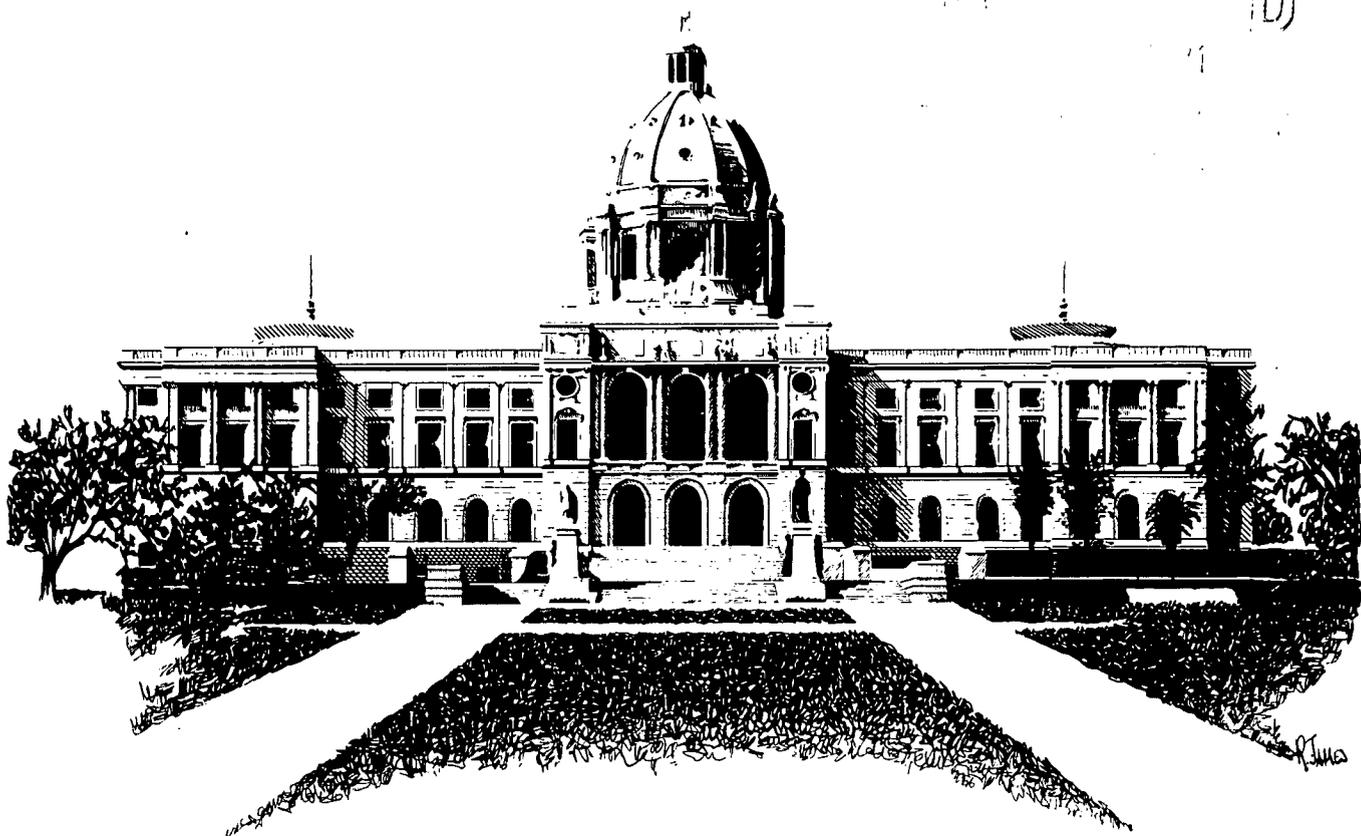


81 Nov. 9

# STATE REGISTER

STATE OF MINNESOTA

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VOLUME 6, NUMBER 19

November 9, 1981

Pages 869-908



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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
<b>SCHEDULE FOR VOLUME 6</b>			
20	Monday Nov 2	Friday Nov 6	Monday Nov 16
21	Friday Nov 6	Monday Nov 16	Monday Nov 23
22	Monday Nov 16	Friday Nov 20	Monday Nov 30
23	Friday Nov 20	Monday Nov 30	Monday Dec 7

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

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

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

**The PROPOSED RULES section contains:**

- 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:

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

---

## Board of Architecture, Engineering, Land Surveying and Landscape Architecture

### Proposed Rule Amending Licensing Fee Requirement

#### Notice of Intent to Adopt Rule without a Public Hearing

Notice is hereby given that the State Board of Architecture, Engineering, Land Surveying, and Landscape Architecture proposes to adopt the above-entitled rule without a public hearing. The board has determined that the proposed adoption of this rule will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0412, subd. 4h.

Persons interested in this rule shall have 30 days to submit comments on the proposed rule. The proposed rule may be modified if the modifications are supported by the data and views submitted to the board and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rule within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the board will proceed according to the provisions of Minn. Stat. § 15.0412, subds. 4 to 4f.

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

Lowell E. Torseth  
Executive Secretary  
Board of Architecture, Engineering, Land  
Surveying and Landscape Architecture  
500 Metro Square  
Saint Paul, Minnesota 55101  
(612) 296-2388

Authority for the adoption of this rule is contained in Minn. Stat. §§ 214.06 and 326.06. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rule, and that identifies the data and information relied upon to support the proposed rule, has been prepared and is available from Mr. Torseth upon request.

Upon adoption of the final rule without a public hearing, the proposed rule, this notice, the statement of need and reasonableness, all written comments received, and the final rule as adopted will be delivered to a designee of the Attorney General who will review the rule as to its legality, including the issue of substantial change, and its form as it relates to legality. Persons who wish to be advised of the submission of this rule for approval, or who wish to receive a copy of the final rule as adopted, should submit a written statement of such request to Mr. Torseth.

A copy of the proposed rule is attached to this notice. Additional copies of this notice and the proposed rule are available and may be obtained by contacting Mr. Torseth.

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 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 \$250.00, 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 \$250.00, 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, 40 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

Lowell E. Torseth, Executive Secretary

### **Rule as Proposed**

#### **4 MCAR § 7.004 Fees.**

C. The fee for licensure, or renewal of licensure, as an architect, professional engineer, land surveyor, or landscape architect shall ~~be \$15~~ not exceed \$25 per year. The initial license fee shall be prorated at six month intervals during each biennium ~~not to exceed the amount indicated.~~ The fee for months 24 to 18 ~~shall be \$30,~~ is \$50; for months 18 to 12 ~~shall be \$22.50,~~ \$37.50; for months 12 to 6 ~~shall be \$15,~~ \$25; and for months 6 to 0 ~~shall be \$7.50,~~ \$12.50. The renewal fee for fiscal year 1978 shall be paid on or before June 30, 1977 and biennially on or before June 30 of each even numbered year thereafter, as required by Minn. Stat. § 326.10, subd. 4. The board may delete from the roster the name of any licensee who fails to timely pay the required renewal fee or if such renewal fee, when paid by mail, is not postmarked on or before June 30 of the year specified herein.

## **Minnesota Housing Finance Agency**

### **Proposed Amendment to and Adoption of Rules Governing Income Limits for Limited Unit Developments**

#### **Notice of Correction of Previously Published "Notice of Intent to Adopt Rules without a Public Hearing"**

The "Notice of Intent to Adopt Rules without a Public Hearing" published in the *State Register* along with the Proposed Amendment to and Adoption of Rules Governing Income Limits for Limited Unit Developments (6 S.R. 213, August 24, 1981) did not include certain information required in the notice by the rules adopted by the Attorney General. Accordingly, the corrected notice is published below. The rules are identical to those printed in the original notice.

#### **Notice of Intent to Adopt Rules without a Public Hearing**

Notice is hereby given that the Minnesota Housing Finance Agency ("agency") proposes to adopt the above-entitled rules without a public hearing. The agency has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0412 subd. 4h(1980).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 15.0412, subds. 4-4f. If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modifications is desired.

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

**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

Monte Aaker, Research Coordinator  
 Research Division  
 Minnesota Housing Finance Agency  
 Suite 200—Nalpak Building  
 333 Sibley Street  
 St. Paul, Minnesota 55101  
 Telephone (612) 296-9952

Authority for the adoption of these rules is contained in Minn. Stat. § 462A.06, subs. 4 and 11(1980). Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules, and that identifies the data and information relied upon to support the proposed rules, has been prepared and is available from Monte Aaker upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to a designee of the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of these rules for approval, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Monte Aaker.

A copy of the proposed rules is attached to this notice. Additional copies may be obtained by contacting Monte Aaker.

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11(1980) 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 \$250.00, 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 \$250.00, 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, 40 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

October 26, 1981

James J. Solem  
 Executive Director

## Rule as Proposed

12 MCAR § 3.002 O. "Persons and families of low and moderate income" means:

1. With respect to limited-unit mortgage loans pursuant to Chapter Four of these rules, development cost loans pursuant to Chapter Three of these rules, planning grants pursuant to Chapter Five of these rules, and American Indian housing loans pursuant to Chapter Eight of these rules, which loans and grants are intended for a limited-unit development, or a dwelling unit in a planned unit development or a condominium, those persons and families whose adjusted income does not exceed \$19,000 in the metropolitan area as defined in Minn. Stat. § 473.121, subd. 2 and \$17,500 in the remainder of the state the amounts set forth in Exhibit 12 MCAR § 3.002 O.-1. or such lower amount as shall be required to assure that the interest on obligations of the agency will be exempt from federal income taxation; ~~and~~ "Metropolitan area" has the meaning given it in Minn. Stat. § 473.121, subd. 2.

Exhibit 12 MCAR § 3.002 O.-1.

Mortgage Interest Rate	Nonmetropolitan Area	Metropolitan Area
	Maximum Adjusted Income	Maximum Adjusted Income
0-10.59%	\$19,000	\$24,000
10.60-11.09%	\$20,000	\$25,000
11.10-11.59%	\$21,000	\$26,000
11.60-12.00%	\$22,000	\$27,000

## **Minnesota Housing Finance Agency**

### **Proposed Amendment to and Adoption of Rules Governing Eligibility for the Home Ownership Assistance Fund**

#### **Notice of Correction of Previously Published "Notice of Intent to Adopt Rules without a Public Hearing"**

The "Notice of Intent to Adopt Rules without a Public Hearing" published in the *State Register* along with the Proposed Amendment to and Adoption of Rules Governing Eligibility for the Home Ownership Assistance Fund (6 S.R. 214, August 24, 1981) did not include certain information required in the notice by the rules adopted by the Attorney General. Accordingly, the corrected notice is published below. The rules are identical to those printed with the original notice.

#### **Notice of Intent to Adopt Rules without a Public Hearing**

Notice is hereby given that the Minnesota Housing Finance Agency ("agency") proposes to adopt the above-entitled rules without a public hearing. The agency has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0412 subd. 4h(1980).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 15.0412, subds. 4-4f. If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modifications is desired.

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

Monte Aaker, Research Coordinator  
Research Division  
Minnesota Housing Finance Agency  
Suite 200—Nalpak Building  
333 Sibley Street  
St. Paul, Minnesota 55101  
Telephone (612) 296-9952

Authority for the adoption of these rules is contained in Minn. Stat. § 462A.06, subds. 4 and 11(1980). Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules, and that identifies the data and information relied upon to support the proposed rules, has been prepared and is available from Monte Aaker upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to a designee of the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of these rules for approval, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Monte Aaker.

A copy of the proposed rules is attached to this notice. Additional copies may be obtained by contacting Monte Aaker.

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11(1980) 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 \$250.00, 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

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

# PROPOSED RULES

(b) Who spends more than \$250.00, 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, 40 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

October 26, 1981

James J. Solem  
Executive Director

## Rule as Proposed

### 12 MCAR § 3.133 Homeownership assistance fund ~~monthly assistance.~~

A. Monthly assistance. The agency may provide eligible recipients with interest-free monthly assistance loans in the form of monthly payments of a portion of the principal and interest installment due on the limited-unit development mortgage on qualifying property. Such payments shall not exceed ~~\$75~~ \$100 per month and shall decrease by ~~\$5~~ \$10 per month (or ~~\$60~~ \$120 per year) each year. The maximum amount of monthly assistance to which a recipient is originally entitled shall be determined by the agency from time to time on the basis of the percentage of income which may reasonably be spent on mortgage payments, the interest rate charged for limited-unit development mortgage loans, and general housing and construction costs in the State of Minnesota, provided however, that the initial maximum monthly assistance which the agency shall determine to be available shall not exceed the following amounts for persons and families within the following annual adjusted income ranges: as set forth in Exhibit 12 MCAR § 3.133 B.-1. and Exhibit 12 MCAR § 3.133 C.-2. for various potential interest rates to be charged by the agency on its limited-unit development mortgage loans.

Annual Adjusted Income Between	Initial Maximum Monthly Assistance
-11,500	75
10,000-12,000	65
10,500-12,500	55
11,000-13,000	45
11,500-13,500	35
12,000-14,000	25
12,500-16,000	15

B. Metropolitan area. Exhibit 12 MCAR § 3.133 B.-1. applies to eligible recipients whose qualifying property is in the metropolitan area as defined in Minn. Stat. § 473.121, subd. 2.

### Exhibit 12 MCAR § 3.133 B.1.

Mortgage Interest Rate	Adj. Hshld. Income	Initial Maximum Monthly Assistance				
		\$100	\$80	\$60	\$40	\$20
0- 10.59%	0- 15000	0- 15000	15001- 16000	16001- 17000	17001- 18000	18001- 19000
10.60- 11.09%	0- 16000	0- 16000	16001- 17000	17001- 18000	18001- 19000	19001- 20000
11.10- 11.59%	0- 17000	0- 17000	17001- 18000	18001- 19000	19001- 20000	20001- 21000
11.60- 12.00%	0- 18000	0- 18000	18001- 19000	19001- 20000	20001- 21000	21001- 22000

C. Nonmetropolitan area. Exhibit 12 MCAR § 3.133 C.-2. applies to eligible recipients whose qualifying property is not in the metropolitan area as defined in Minn. Stat. § 473.121, subd. 2.

Exhibit 12 MCAR § 3.133 C.-2.

Initial Maximum  
Monthly Assistance

Mortgage  
Interest  
Rate

		<u>\$100</u>	<u>\$80</u>	<u>\$60</u>	<u>\$40</u>	<u>\$20</u>
<u>0-</u> <u>10.59%</u>	<u>Adj. Hshld.</u> <u>Income</u>	<u>0-</u> <u>10000</u>	<u>10001-</u> <u>11000</u>	<u>11001-</u> <u>12000</u>	<u>12001-</u> <u>13000</u>	<u>13001-</u> <u>14000</u>
<u>10.60-</u> <u>11.09%</u>	<u>Adj. Hshld.</u> <u>Income</u>	<u>0-</u> <u>11000</u>	<u>11001-</u> <u>12000</u>	<u>12001-</u> <u>13000</u>	<u>13001-</u> <u>14000</u>	<u>14001-</u> <u>15000</u>
<u>11.10-</u> <u>11.59%</u>	<u>Adj. Hshld.</u> <u>Income</u>	<u>0-</u> <u>12000</u>	<u>12001-</u> <u>13000</u>	<u>13001-</u> <u>14000</u>	<u>14001-</u> <u>15000</u>	<u>15001-</u> <u>16000</u>
<u>11.60-</u> <u>12.00%</u>	<u>Adj. Hshld.</u> <u>Income</u>	<u>0-</u> <u>13000</u>	<u>13001-</u> <u>14000</u>	<u>14001-</u> <u>15000</u>	<u>15001-</u> <u>16000</u>	<u>16001-</u> <u>17000</u>

**Minnesota Housing Finance Agency**

**Proposed Amendment to and Adoption of Rules Governing the Rental Rehabilitation Loan Program**

**Notice of Correction of Previously Published "Notice of Intent to Adopt Rules without a Public Hearing"**

The "Notice of Intent to Adopt Rules without a Public Hearing" published in the *State Register* along with the Proposed Amendment to and Adoption of Rules Governing the Rental Rehabilitation Loan Program (6 S.R. 216, August 24, 1981) did not include certain information required in the notice by the rules adopted by the Attorney General. Accordingly, the corrected notice is published below. The rules are identical to those printed in the original notice.

**Notice of Intent to Adopt Rules without a Public Hearing**

Notice is hereby given that the Minnesota Housing Finance Agency ("agency") proposes to adopt the above-entitled rules without a public hearing. The agency has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0412, subd. 4h(1980).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rule may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 15.0412, subds. 4-4f. If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modifications is desired.

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

Mary Tingerthal, Manager  
Home Improvement Programs  
Minnesota Housing Finance Agency  
Suite 200—Nalpak Building  
333 Sibley Street  
St. Paul, Minnesota 55101  
Telephone (612) 297-3126

**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

Authority for the adoption of these rules is contained in Minn. Stat. § 462A.06, subs. 4 and 11(1980). Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules, and that identifies the data and information relied upon to support the proposed rules, has been prepared and is available from Ms. Tingerthal upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to a designee of the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of these rules for approval, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Ms. Tingerthal.

A copy of the proposed rules is attached to this notice. Additional copies may be obtained by contacting Ms. Tingerthal.

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11(1980) 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 \$250.00, 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 \$250.00, 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, 40 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

October 26, 1981

James J. Solem  
Executive Director

### Rules as Proposed (all new material)

#### Chapter Six A: Rental Rehabilitation Loans

##### 12 MCAR § 3.053 Eligible applications.

A. Property interest. Each applicant for a rental rehabilitation loan must individually or in the aggregate possess at least a one-third interest in a fee, or a contract for deed, or a life estate in the property to be improved. However, occupancy of the property by the applicant shall not be required.

B. Credit risk. Each applicant must be a reasonable credit risk with the ability to pay the loan obligation, as determined by the agency or by the lending institution, if any, servicing the loan on behalf of the agency.

C. Eligible improvements. To be eligible, the structure must be in need of repairs in order to bring it into compliance with Minn. Stat. § 116H.129, subd. 3, state energy conservation standards. For structures less than 15 years old, only improvements necessary to bring the structure into compliance with the state energy conservation standards are eligible. Further explanation of this requirement is in 12 MCAR § 3.054.

D. Compliance with zoning ordinances. The structure to be improved must not be in violation of applicable zoning ordinances or other applicable land use guides.

E. Use of property restricted. The property must be used primarily for residential purposes and must consist primarily of comprehensive living units including kitchen and bathroom facilities. Mobile homes and trailers shall not be eligible for rental rehabilitation Loans.

F. Restriction on loan use. Rental rehabilitation loan proceeds must be used to finance only improvements upon or in connection with existing structures.

G. Time of completion. All improvements must be reasonably capable of being completed within nine months of the date of the first disbursement of funds pursuant to the rental rehabilitation loan except for delays due to causes beyond the applicant's reasonable control, such as fire, strike, and shortage of materials.

H. Unavailability of financing. At the time of application, conventional financing must not be available from private lenders upon equivalent terms and conditions.

I. Required occupancy. The structure to be improved must be occupied at the time of loan closing primarily by persons and families of low and moderate income. Structures containing six rental units or fewer must be occupied by persons and families of low and moderate income in at least one of the units in the case of a one-unit or two-unit rental structure, two of the units in the case of a three-unit rental structure, three of the units in the case of a four-unit rental structure, four of the units in the case of a five-unit or six-unit rental structure, and at least 75 percent of the rental units in the case of rental structures containing more than six units.

**12 MCAR § 3.054 Eligible improvements.**

A. Restrictions in general. Improvements made with rental rehabilitation loan proceeds shall be in compliance with 1.-3.

1. The structure must be brought into compliance with the standards established in Minn. Stat. § 116H.129, subd. 3, state energy conservation standards.

2. For structures less than 15 years old, only improvements necessary to bring the structure into compliance with the state energy conservation standards are eligible.

3. For structures more than 15 years old, permanent general improvements as described in B. are eligible if the structure has been or will be brought into compliance with the state energy conservation standards.

B. Permanent general improvements. Each improvement must be a permanent general improvement. Permanent general improvements shall include additions, alterations, renovations, or repairs upon or in connection with existing structures which materially preserve or improve the basic livability, safety, or utility of the property. However, conversions of structures, or portions thereof, from nonresidential use to residential use are not eligible. Permanent general improvements shall not include materials, fixtures, or landscaping of a type or quality exceeding that customarily used in the locality for properties of the same general type as the property to be improved.

C. Other codes and standards. Each improvement must be made in compliance with all applicable health, fire prevention, building, and housing codes and standards, but no application for a rental rehabilitation loan for property occupied by the owner shall be denied solely because the improvements will not bring the property into full compliance with all codes and standards, except that the property must be brought into compliance with state energy conservation standards as specified in A.1.

D. Public improvements. Rental rehabilitation loan proceeds shall not be used for the payment, wholly or in part, of assessments for public improvements; provided, however, that the proceeds may be used for improvements which will bring an individual sewage disposal system located on the property, including septic systems, into compliance with local, state, or federal environmental and sanitary standards.

E. Warranty. All contracts covering all or any portion of an improvement must contain an agency approved warranty of workmanship and materials.

## **Minnesota Housing Finance Agency**

### **Proposed Rules Amending Provisions Relating to Downpayments under the Homeownership Assistance Fund**

#### **Notice of Correction of Previously Published "Notice of Intent to Adopt Rules without a Public Hearing"**

The "Notice of Intent to Adopt Rules without a Public Hearing" published in the *State Register* along with the Proposed Rules Amending Provisions Relating to Downpayments under the Homeownership Assistance Fund (6 S.R. 536 on September 28, 1981) did not include certain information required in the notice by the rules adopted by the Attorney General. Accordingly, the corrected notice is published below. The rules are identical to those printed in the original notice.

#### **Notice of Intent to Adopt Rules without a Public Hearing**

Notice is hereby given that the Minnesota Housing Finance Agency ("agency") proposes to adopt the above-entitled rules without a public hearing. The agency has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0412 subd. 4h(1980).

**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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Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 15.0412, subs. 4-4f. If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modifications is desired.

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

Monte Aaker, Research Coordinator  
Research Division  
Minnesota Housing Finance Agency  
Suite 200—Nalpak Building  
333 Sibley Street  
St. Paul, Minnesota 55101  
Telephone (612) 296-9952

Authority for the adoption of these rules is contained in Minn. Stat. § 462A.06, subs. 4 and 11(1980). Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules, and that identifies the data and information relied upon to support the proposed rules, has been prepared and is available from Monte Aaker upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to a designee of the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of these rules for approval, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Monte Aaker.

A copy of the proposed rules is attached to this notice. Additional copies may be obtained by contacting Monte Aaker.

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11(1980) 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 \$250.00, 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 \$250.00, 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, 40 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

October 26, 1981

James J. Solem  
Executive Director

### Rule as Proposed

**12 MCAR § 3.134 Homeownership assistance fund; downpayment assistance.** The agency may provide interest-free downpayment assistance loans to eligible recipients who are determined, on the basis of normal credit procedures, to lack the cash or land equity necessary to pay the required downpayment, plus closing costs, expenses, and origination fees on the dwelling to be purchased. The amount of the downpayment assistance loan shall equal the amount by which the sum of the downpayment, closing costs, expenses, and origination fees exceeds five percent of the purchase price of the dwelling, but it shall not exceed the lesser of 50 percent of the downpayment or ~~\$1,000~~ \$1,500.

## **Department of Public Service**

### **Proposed Rule Governing the Director of the Department of Public Service's Authority to Grant Variances with Regard to the Installation of Commercial Scales, Weighing Devices and Measuring Devices Not in Compliance with the Stated Rules of 4 MCAR (PSC Rules 120-145)**

#### **Notice of Intent to Adopt Rule without a Public Hearing**

Notice is hereby given that the Minnesota Department of Public Service proposes to adopt the above-entitled rule without a public hearing. The director of the Department of Public Service has determined that the proposed adoption of this rule will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes § 15.0142, subd. 4(h) (1980).

Persons interested in this rule shall have 30 days to submit comment on the proposed rule. The proposed rule may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rule within the 30 day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes § 15.0412, subd. 4-4f.

Persons who wish to submit comments or a written request for a public hearing should submit such comments to: Richard Auld, Minnesota Department of Public Service, 790 American Center Building, 160 East Kellogg Boulevard, St. Paul, Minnesota 55101, (612) 296-6025.

A statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rule has been prepared and is available upon request from: Richard Auld, Minnesota Department of Public Service, 790 American Center Building, 160 East Kellogg Boulevard, St. Paul, Minnesota, 55101, (612) 296-6025.

The authority to adopt this rule is contained in Minn. Stat. § 239.06 (1980), which provides that the Department of Public Service shall prescribe and adopt such rules and regulations as it deems necessary to discharge its duties under Minnesota Statutes, chapter 239 (1980).

Upon adoption of the final rule without a public hearing, the proposed rule, this notice, the statement of need and reasonableness, all written comments received, and the final rule as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rule as proposed for adoption, should submit a written statement of such request to Richard Auld, Minnesota Department of Public Service, 790 American Center Building, 160 East Kellogg Boulevard, St. Paul, Minnesota, 55101, (612) 296-6025.

Copies of this notice and proposed rule are available and may be obtained by contacting Richard Auld, Minnesota Department of Public Service, 790 American Center Building, 160 East Kellogg Boulevard, St. Paul, Minnesota 55101, (612) 296-6025.

October 26, 1981

Richard Auld, Director  
Minnesota Department of Public Service

#### **Rule as Proposed (all new material)**

##### **4 MCAR § 3.0146 Variances.**

A. Director to grant. No commercial scale, commercial weighing device, or commercial measuring device which fails to comply with any rule in Chapter Four shall be installed unless the Director of the Division of Weights and Measures has first granted a variance to those rules for the scale or device.

B. Request. To apply for a variance for any rule within Chapter Four, the owner or operator of the commercial scale or device must submit a request in writing to the Director of Weights and Measures. The request shall:

**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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1. Explain why a variance is sought;
  2. Explain how the applicant meets the criteria for a variance set forth in C.;
  3. Specify the desired alternative standard to the rule and demonstrate that under the alternative standard the scale or device will conform to good commercial practices;
  4. Provide a detailed plan showing the following:
    - a. The dimensions for all parts of the scale or device;
    - b. The materials from which those parts are made; and
    - c. The construction of the scale or device, including its foundation and location.
- C. Approval criteria. No request for a variance shall be granted unless all the following criteria are met:
1. The rule for which a variance is sought works an undue hardship on the applicant, or it is impossible for the applicant to comply with the rule;
  2. The variance sought will not work a harm to the public interest;
  3. The director is able to determine, after investigation, that under normal operating conditions the scale or device for which a variance is sought will:
    - a. Maintain the applicable accuracy standards;
    - b. Maintain the permanence of adjustments required; and
    - c. Contain operating parts which function as intended.
- D. Denial. No variance will be granted if it is a variance of a tolerance or would apply to the value of the minimum graduated interval of a device.
- E. Response by the division to request. All requests will be answered by the division in writing, setting forth the reasons for granting or denying the variance.

## **Department of Public Welfare Income Maintenance Bureau**

### **Proposed Rule Governing the Administration and Provision of Pre-admission Screening and Long-term Care and Alternative Care Grants (12 MCAR § 2.065)**

#### **Notice of Hearing**

A public hearing concerning the above-entitled matter will be held in Room A, 4th Floor, Centennial Office Building, St. Paul, Minnesota, 55155 on December 15, 1981 commencing at 9:00 a.m. and continuing until all interested persons have an opportunity to be heard. The proposed rule may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rule, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Jon Lunde, Hearing Examiner, Office of Administrative Hearings, 1745 University Avenue, Room 300, St. Paul, Minnesota 55104, (612) 296-5938, either before the hearing or within five working days after the public hearing ends. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

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 Administrative Hearings. This statement of need and reasonableness will include a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule or rules. Copies of the statement of need and reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

The purpose of 12 MCAR § 2.065 is to set forth procedures and standards for establishing county based pre-admission screening programs and alternative care services as required in Minn. Stat. § 256B.091. The screenings are mandatory for nursing home applicants who are eligible for Medical Assistance or who will be eligible within 90 days of admission, and is also available to others on a sliding fee schedule.

The screening team of a public health nurse, social worker and consulting physician determine whether the applicant requires institutionalization, or can be maintained in the community with home-based services. Services specified in a plan of care are provided through existing community programs and the supplementary alternative care grant programs. The plan of care must include provisions for follow-up to assure that services provided meet applicable standards.

The intent of the program is to establish a mechanism so that nursing home applicants are directed to appropriate care, and to ensure that public funding for long-term care are spent in a cost effective manner. Statewide implementation of the program will also provide basic information for assessing future service needs.

The rule addresses the following concerns:

- (a) Assigns responsibility for the program;
- (b) Defines program scope including eligible persons;
- (c) Specifies notification about the program to potential recipients, providers and others affected by the requirement;
- (d) Describes resources material to be used by the screening team;
- (e) Sets forth screening procedures to be used by the county;
- (f) Defines when nursing home admission should be approved, and when to recommend alternative care services;
- (g) Specifies that the plan of care assign responsibilities, list services, and include a component for follow-up care;
- (h) Provides instructions on uses of the alternative care grants, including providers, reimbursement, and assurances of how the funds are to be used;
- (i) Sets guidelines for reimbursement of nursing homes for admissions in the following instances: emergency and non-emergencies, screened and non-screened applicants; and medical assistance eligible and ineligible persons;
- (j) Sets guidelines for reimbursement of screening costs for the following categories: applicants who are eligible for Medical Assistance, applicants who will be eligible for Medical Assistance in 90 days, and applicants who volunteer for the screening who will be assessed on a sliding fee schedule;
- (k) Assures persons being screened of their right to appeals; and
- (l) Requires that the county submit reports on specific items, and other information as determined necessary by the Commissioner of Public Welfare.

The agency's authority to adopt the proposed rule is contained in Minn. Stat. § 256B.091.

Cost to the county agencies for the pre-admission and alternative care grant program will be \$62,456.00 for F.Y. 1981-1982 and \$12,981.00 for F.Y. 1982-1983. This estimate is based on 4.5 percent match for reimbursement of the screening teams and 10 percent match on the alternative care grants. These amounts can be separated out as follows: F.Y. 1981-1982 Pre-admission screening \$2,456.00 and alternative care grants \$60,000.00; F.Y. 1982-1983 Pre-admission screening \$9,812 and alternative care grants \$120,000.00.

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to Marie Scheer, Department of Public Welfare, 444 Lafayette Road, Box #43170, St. Paul, Minnesota 55164, telephone 612/296-2274. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rule, contact Marie Scheer at 612/296-2274.

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

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11, 1979 supp., as any individual:

- (a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends

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## PROPOSED RULES

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more than five hours in any month or more than \$250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

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

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

October 23, 1981

Arthur E. Noot  
Commissioner of Public Welfare

### Rule as Proposed (all new material)

12 MCAR § 2.065 Pre-admission screening for persons entering long term care facilities and alternative care grant services.

A. Responsibility for the program. The county agency responsible for administering the medical assistance program in each participating county shall be responsible for complying with requirements of the pre-admission screening program.

B. Program scope. In counties participating in the program, screening teams shall review and make recommendations for nursing home applicants who are eligible for medical assistance and those who will be eligible within 90 days of admission to a nursing home. The procedures and criteria used by the screening team shall be in accordance with D.-H. Participating counties shall be eligible for the alternative care grant program described in H.

C. Notification about program.

1. Notice to eligible persons. The county agency responsible for the screening program shall refer to a screening team all persons eligible for the screening as described in B. When possible, these persons shall be notified of the screening requirement by direct mail.

2. Public notice. The county agency responsible for the screening program shall provide public notification of the screening requirement. The methods of public notification shall include publication in available appropriate newsletters, display and dissemination of information leaflets in a readable form and in an accessible location, and promotion through other local media sources. The public notification shall include information on how to contact the screening team, implications of the screening team's recommendations, and the individuals' rights to appeal the screening team's recommendations.

3. Notice to officials and health care professionals. The Department of Public Welfare shall provide formal notification about the screening program to county commissioners, local health and welfare agencies, state hospitals, nursing homes, and physicians. The department shall assist participating counties in providing information sessions and materials to further explain the program.

D. Resource material for screening programs.

1. Screening tool. The department shall recommend a screening tool to be used as a guide in conducting the screening interview. The screening tool recommended by the department shall obtain consistent categories of information and ensure that persons are receiving uniform screening. The state agency shall allow counties flexibility in using the recommended tool or a comparable one approved by the state agency.

2. Technical assistance. Department staff shall be available to provide technical assistance in conducting the screenings, including special training sessions.

3. Directory of services. The county agency shall develop a resource directory of available non-institutional services to be used by the screening team in determining how well an applicant's needs can be met by existing community services.

E. Screening procedures. The screening team shall begin the screening process within five working days after receiving the request, and it shall issue a recommendation within ten working days after receiving the request. The screening team shall notify the applicant or appropriate relative or responsible party of the decision. The team shall also notify the referring physician, the referring local welfare department if the applicant is a medical assistance recipient, and the nursing home if placement is recommended. Reconsideration of a previously denied application shall be given when there has been a change in circumstances. The application shall be resubmitted with a written explanation of the change in circumstances.

F. Criteria for screening team recommendations.

1. Nursing home admission. The screening team shall recommend admission to a nursing home when it is determined that the individual requires care or services which are not available to the recipient outside of the nursing home.

2. Use of community services. The screening team shall not recommend admission to a nursing home when it is determined that the individual can remain in the community and that care and services are available and accessible.

G. Plan of care required. A recommendation for the applicant to remain in the community shall be accompanied by a plan of care including referral to service providers and assignment of responsibility for implementing the plan.

1. Development of the plan. The plan of care shall be developed by the screening team in consultation with the individual, the treating physician, and appropriate family members or responsible parties. The resource directory described in D.3. shall be used in determining what services are available.

2. Availability of services. Where the plan of care includes services that are not available at that time through other public assistance sources, the services shall be provided through an alternative care grant described in H.

H. Alternative care grant.

1. Use of grant. The grant shall be used to provide services to those persons who have been screened and found appropriate for home or community care. The grant shall supplement but not supplant services available through other public assistance or service programs. The grant shall not be used to establish new programs for which public money is available through other sources.

2. Service provision. The services shall be provided by a licensed health care provider; a home health service eligible for reimbursement under 42 United States Code, Subchapters XVIII or XIX, as amended through December 31, 1981; or by persons employed by, or under contract to, the county board or the local welfare agency.

3. Reimbursement of services. Services shall be reimbursed at a level no greater than that which is allowed under 42 United States Code, Subchapters XIX and XX, as amended through December 31, 1981, unless lower rates are negotiated with providers at a level sufficient to insure the availability of such services in the community.

4. Assurances. The county shall provide the Commissioner of Public Welfare with assurances that the alternative care grant is used for purposes specified in Minn. Stat. § 256B.091, subd. 8 and in Public Law 97-35, Section 2176 relating to community-based services.

I. Reimbursement of nursing home costs.

1. Nonemergencies; unscreened applicants. When an individual covered by the mandatory screening requirement is admitted to a nursing home on a nonemergency basis and has not obtained the required pre-admission screening, the nursing home shall notify the screening team within two working days. The screening team shall make a decision on the case within five working days of being contacted by the nursing home. If the screening team fails to review the case within five working days or recommends that institutionalization is necessary, medical assistance shall cover the cost of the care. If the screening team determines that the individual does not require institutionalization, the admitting facility shall not be reimbursed for any costs incurred, and patient days resulting from that stay must be counted in the facility's patient day statistics for the purposes of rate calculation under 12 MCAR § 2.049.

2. Emergencies; unscreened applicants. When an individual covered by the mandatory screening requirement is admitted to a nursing home on an emergency basis and has not obtained the required pre-admission screening, the nursing home shall notify the screening team within two working days. The screening team shall make a decision on the case within five working days of being contacted by the nursing home. If the screening team fails to review the case within five working days or recommends that institutionalization is necessary, the costs of nursing home care shall be covered by medical assistance. If the screening team reviews the admission within the five working days and determines that the individual does not require institutionalization, medical assistance shall cover the costs only for the period through the date the screening team notified the nursing home of its decision, and until a plan for alternative care can be implemented. If the admitting facility fails to contact the screening team within the prescribed period, the facility shall not be reimbursed for any costs incurred, and patient days resulting from that stay must be counted in the facility's patient day statistics for the purposes of rate calculation under 12 MCAR § 2.049. Reimbursement for emergencies of unscreened persons shall be allowed for medical emergencies only, as certified by the attending physician.

3. Screened applicants. Medical assistance shall not be available to reimburse the nursing home in instances when an individual is admitted to a nursing home after the screening team has determined that institutionalization is not necessary. The individual has the right to notification and a fair hearing on such denial of payment in accordance with K.

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## PROPOSED RULES

4. Persons not screened. Nursing home applicants who have not been screened and are not medical assistance recipients shall be asked by the nursing home if they have sufficient funds to cover 90 days of nursing home care or whether they will be applying for medical assistance within that time period. If, based on the information given and recorded, the nursing home determines that the person is not subject to the screening requirement the applicant may be admitted. The nursing home shall maintain documentation of the basis for this decision in the patient's file.

### J. Reimbursement for screening costs.

1. Persons eligible for medical assistance. The Department of Public Welfare shall reimburse the county agency for the pre-admission screening required for persons who are eligible for medical assistance and those who will be eligible for medical assistance within 90 days of admission to a nursing home. Reimbursement shall be in a manner agreed upon by both parties.

2. Persons not receiving assistance. The Department of Public Welfare shall reimburse the county agency for all or a portion of the cost of screening for a person whose costs are not reimbursed under 1. The percentage rate of reimbursement by the department shall be determined according to the schedule in Exhibit 12 MCAR § 2.065 J.-1., except that the maximum amount of reimbursement from the department for a screening shall not exceed the maximum reimbursement available to a county agency for the cost of a screening reimbursed under 1. The county agency may assess the person who is screened for the part of the screening cost not reimbursed by the department.

#### Exhibit 12 MCAR § 2.065 J.-1.

Annual Gross Income per Individual	Screening Fee Reimburse- ment for Applicants not Eligible for Medical Assistance
under-13,000	100%
13,001-13,500	90
13,501-14,000	80
14,001-14,500	70
14,501-15,000	60
15,001-15,500	50
15,501-16,000	40
16,001-16,500	30
16,501-17,000	20
17,001-17,500	10
17,501-and over	0

### K. Right to appeal.

1. Appeal procedures. Persons who are recipients of or applying for medical assistance have the right to a fair hearing pursuant to Minn. Stat. § 256.045 to challenge the decision of the screening team. The hearing shall be conducted in accordance with appeal procedures set forth in Minn. Stat. § 256.045. An appeal must be made within 30 days after receiving written notice of the screening team's recommendation. If it appears at the hearing that circumstances are different than they were at the time the initial recommendation was made, the referee may refer the case back to the screening team for reevaluation.

2. Appeal by the physician. When the treating physician disagrees with the screening team's decision, the physician shall notify the screening team and request an appeal on behalf of the individual. The appeal may be withdrawn with the consent of the individual and the treating physician.

3. Persons not receiving assistance. Persons who are not applying for or receiving medical assistance shall consider the recommendation by the screening team to be advisory, unless the person applies for medical assistance within 90 days following admission to a nursing home.

L. County reports. The county agency shall submit a report to the Department of Public Welfare according to a schedule agreed upon by the department and the county agency. The report shall be submitted on forms provided by the commissioner and include the number of persons screened, results of each screening, and the rationale for each screening recommendation. The county agency shall retain the plan of care for persons who are to remain in the community and shall make it available to the department on request. The county agency shall also provide information as requested by the commissioner for ongoing evaluation of the program.

**Department of Revenue  
Income Tax Division****Proposed Adoption of a New Rule Governing Filing and Payment of Withholding Tax  
(13 MCAR § 1.6301)****Notice of Hearing**

A public hearing concerning the adoption of the proposed new rule will be held in Room 83, State Office Building, 435 Park Street, St. Paul, Minnesota 55155, on Friday, December 11, 1981, commencing at 9:00 a.m. The proposed new rule may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed new rule, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested (or affected) persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or materials may be submitted to Peter Erickson, Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, (612) 296-8118, either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is covered by Minn. Stat. §§ 15.0411 to 15.0417 and 15.052 and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Twenty-five days prior to the hearing a statement of need and reasonableness will be available for review of the agency and at the Office of Administrative Hearings. This statement of need and reasonableness will include a summary of all the evidence and arguments which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule. Copies of this statement of need and reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

The proposed new rule (13 MCAR § 1.6301) reads as follows:

"For purposes of determining the timeliness of withholding tax payments, returns, or deposits under Minn. Stat. Section 290.92, subd. 6, clause (1), the payment, return, or deposit shall be treated as having been made on the earlier of the following dates:

- A. the date actually received by the Department of Revenue; or
- B. the date of mailing, but only if the payment, return, or deposit was mailed on or before the second day prior to the due date, including any extension of time granted for making the payment, return, or deposit. The person required to make the payment, return, or deposit shall have the burden of establishing that the payment, return, or deposit was timely mailed in the United States by United States mail in an envelope or other appropriate wrapper, postage prepaid and properly addressed."

The agency's authority to adopt the proposed new rule is contained in Minn. Stat. § 290.52.

The agency estimates that there will be no cost to local public bodies in the state to implement the rule for the next two years immediately following its adoption within the meaning of Minn. Stat. § 15.0412, subd. 7.

Copies of the proposed rule are now available. Persons with questions about the rule or who desire a free copy of the rule should contact:

Mr. Dale H. Busacker  
Attorney, Income Tax Division  
Minnesota Department of Revenue  
Centennial Office Building  
St. Paul, Minnesota 55145  
(612) 296-3439

Any person may request notification of the date on which the hearing examiner's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the

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## PROPOSED RULES

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

Minn. Stat. Chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1980) as any individual:

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

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

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone 612-296-5615.

October 22, 1981

Clyde E. Allen, Jr.  
Commissioner of Revenue

### Rule as Proposed (all new material)

13 MCAR § 1.6301 Filing and payment of withheld tax. For purposes of determining the timeliness of withholding tax payments, returns, or deposits under Minn. Stat. § 290.92, subd. 6, clause (1), the payment, return, or deposit shall be treated as having been made on the earlier of the following dates:

A. The date actually received by the Department of Revenue; or

B. The date of mailing, but only if the payment, return, or deposit was mailed on or before the second day prior to the due date, including any extension of time granted for making the payment, return, or deposit. The person required to make the payment, return, or deposit shall have the burden of establishing that the payment, return, or deposit was timely mailed in the United States by United States mail in an envelope or other appropriate wrapper, postage prepaid, and properly addressed.

## 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.

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## Department of Labor and Industry Occupational Safety and Health Division

### Adoption by Reference of Occupational Safety and Health Standards

Pursuant to Minn. Stat. § 182.655 (1980) notice was duly published at *State Register*, Volume 6, Number 8, p. 218 (6 S.R. 218) dated August 24, 1981 specifying the establishment and modification of certain Occupational Safety and Health Standards, specifically, the proposed adoption of revised Subpart S, "Electrical," of 29 CFR Part 1910.

Subpart S establishes "Design Safety Standards for Electrical Systems" by incorporating relevant requirements of the National Electrical Code into the text of OSHA regulations, making it unnecessary for employers to refer to the National Electrical Code (NEC) to determine their obligations and unnecessary for OSHA to continue incorporating NEC requirements by reference. On July 7, 1980, the provisions of the 1978 NEC were incorporated by reference into the Minnesota Occupational Safety and Health Codes; adoption of revised Subpart S makes this incorporation by reference unnecessary.

No written comments or requests for hearing on objections have been received. Therefore, revised 29 CFR Part 1910, Subpart S, is hereby adopted and is identical in every respect to its proposed form. The incorporation by reference of provisions of the 1978 NEC into the Minnesota Occupational Safety and Health Codes is hereby repealed.

Russell B. Swanson  
Commissioner

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**TAX COURT**

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

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State of Minnesota  
County of Chisago

Tax Court  
Regular Division

Allan R. Johnson,  
Appellant,

Findings of Fact, Conclusions of Law, and Order for  
Judgment

v.

Commissioner of Revenue,  
Appellee.

Docket No. 2989  
Order Dated: 10-22-81

The above matter came on for hearing before the Minnesota Tax Court in Center City on October 2, 1981, with Judge Carl A. Jensen presiding.

Allan R. Johnson, Appellant, appeared on his own behalf.

Paul R. Kempainen, Assistant Attorney General, appeared for the Appellee.

1. Appellant was a resident of Minnesota all his life prior to 1978. During the year 1978 he spent a total of 115 days traveling outside the state of Minnesota. Forty-five of these days were spent in Spain, where Appellant lived in an apartment which he co-owned along with 139 other persons. The remainder of the 115 days were spent chiefly in Mexico. For the remaining days of 1978 Appellant returned to the State of Minnesota, where he lived with his mother on a 206 acre farm in Chisago County.

2. During his stays in Spain and Mexico Appellant had no present intention of taking up permanent residence in either of those countries.

3. Appellant filed his Minnesota income tax return for 1978 wherein he deducted the income received while he was in Spain and Mexico and claimed that he was only a part-year resident of Minnesota for 1978. The Commissioner's Order of September 11, 1979, assessed additional income tax to the Appellant on the basis that Appellant was domiciled in Minnesota for the entire year of 1978. Appellant has appealed from this Order.

4. Appellant's domicile was Minnesota for the entire year of 1978 and he is subject to Minnesota income tax for all of his income.

5. In filing his 1978 return Appellant, who was a federal pensioner retired in 1973, failed to take a subtraction from his pension income for the employee contributions made by him to the pension fund. Under the Tax Court's decision in *Noreen v. Commissioner of Revenue*, Docket No. 2878 (Jan. 26, 1981), Appellant would be entitled to such a subtraction and the commissioner has agreed to recalculate his 1978 tax liability accordingly. Such a recalculation results in a refund due the Appellant of \$486.60.

**Conclusions of Law**

1. The Commissioner's Order of September 11, 1979, is affirmed on the residency issue. However, because of the recalculation required by *Noreen, supra*, the Appellant is entitled to a 1978 refund of \$486.60. The Commissioner's Order is amended to provide for said refund.

IT IS SO ORDERED.

By the Court,  
Carl A. Jensen, Judge  
Minnesota Tax Court

**SUPREME COURT**

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**Decisions Filed Friday, October 30, 1981****Compiled by John McCarthy, Clerk**

50587/Sp. Carvell B. Wright, *et al.*, Appellants v. Laura Lee Wright, a.k.a. Laura Lee Tracy. Hennepin County.

Affirmed. Sheran, C. J. Dissenting: Otis, Peterson, and Yetka, JJ.

51930/Sp. State of Minnesota v. O'Darius Fields, Appellant. Hennepin County.

Trial court did not err in denying request by criminal defendant, after jury had been selected, for appointment of different counsel.

Trial court did not violate defendant's constitutional or statutory rights in making sentence run consecutively to previously imposed prison term.

Affirmed. Sheran, C. J.

50845, 50879, 50914/364 (1980) In the Matter of the Trust Known as Great Northern Iron Ore Properties. Ramsey County.

Income beneficiaries and the reversioner of a trust, who intervened in the trustees' action for instructions, may be allowed attorney fees and expenses from the trust under the principles of *In re Living Trust Created by Atwood*, 227 Minn. 495, 35 N.W.2d 736 (1949).

Where the litigation was protected, and much of it was motivated by the self-interest of the intervening income beneficiaries and reversioner and did not inure to the benefit of the trust, certain allowances for attorney fees and expenses were clearly excessive. Those allowances must be reconsidered in light of the limitations stated herein.

Attorney fees and expenses allowed from the trust are to be charged against trust principal. Minn. Stat. §§ 501.49, subd. 1, .59, subd. 3(a) (1980).

Affirmed in part, reversed in part, and remanded with directions.

Peterson, J. Dissenting, Sheran, C. J., Otis, Wahl, and Amdahl, JJ.

51750/Sp. State of Minnesota v. Ka-Felling Beeks, Appellant. Hennepin County.

Evidence was sufficient to support defendant's convictions of criminal sexual conduct in the first degree.

Defense counsel, by failing to object, forfeited right to have this court consider on appeal certain claims of trial error.

Affirmed. Todd, J.

51122/Sp. Joy Ganyo, petitioner, Appellant v. Independent School District No. 832. Washington County.

The decision of respondent school district to terminate petitioner as a tenured teacher was not supported by substantial evidence on the entire record.

Eight weeks from notice of deficiency to notice of termination was not the reasonable time required by Minn. Stat. § 125.12, subd. 6 (1980) for a teacher of 17 years in respondent school district to remedy teaching practices which were now labeled deficient for the first time.

Reversed. Wahl, J.

51544/Sp. **The First National Bank of St. Paul, Appellant v. George R. Ramier, as Special Administrator of the Estate of Ronald A. Rohloff, deceased, Betty J. Rohloff and Lawrence O. Hoff, et al., Defendants. Hennepin County.**

An equitable mortgage or lien was not created when the documents of record disclose no indication that the parties intended the loan agreement to be a security transaction but rather indicated that it was an unsecured loan.

A constructive trust will not be imposed where a banking institution could have required security for a loan or obtained the signature of the potential joint tenant of the property to be purchased with the bank and chose not to do so.

Affirmed. Wahl, J. Dissenting: Sheran, C. J., and Yetka, J.

Took no part, Otis, J.

51889/Sp. **State of Minnesota v. John H. Hudson, Appellant. Ramsey County.**

Evidence was sufficient to sustain defendant's conviction for criminal sexual conduct in the first degree.

Testimonial reference by state's witness to fact that defendant had been in jail does not require a new trial because defense counsel elicited the evidence and there is no showing that the evidence prejudiced defendant who credibility was properly impeached by evidence of a prior conviction when he testified.

Four of five defendant's convictions are vacated pursuant to Minn. Stat. § 609.04 (1980), which forbids two or more convictions for the same offense (or one offense and an included offense) based on the same criminal act.

Affirmed in part, reversed in part. Simonett, J.

81-295/Sp. **State of Minnesota v. Dennis D. Linehan. Washington County.**

District court properly denied, as moot, petition for writ of habeas corpus by prison inmate.

Affirmed. Rogosheske, J. Retired.

## **Opinions Filed October 26, 1981**

81-474/Sp. **State of Minnesota v. Tommy J. Evans, Appellant. Hennepin County.**

Trial court was justified in departing from presumptive sentence but we reduce the total length of defendant's prison term to double that of the presumptive sentence.

Affirmed as modified. Amdahl, J.

81-977/Sp. **State of Minnesota v. Jeffrey Scott Hernandez, Appellant. Ramsey County.**

Trial court, in sentencing defendant on the same day for three convictions based on different offenses not part of the same behavioral incident or course of conduct and involving different victims, properly considered first two convictions in determining defendant's criminal history score for third conviction.

Affirmed as modified. Amdahl, 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 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 Administration Intergovernmental Information Systems Advisory Council

### Notice of Request for Proposals for the Continued Development of an Automated Utility Billing System to Serve Small Minnesota Cities

The Intergovernmental Information Systems Advisory Council (IISAC), in conjunction with a grant awarded to the City of Wayzata is assisting with the issuance of a Request for Proposal (RFP). The RFP delineates the specific requirements for the development of detailed program specifications, programming, testing and documentation of the system. A major part of the RFP is a detailed system design document, already completed. The system will be installed on an Apple II Plus microcomputer at the City of Wayzata. The programming language will be BASIC.

A pre-bidders conference will be held at the Business and Technology Center, 245 E 6th Street, conference room A, at 1:30 p.m., on Monday, November 16, 1981.

Selection criteria, along with price considerations, will include length of time in business, previous experience with local government systems, previous experience with microcomputer developed systems, and staff to be assigned to the project.

Critical dates: 11/16/81 Pre-bidders conference  
11/20/81 Bid submission deadline  
11/25/81 Target date to select winning bid

The maximum amount of funds available for this effort is \$13,250.00.

The RFP will be sent to those contacting Roger Sell, Executive Director of IISAC, Business and Technology Center, 245 East 6th Street, St. Paul, MN 55101, (612) 297-2172.

## Department of Natural Resources

### Notice of Sale of State Peat Lease

Notice is hereby given that a lease sale to remove peat in swamp fund lands located in 629 acres, more or less, of the West Central Lakes Bog, St. Louis County, Minnesota will be held in Room 130 of the State Capitol Building, St. Paul, Minnesota, at 9:30 o'clock a.m. CST on December 15, 1981.

The Commissioner of Natural Resources, Box 45, Centennial Office Building, St. Paul, Minnesota 55155, will receive sealed bids and applications for a lease to remove peat under the authority of Minnesota Statutes, § 92.50 (1980), as amended by Laws of Minnesota, ch. 328, § 1, up to the time specified below.

Each application and bid must be submitted in a bid envelope obtained from the Division of Minerals and each sealed bid envelope must be enclosed in another envelope and delivered to the Commissioner of Natural Resources, Attention: Division of Minerals, Box 45, Centennial Office Building, St. Paul, Minnesota 55155. Bids must be received by 4:30 o'clock p.m. CST on December 14, 1981 and no bids received after that time will be considered.

At the time specified for the lease sale, the commissioner, together with the State Executive Council, will publicly open the bids and announce the amount of each bid separately. A lease will be awarded by the commissioner, with approval of the State Executive Council, to the highest responsible bidder; but no bids will be accepted that do not equal or exceed the base royalty rates set forth in the prospectus. The right is reserved to the state, through the Executive Council, to reject any or all bids. All bids not accepted will become void.

In the absence of satisfactorily demonstrated past technical and financial competence to perform under similar circumstances, the commissioner may require bidders to submit information relating to their technical and financial competence to perform under the state's lease to remove peat. If the commissioner makes such a request of a bidder, the information shall be submitted within 30 days after the date of the commissioner's request.

Application and bid forms, bid envelopes, instructions on how bids are to be submitted, and copies of the prospectus may be obtained from the Department of Natural Resources, Division of Minerals Offices at Box 45, Centennial Office Building, St. Paul, Minnesota 55155, or Box 567, Hibbing, Minnesota 55746.

November 2, 1981

Joseph N. Alexander  
 Commissioner  
 Department of Natural Resources

**Pollution Control Agency**

**Request for Proposals for Assistance with Review of State Noise Standards**

I. Background

On November 27, 1974, the Minnesota Pollution Control Agency adopted State Noise Standards, NPC 1 and 2. These standards were adopted pursuant to a mandate of the legislature set forth in Minn. Stat. § 116.07, subd. 2 (1980), which states:

The pollution control agency shall also adopt standards describing the maximum levels of noise in terms of sound pressure levels which may occur in the outdoor atmosphere, recognizing that due to variable factors no single standard of sound pressure is applicable to all areas of the state. Such standards shall give due consideration to such factors as the intensity of the noises, the types of noises, the frequency with which noises occur, and such other factors as could affect the extent to which noises may be injurious to human health or welfare, animal or plant life, or property, or could interfere unreasonably with the enjoyment of life or property. In adopting standards, the pollution control agency shall give due recognition to the fact that the quantity or characteristics of noise or the duration of its presence in the outdoor atmosphere, which may cause noise pollution in one area of the state, may cause less or not cause noise pollution in another area of the state, and it shall take into consideration in this connection such factors, including others which it may deem proper, as existing physical conditions, zoning classifications, topography, meteorological conditions and the fact that a standard which may be proper in an essentially residential area of the state, may not be proper as to a highly developed industrial area of the state. Such noise standards shall be premised upon scientific knowledge as well as effects based on technically substantiated criteria and commonly accepted practices. No local governing unit shall set standards describing the maximum levels of sound pressure which are more stringent than those set by the pollution control agency.

In adopting State Noise Standards<sup>1</sup> the agency has set forth the limiting levels of sound in the outdoor atmosphere which are consistent with speech, sleep, annoyance and hearing conservation requirements for people (receivers) depending upon the activities on the land where the sound levels are located. The land areas are classified according to their actual use, each parcel of land being given a Noise Area Classification (NAC).

The Noise Area Classifications take into account the amount of noise which is safe for people to encounter in their daily lives. For example, a person needs and desires a quieter outdoor environment surrounding a residence than at a factory or a shopping center. Therefore land uses which are more "sensitive" to noise are classified as NAC-1 and have the most stringent noise standards applied to them. NAC-1 land activities include household units, medical and other health services, and religious activities. NAC-2 land activities have less stringent standards and include railroad and bus terminals and commercial centers. NAC-3 land activities have even less stringent standards. They include manufacturing activities, agricultural activities, and mining activities. The fourth type of land activity classification, NAC-4, may receive unlimited noise and includes undeveloped and unused land.

The limiting levels of sound for land areas classified as NAC-1, NAC-2 and NAC-3 are as follows:

NAC	Day		Night	
	L <sub>50</sub>	L <sub>10</sub>	L <sub>50</sub>	L <sub>10</sub>
1	60	65	50	55
2	65	70	65	70
3	75	80	75	80

These standards incorporate the intensity (decibel level) and duration of noise. The "L<sub>10</sub>" is defined by NPC 1(a)(15) as "the sound level, expressed in dBA, which is exceeded ten percent of a one hour survey." Thus a violation of an L<sub>10</sub> standard of 65 dBA occurs when noise monitoring shows that the outdoor sound level exceeded 65 dBA for over six minutes of a one-hour survey. The "L<sub>50</sub>" standard is defined by NPC 1(a)(16) as "the sound level, expressed in dBA, which is exceeded fifty percent of the time for a one hour survey." Thus a violation of an L<sub>50</sub> standard of 60 dBA occurs when noise monitoring shows that the outdoor sound level exceeded 60 dBA for over thirty minutes of a one-hour survey.

<sup>1</sup> Copies of NPC 1 and 2 are available at the MPCA.

## STATE CONTRACTS

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On June 5, 1979, the Minnesota Pollution Control Agency adopted a resolution stating that noise standards would be reviewed. The Minnesota Pollution Control Agency by this Request for Proposals is seeking assistance with the review it is conducting pursuant to that resolution.

### II. Approach

The agency in its review of the State Noise Standards desires to focus mainly upon two aspects of the rules: 1) information related to the health and welfare effects attributable to noise exposures; and 2) the technical information that formed the basis for individual components of the rules, such as descriptors, designation of hours constituting daytime and nighttime, and the exceptions to the rules. The agency specifically desires to update and supplement the report of the consultant which provided technical assistance to the agency in the original formulation of the rules. This report, entitled *Noise Pollution Standards and Regulation*, by Noise Control Systems, Inc., is dated December 1972.

The person or persons awarded a contract based on a proposal submitted in response to this Request for Proposal will also be required to participate in any rulemaking proceeding which may be initiated by the Agency as a result of the review of State Noise Standards.

### III. Scope of Work

Specifically the agency is requesting at least the following tasks to be completed:

#### Task I

Develop an assessment of the health/welfare effects attributable to noise and at what levels these effects occur to include but not limited to:

1. Supplement and update the information contained in the *Public Health and Welfare Criteria for Noise* document compiled by the EPA, with regards to health/welfare effects.
2. Conduct a literature review on health/welfare effects since the above document was published (including impulsive noise).
3. Assess health/welfare basis for a more stringent standard during night time hours (2200 to 0700) than during daytime hours.
4. Provide a written document addressing the elements of Task I.

#### Task II

Develop a technical assessment of the current noise standard as to its technical merit for regulating noise to include but not limited to:

1. Update the *Noise Control Systems, Inc.*, report.
2. Assess the current descriptors,  $L_{10}$  and  $L_{50}$  as they apply to airports and other special sources such as highways. Make recommendations if additional or other descriptors are necessary.
3. Assess the one hour averaging time currently used in the regulation.
4. Assess the "exceptions" as stated in the current regulation.
5. Make recommendations.
6. Provide a written document addressing the elements of Task II.

#### Task III

At a minimum the contractor should assess the current descriptors,  $L_{10}$  and  $L_{50}$ , or any other descriptor as recommended by the contractor by Task II, as to compatibility with current computer modeling knowledge for noise from airports and other special sources of noise such as highways.

#### Task IV

Provide a review of the original public hearing record conducted by the MPCA in June 1974 and comments received in response to the Agency's solicitation of public opinion to include but not limited to:

1. Assess the recommendations made through public testimony.
2. Assess the recommendations made through written comments.
3. Make recommendations.
4. Provide a written document addressing the elements of Task IV.

In summary, the Agency expects the contractor to:

1. Make current the type of information contained in the following: *Noise Control Systems, Inc.*, report and *Public Health and Welfare Criteria for Noise*.

2. Assess the technical merit of the existing standard.
3. Provide modeling compatibility with existing descriptors or any additional descriptors as recommended.
4. Provide a review of the original hearing record and written comments.
5. Make recommendations.
6. Provide written documents.
7. Participate in the rule making process.

#### IV. Preparation of the Proposal.

Proposals should include at least the following information:

1. Introduction to the consultant. A brief description of the contractor should be presented focusing primarily on unique capabilities relating to noise pollution and environmental standard setting.

Proposals should describe the contractors experience and qualifications to prepare technical reports, assess noise standards and assess health/welfare effects of noise. Proposals should demonstrate that the contractor understands that the MPCA is requesting an assessment of the health/welfare effects of noise and an assessment of the technical basis for the existing standard.

2. Staff availability. A brief description of the staff planned for use on this project must be included with resumes highlighting experience in noise pollution and standard setting processes. A description of the organization and management must also be included.

3. Description of proposed services—scope of work.
4. Detailed schedule of tasks and completion date.
5. Time and cost estimates for each task.

The total cost of the contract should not exceed \$30,000.

#### 6. References.

The contractor should provide references to contracts completed in noise pollution and environmental standard setting.

#### V. Consultant Selection.

##### 1. Submittal of proposals

- a. Proposals should be submitted to:

Dave Kelso  
Program Development/Noise  
Minnesota Pollution Control Agency  
1935 West County Road B2  
Roseville, Minnesota 55113  
(612) 296-7372

- b. Deadline for submittal is January 4, 1982.

2. Selection will be based on relevant qualifications, past experience and project cost. An MPCA selection committee will evaluate the proposals. Qualifications and relevant experience will be the primary determinants in the selection of the contractor.

3. Finalists will be interviewed by telephone and/or in person.

VI. Report Completion. The MPCA is requesting that the selected consultant perform all duties and tasks, except testimony at the public hearing, within six months from the time the contract is awarded.

## **Water Planning Board**

### **Amended Notice of Request for Proposals for Preparation of a Slide Presentation Illustrating Water Management Problems and the Need for New Local Government Response**

This notice supersedes the Request for Proposals appearing in the *State Register*, Volume 6, Number 15 on Monday, October 12, 1981, pages 652-654. This modified Request for Proposals incorporates specifications changes and the deadline for

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submission has been revised accordingly. A revised specifications sheet will be provided upon request. All proposals must utilize this bid sheet format.

I. Scope of Project. This project will produce an automated 35mm color slide presentation with an audio component consisting of a narrative and background music. The slide show will examine selected water management problems from across the state and present observations of affected citizens concerning the obstacles encountered in addressing these problems. The slide show will also present the conclusions and recommendations of the Water Planning Board's "Special Study on Local Water Management."

The "Special Study on Local Water Management" was approved by the Minnesota Water Planning Board in January 1981. The study was prepared pursuant to Laws of 1980, ch. 548. In this study, the board identified a range of water management problems which demonstrate the need for a stronger local governmental role in water management. The purpose of this Request for Proposals is to develop a slide presentation which illustrates water management problems encountered across the state and communicates the need for new participation by local governments in addressing these problems.

II. Project Completion Date. The project shall be completed by March 31, 1982.

III. Department Contact. Prospective responders may call or write John Wells for copies of the amended specifications sheet or to address questions concerning this request at the Minnesota Water Planning Board, 600 American Center Building, 150 E. Kellogg Boulevard, St. Paul, Minnesota 55101 (612) 297-2377. Please note: Other board personnel are not permitted to discuss the project with responders before the proposal submittal deadline.

IV. Submission of Proposals. All proposals must be sent to and received by John Wells at the above address no later than 4:30 p.m. November 30, 1981. Late proposals will not be accepted. Prices and terms of the proposal as stated must be valid for the length of the project. Proposals must utilize the bid sheet format available through the board and include a description of the responder's background and experience.

V. Evaluation. All proposals received by the deadline will be evaluated by representatives of the Water Planning Board. If deemed necessary, an interview may be included in the evaluation process. Evaluation and selection will be completed by December 7, 1981. Results will be sent immediately by mail to all responders.

This Request for Proposals does not obligate the state to complete the project and the state reserves the right to cancel the solicitation if it is considered to be in its best interest.

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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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### State Board of Education Department of Education Special and Compensatory Education Division

#### Notice of Cancellation of Public Hearing and Withdrawal of Proposed Rules Governing Special Education Staff-to-student Ratios (5 MCAR §§ 1.0120-1.0122)

Notice is hereby given that the public hearing on the proposed rules as noticed in the October 12, 1981 issue of the *State Register* at 6 S.R. 624 has been cancelled. The agency will reschedule the hearing for a later date. The proposed rules as noticed in the same issue of the *State Register* at 6 S.R. 624 through 6 S.R. 630 and as corrected in the October 26, 1981 issue of the *State Register* at 6 S.R. 710 through 6 S.R. 711 are withdrawn.

Questions regarding this matter should be directed to:

Wayne A. Erickson, Manager  
Special Education Section  
802 Capitol Square Building  
550 Cedar Street  
St. Paul, Minnesota 55101  
(612) 296-4163

John J. Feda, Secretary  
State Board of Education

## **Department of Commerce Banking Division**

### **Bulletin No. 2472: Maximum Lawful Rate of Interest for Mortgages and Contracts for Deed for the Month of November 1981**

Notice is hereby given that pursuant to Minnesota Statutes, § 47.20, subd. 4a (1980), the maximum lawful rate of interest for conventional home mortgages for the month of November 1981 is eighteen and three-quarters (18.75) percentage points. Further, pursuant to Senate File No. 273, Chapter 373, 1980 Session Laws, as it amended Minnesota Statutes § 4720, the maximum lawful rate of interest for contracts for deed for the month of November, 1981, is eighteen and three-quarters (18.75) percentage points.

It is important to note that this maximum lawful interest rate does not apply to all real estate loans and contracts for deed. Under Minnesota's interest rate moratorium, which is identical to the Federal Usury Preemption, in most instances any rate may be charged on real estate mortgages and contracts for deed that constitute first liens.

The maximum rate is based on the Federal National Mortgage Association October 27, 1981, auction results and an average yield for conventional mortgage commitments of 18.614%. Current rates regarding this monthly publication are available by telephoning the Banking Division 24-hour information number (612) 297-2751.

October 28, 1981

Michael J. Pint  
Commissioner of Banks

## **Department of Commerce Insurance Division**

### **Meeting Notice**

Minnesota Comprehensive Health Association  
Board of Directors  
Tuesday, January 26, 1982, 9:00 a.m.  
Northwestern National Life Insurance Company  
20 Washington Avenue South  
Minneapolis, Minnesota

Changes in any scheduled meetings and notices of any additional meetings will be posted or otherwise be available upon inquiry at the office of the Insurance Division, and may also be obtained by telephone from the Life and Health Section, telephone (612)-296-2202.

## **Minnesota Cosmetology Advisory Council Office of Consumer Services Cosmetology Unit**

### **Notice of Meetings**

The Minnesota Cosmetology Advisory Council will meet according to the following schedule:

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November 17, 1981, 1:00-3:30 p.m.

December 1, 1981, 1:00-3:30 p.m.

First Tuesday of every month in 1982, 1:00-3:30 p.m.

Meetings will be held in the Office of Consumer Services, Room 128, Metro Square Building, 7th & Robert Streets, St. Paul, Minnesota 55101.

### **Minnesota Energy Agency Data and Analysis Division**

#### **Application of Minnesota Alcohol Producers for a Certificate of Need for an Ethanol Production Facility**

##### **Order for and Notice of Hearing**

It is hereby ordered and notice is hereby given that a contested case hearing concerning the above-entitled matter will commence at 1:00 p.m. and continue at 7:00 p.m. on December 7, 1981, in the Minnesota Valley Regional Library, 100 East Main Street, Mankato, Minnesota. The hearing will continue at times and places to be specified by the hearing examiner if further hearing time is necessary.

This matter is being heard upon the Application for a Certificate of Need to construct an Ethanol Production Facility filed by Minnesota Alcohol Producers ("MAP") on October 22, 1981. The application was submitted, and the agency is convening the hearing on the authority of Minn. Stat. § 116H.13 and 6 MCAR §§ 2.1101-1186.

The hearing will be held before Myron Greenberg, Hearing Examiner, Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104, telephone (612) 296-8110, an independent hearing examiner appointed by the chief hearing examiner of the State of Minnesota. All parties have the right to represent themselves or to be represented by legal counsel or any other representative of their choice throughout the contested case proceeding. The hearing will be conducted pursuant to the contested case procedures set out in Minn. Stat. §§ 15.0411 through 15.052 and procedural rules 9 MCAR §§ 2.201-2.299 and EA 500-520 (6 MCAR §§ 2.500-2.520). Where the procedural rules conflict, the hearing examiner's rules, 9 MCAR §§ 2.201-2.299, supersede the agency's rules, EA 500-520. Questions concerning the issues raised in this order or concerning informal disposition or discovery may be directed to Special Assistant Attorney General Dwight S. Wagenius, 720 American Center Building, 150 East Kellogg Boulevard, Saint Paul, Minnesota 55101, telephone (612) 296-8278.

The Minnesota Energy Agency has designated a person to facilitate citizen participation in the hearing process. That person is David L. Jacobson, who can be reached by mail or telephone at 980 American Center Building, Saint Paul, Minnesota 55101, (612) 296-7502.

The purpose of the hearing is to determine whether MAP (hereinafter sometimes the "applicant") has justified the need for the facility proposed in its application. The application is for the construction of an ethanol production facility which would be located at Mankato, Minnesota. The proposed facility would convert approximately 152,000 tons of starch annually into 20,000,000 gallons of anhydrous ethanol. The initial planned source of starch, no. 2 yellow corn, would generate approximately 78,000 tons of distillers' dried grains and solubles annually as a co-product of the alcohol production process.

The hearing will address, among other things, the accuracy of the applicant's forecast of demand for the type of energy that will be supplied by the proposed facility, the effect of the proposed facility upon the future adequacy, reliability, safety, or efficiency of energy supply to applicant's customers or the people of Minnesota and neighboring states, and alternative ways of meeting the demand. Determination must be made whether the consequences of granting the certificate of need outweigh the consequences of denying it, considering socioeconomic and environmental factors. In addition, a certificate of need cannot be granted if it has been demonstrated on the record that the proposed facility will fail to comply with relevant policies, rules and regulations of other state agencies, federal agencies, and local governments which have been considered during the hearing process.

Any person wishing to become a party to the proceeding must file a Notice of Intervention or a Petition to Intervene with the hearing examiner pursuant to 9 MCAR § 2.210 and EA 506. The notice of petition must be received by the hearing examiner on or before November 25, 1981, and a copy must be served on the Energy Agency (% Dwight Wagenius at his address, given above), on the applicant (at Muller Associates, Inc., 1500 South Lilac Drive, Suite 360, Minneapolis, Minnesota 55416, % David R. Kuechenmeister), and on known parties at time of intervention. Early intervention is strongly encouraged. Late interventions will be granted for good reasons. Parties must file a Notice of Appearance at least ten (10) days prior to the hearing. (The Notice of Appearance is not a substitute for a Petition to Intervene.)

A prehearing conference will be held pursuant to HE 213 A. at 1:30 p.m. on November 30, 1981, at the Office of Administrative Hearings, Room 300, 1745 University Avenue, Saint Paul, Minnesota. The applicant shall have its prefiled testimony available for distribution at the prehearing conference. Intervenor must attend the prehearing conference and be prepared to present a complete list of witnesses with prepared testimony or a summary of testimony to be presented. All parties must also present at the prehearing conference the exhibits to be sponsored and relied upon by their witnesses, clearly indicating the witness who will sponsor each exhibit.

Any person who wishes to give testimony, present other evidence or exhibits, or note his appearance at the hearing may do so, pursuant to 9 MCAR § 2.210 E., without having attained party status by intervention. Registration forms for such appearances will be available at the hearing. No special time has been specified for receipt of testimony from persons not parties to the proceeding. They should come to either hearing session on December 7, 1981.

All persons are advised that no factual information or evidence, except tax returns and tax reports, which is not part of the hearing record shall be considered by the hearing examiner or by the director in the determination of the above-entitled matter. Persons attending the hearing should bring all evidence bearing on the case including any records or other documents.

The procedural rules cited above are available for review at the Office of Administrative Hearings (9 MCAR §§ 2.201-2.299) and at the offices of the Energy Agency (EA 500-520). The applicant's application for a certificate of need and the substantive rules applicable to this matter, 6 MCAR §§ 2.1101-2.1186, are also available for review at the offices of the Energy Agency and at the Minnesota Valley Regional Library, Mankato, the Legislative Reference Library, State Capitol, Saint Paul, and the Environmental Conservation Library, Minneapolis. All rules may be purchased from the State Register and Public Documents Division, Department of Administration, 117 University Avenue, Saint Paul, Minnesota 55155, telephone (612) 297-3000. The cited procedural rules provide generally for the procedural rights and obligations of the parties including the right to advance notice of witnesses and evidence, the right to present evidence and cross-examine witnesses, the right to purchase a record or transcript, the right to object to petitions for intervention, the obligation to meet certain time limits, the obligation to file proposed findings and conclusions, and the right to file comments on and exceptions to the findings and recommendation of the Hearing Examiner.

Parties are entitled to issuance of subpoenas to compel witnesses to attend and produce documents and other evidence. Requests for subpoenas must be made of the hearing examiner in writing, pursuant to 9 MCAR § 2.216.

If persons have good reason for requesting a delay in the hearing, the request must be made in writing to the hearing examiner as soon as possible but at least five (5) days prior to the hearing. A copy of the request must be served on the agency and any other parties.

October 30, 1981

Mark Mason, Director  
Minnesota Energy Agency

## **Department of Energy, Planning and Development Energy Policy Development Council**

### **Notice of First Council Meeting**

The first meeting of the council is scheduled for November 16, 1:30 to 4:00 p.m. in Room 118 of the State Capitol. This first meeting will review and discuss the draft report to the legislature on the reorganization of statewide energy functions. Organization of the council will also be a topic of discussion.

## **Department of Natural Resources Parks and Recreation Division**

### **Notice of Intent to Solicit Outside Opinion Regarding the Proposed Concession Announcement for Hydroelectric Power Redevelopment at the Kettle River Dam Located in the City of Sandstone, Pine County**

Notice is hereby given that the Parks and Recreation Division is seeking information and opinions from sources outside the agency in preparing to make a concession announcement requesting proposals for redevelopment of hydroelectric generating capability at the Kettle River Dam located in the City of Sandstone, Pine County, consistent with Minnesota Statutes § 105.482,

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subd. 1. It is the intent of the Parks and Recreation Division that hydropower redevelopment at the site utilize modern technology so as to optimize interpretive possibilities for Banning State Park.

The Parks and Recreation Division requests information and comments concerning the term of the concession agreement, any constraints which should be imposed to protect public interests, and appropriate fee to be paid to the state for the developmental rights, and other matters affecting the subject of the proposed concession announcement.

Interested or affected persons or groups may submit written or oral information and comments to:

Milton Krona  
(612) 296-4778  
DNR Parks and Recreation Division  
444 Lafayette Road  
St. Paul, MN 55101

or

Craig Regalia  
(612) 296-0525  
DNR Waters Division  
444 Lafayette Road  
St. Paul, MN 55101

Information should be received by November 13, 1981, in order to be considered by the Parks and Recreation Division. Any written material received will become part of the record of this matter.

Steven G. Thorne  
Deputy Commissioner of Natural Resources

## Department of Transportation

### Amended Order and Notice of Street and Highway Routes Designated and Permitted to Carry the Gross Weights Allowed under Minn. Stat. § 169.832.

#### Order No. 66221

Whereas, the Commissioner of Transportation has made his Order No. 65851, which has been amended by Orders 65929, 65932, 65933, and 66058, designating and permitting certain street and highway routes, or segments of those routes, to carry the gross weights allowed under Minnesota Statutes § 169.832, and

Whereas, the commissioner has determined that the additional following routes, or segment of routes, should be designated to carry the gross weights allowed under Minnesota Statutes § 169.832.

It is hereby ordered that Commissioner of Transportation Order No. 65851 is amended this date by adding the following designated streets and highway routes, or segment of routes, as follows:

#### Trunk Highways

##### *Temporary Route*

T.H. 56 Kenyon to Hampton

##### *Seasonal Routes*

T.H. 59 Worthington to Fulda

#### County Roads

Becker CSAH 7 Fm TH #10 to Front St. (City of Lake Park)  
CSAH 10 Fm TH #87 to South County Line  
CSAH 13 Fm TH #10 to Eagle St. (City of Audubon)  
CSAH 30 Fm TH #87 to River Drive (City of Frazee)  
CSAH 84 Fm TH #59 to Soo Line R.R. (City of Callaway)

Martin Martin Co. Rd. 145 Fm CSAH 38 to T.H. 15

Ottertail CSAH 8 Fm TH #10 to the North City Limits of Perham  
CSAH 80 Fm Southeast Jct. T.H. #10 to the Northwest Jct. of T.H. #10

Dated this 2nd day of November, 1981

Richard P. Braun  
Commissioner of Transportation

**Waste Management Board****Proposed Hazardous Waste Processing Facility Area in the City of Grand Rapids and the Townships of Grand Rapids and Harris****Notice of Change of Location of Hearing**

The location of the hearing in the above-captioned matter originally scheduled to be held at Itasca Community College on December 9, 1981, has been changed to the Holiday Inn, 2301 Pokegama Avenue, Grand Rapids, Minnesota at the same time and on the same day as previously scheduled.

October 30, 1981

Robert G. Dunn, Chairman  
Waste Management Board

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