local Need Registration For RTU-1010 Small Grains Seed Protectant**

Pursuant to Minn. Stat. sec. 18A.23 and 3 MCAR sec. 1.0338 B, the Minnesota Department of Agriculture on December 16, 1980, issued a Special Local Need Registration for RTU-1010 Small Grains Seed Protectant manufactured by Cargill, Incorporated, Minneapolis, Minnesota.

Commissioner of Agriculture, based upon information in the application, has deemed it in the public interest to issue such a registration, and has deemed that the information in the application indicates that the pesticide does not have the potential for unreasonable adverse environmental effects.

This Special Local Need Registration permits the use of this pesticide as a seed protectant for small grains from seedling diseases, smut and bunt.

The application and other data required under Minn. Stat. secs. 18A.22, subd. 2 (a-d), 18A.23, and 40 CFR 162.150-162.158, subpart B relative to this registration (identified as SLN # MN 80-0019) is on file for inspection at:

Minnesota Department of Agriculture  
Pesticide Control Section  
90 West Plato Blvd.  
Saint Paul, Minnesota 55107  
Phone: (612) 296-8379

A federal or state agency, a local unit of government, or any person or group of persons filing with the Commissioner a petition that contains the signatures and addresses of 500 or more individuals of legal voting age, have thirty (30) days to file written objections with the Commissioner of Agriculture regarding the issuance of this Special Local Need Registration. Upon receipt of such objections and when it is deemed in the best interest of the environment or the health, welfare, and safety of the public, the Commissioner of Agriculture shall order a hearing pursuant to Minn. Stat. Ch. 15, for the purpose of revoking, amending, or upholding this registration.

December 19, 1980

Mark W. Seetin, Commissioner  
Minnesota Department of Agriculture

STATE OF MINNESOTA  
OFFICE OF THE STATE REGISTER

506 Rice Street  
St. Paul, Minnesota 55103  
(612) 296-8239

## ORDER FORM

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## FOR LEGISLATIVE NEWS

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

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

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

**Weekly Wrap-Up**—House committees, committee assignments of individual representatives, news on committee meetings and action, House action and bill introductions. Contact House Information Office, Room 8 State Capitol, St. Paul, MN, (612) 296-2146.

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

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Legislative Reference Library  
Room 111 Capitol  
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