

State of Minnesota

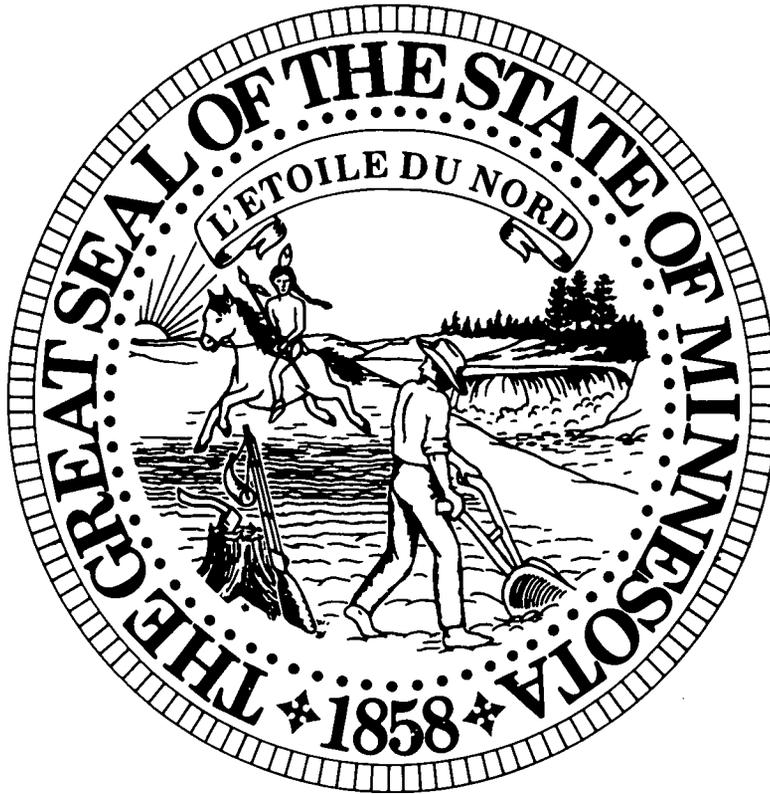
# STATE REGISTER

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Rules edition  
Published every Monday

27 November 1989

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# STATE REGISTER

## Judicial Notice Shall Be Taken of Material Published in the *State Register*

The *State Register* is the official publication of the State of Minnesota, containing executive and commissioners' orders, proposed and adopted rules, official notices, state and non-state contracts, contract awards, grants, supreme court and tax court decisions, and a monthly calendar of cases to be heard by the state supreme court.

A *Contracts Supplement* is published every Thursday and contains additional state contracts and advertised bids, and the most complete source of state contract awards available in one source.

### Printing Schedule and Submission Deadlines

Vol. 14 Issue Number	*Submission deadline for Adopted and Proposed Rules, Commissioners' Orders**	*Submission deadline for Executive Orders, Contracts, and Official Notices**	Issue Date
22	Monday 13 November	Monday 20 November	Monday 27 November
23	Monday 20 November	Monday 27 November	Monday 4 December
24	Monday 27 November	Monday 4 December	Monday 11 December
25	Monday 4 December	Monday 11 December	Monday 18 December

\*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 *State Register* editorial offices, 504 Rice Street, St. Paul, Minnesota 55103, (612) 296-4273.

The *STATE REGISTER* is published every Monday (Tuesday when Monday is a holiday) by the State of Minnesota, Department of Administration, Print Communications Division, 117 University Avenue, St. Paul, Minnesota 55155, pursuant to *Minnesota Statutes* § 14.46. A *STATE REGISTER Contracts Supplement* is published every Thursday. The Monday edition is the vehicle for conveying all information about state agency rulemaking, including official notices; hearing notices; proposed, adopted and emergency rules. It also contains executive orders of the governor; commissioners' orders; state contracts and advertised bids; professional, technical and consulting contracts; non-state public contracts; state grants; decisions of the supreme and tax courts; a monthly calendar of scheduled cases before the supreme court; and other announcements. The Thursday edition contains additional state contracts and advertised bids, and the most complete listing of contract awards available in one source.

In accordance with expressed legislative intent that the *STATE REGISTER* be self-supporting, the following subscription rates have been established: the Monday edition costs \$130.00 per year and includes an index issue published in August (single issues are available at the address listed above for \$3.50 per copy); the combined Monday and Thursday editions cost \$195.00 (subscriptions are not available for just the *Contracts Supplement*); trial subscriptions are available for \$60.00, include both the Monday and Thursday edition, last for 13 weeks, and may be converted to a full subscription anytime by making up the price difference. No refunds will be made in the event of subscription cancellation.

Both editions are delivered postpaid to points in the United States, second class postage paid for the Monday edition at St. Paul, MN, first class for the Thursday edition. Publication Number 326630 (ISSN 0146-7751).

Subscribers who do not receive a copy of an issue should notify the *STATE REGISTER* circulation manager immediately at (612) 296-0931. Copies of back issues may not be available more than two weeks after publication.

**Rudy Perpich, Governor**

**Sandra J. Hale, Commissioner  
Department of Administration**

**Stephen A. Ordahl, Director  
Print Communications Division**

**Robin PanLener, Editor**

**Paul Hoffman, Assistant Editor**

**Debbie George, Circulation Manager  
Bonita Karels, Staff Assistant**

## FOR LEGISLATIVE NEWS

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

### SENATE

**Briefly-Preview**—Senate news and committee calendar; published weekly during legislative sessions.

**Perspectives**—Publication about the Senate.

**Session Review**—Summarizes actions of the Minnesota Senate.

Contact: Senate Public Information Office  
Room 231 State Capitol, St. Paul, MN 55155  
(612) 296-0504

### HOUSE

**Session Weekly**—House committees, committee assignments of individual representatives; news on committee meetings and action. House action and bill introductions

**This Week**—weekly interim bulletin of the House.

**Session Summary**—Summarizes all bills that both the Minnesota House of Representatives and Minnesota Senate passed during their regular and special sessions.

Contact: House Information Office  
Room 175 State Office Building, St. Paul, MN 55155  
(612) 296-2146

# Contents

---

## **Minnesota Rules: Amendments & Additions**

Issues 14-22 inclusive (issues #1-13 appeared in #13) . . . 1302

## **Proposed Rules**

### **Commerce Department**

Real estate brokers . . . . . 1303

### **Public Employment Relations Board**

Public employees; arbitration . . . . . 1305

### **Public Utilities Commission**

Utility service disconnection during cold weather . . . . . 1313

### **Secretary of State**

State primary ballot . . . . . 1320

## **Commissioners' Orders**

### **Natural Resources Department**

Order #2361: Regulations for the taking of turkeys during the Spring of 1990 . . . . . 1321

## **Official Notices**

### **Finance Department**

Maximum interest rate for municipal obligations during November . . . . . 1326

### **Gaming Department**

Meeting of the State Lottery Board . . . . . 1326

### **Higher Education Facilities Authority**

Public hearing on proposal to issue revenue bonds for Northwestern College of Chiropractic . . . . . 1327

### **Human Services Department**

Hospital cost index . . . . . 1327

### **Revenue Department**

Opinion sought on rules for administration of the income and excise taxes: the filing of a single return for members of an affiliated group of corporations . . . . . 1328

## **State Contracts & Advertised Bids**

### **Administration Department**

**Materials Management Division:** Commodities and requisitions open for bid . . . . . 1328

**Print Communications Division:** Printing, typesetting, design and mailing services open for bid . . . . . 1329

## **Professional, Technical & Consulting Contracts**

### **Health Department**

Part-time consultant to provide pediatric nurse practitioner services . . . . . 1330

Proposals sought to study first responder units within the emergency medical services system . . . . . 1330

### **Human Services Department**

Contract for consultant to initiate implementation of ancillary care services for resident of state operated community residential facilities . . . . . 1331

### **Labor & Industry Department**

Proposals sought for technical management consultants . . . . . 1331

### **Water & Soil Resources Board**

Proposals sought for environmental agriculturalist education contracts . . . . . 1332

## **State Grants**

### **Corrections Department**

Funds available for statewide battered women services . . . . . 1334

Funds available for services and special projects for general crime victims . . . . . 1334

### **Housing Finance Agency**

Funds available for affordable housing for migrant laborers . . . . . 1334

Funds available for housing for low income persons . . . . . 1335

## **Supreme Court Calendar**

Cases scheduled to be heard during December 1989 . . . . . 1336

## **Supreme Court Decisions**

Decisions, opinions and orders filed Wednesday 22 November 1989 . . . . . 1338

**Announcements** . . . . . 1339

# Minnesota Rules: Amendments and Additions

## NOTICE: How to Follow State Agency Rulemaking in the State Register

The *State Register* is the official source, and only complete listing, for all state agency rulemaking in its various stages. State agencies are required to publish notice of their rulemaking action in the *State Register*. Published every Monday, the *State Register* makes it easy to follow and participate in the important rulemaking process. Approximately 75 state agencies have the authority to issue rules. Each agency is assigned specific *Minnesota Rule* chapter numbers. Every odd-numbered year the *Minnesota Rules* are published. This is a ten-volume bound collection of all adopted rules in effect at the time. Supplements are published to update this set of rules. Proposed and adopted emergency rules do not appear in this set because of their short-term nature, but are published in the *State Register*.

If an agency seeks outside opinion before issuing new rules or rule amendments, it must publish a NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION in the *Official Notices* section of the *State Register*. When rules are first drafted, state agencies publish them as **Proposed Rules**, along with a notice of hearing, or notice of intent to adopt rules without a hearing in the case of noncontroversial rules. This notice asks for comment on the rules as proposed. Proposed emergency rules and withdrawn proposed rules are also published in the *State Register*. After proposed rules have gone through the comment period, and have been rewritten into their final form, they again appear in the *State Register* as **Adopted Rules**. These final adopted rules are not printed in their entirety in the *State Register*, only the changes made since their publication as Proposed Rules. To see the full rule, as adopted and in effect, a person simply needs two issues of the *State Register*, the issue the rule appeared in as proposed, and later as adopted. For a more detailed description of the rulemaking process, see the *Minnesota Guidebook to State Agency Services*.

The *State Register* features partial and cumulative listings of rules in this section on the following schedule: issues 1-13 inclusive; issues 14-25 inclusive; issue 26, cumulative for issues 1-26; issues 27-38 inclusive; issue 39, cumulative for 1-39; issues 40-51 inclusive; and issue 52, cumulative for 1-52. An annual subject matter index for rules appears in August. For copies of the *State Register*, a subscription, the annual index, the *Minnesota Rules* or the *Minnesota Guidebook to State Agency Services*, contact the Print Communications Division, 117 University Avenue, St. Paul, MN 55155 (612) 297-3000 or toll-free in Minnesota 1-800-9747.

## Issues 14-22 (Issues 1-13 in #13)

### Rural Finance Authority

1650.0010-.0070 (adopted) .....	906
1651.0010-.0100 (adopted) .....	906

### Animal Health Board

1715.0385; .0550 (proposed) .....	1159
-----------------------------------	------

### Commerce Department

2660.0010-.0110 (proposed) .....	1123
2751.0100-.1200 (proposed) .....	942
2751.1300 (proposed amendments) .....	947
2800.0100; .7200; 2805.0100; .0900; .1200; .1700 (proposed) .....	1303

### Dentistry Board

3100.0100; .1400; .2000; .3300; .3400; .3500; .4100; .6200; .7000; .8700 (adopted) .....	1214
---	------

### Vocational Technical Education Board

3700.1100; .1400; .1410; .1415; .1420; 3709.0355; .0360 (proposed) .....	1214
---	------

### Trade & Economic Development Department

4300.0100; .0200; .1100; .1101; .1200; .1400 (adopted) .....	1098
4300.0100 s. 16, 24 (repealed) .....	1098

### Health Department

4620.1900-.2500 (proposed emergency) .....	1133
4630.1900; .2000; .2210 (proposed) .....	1091 and 1176
4630.2000 (withdrawn) .....	1091
4670.0100; .0600; .0610; .1600; .1980; .2300 (adopted) .....	1008
4670.0620 (repealed) .....	1008
4670.1320; .4200; .4210; .4220; .4230; .4240 (proposed) .....	1037
4670.3400; .3410; .3420; .3430; .3440; .3450; .3460 (proposed repealer) .....	1037
4685.0100; .0805; .0815; .0900; .0905; .0910; .0915; .0925; .0930; .0935; .0940; .0950; .1910; .1940; .1950; .1980; .2100; .2250; .3000 (adopted) .....	901
4685.3300 s. 1, 2, 4, and 5 (repealed) .....	901

4685.0100; .1100; .1105; .1110; .1115; .1120; .1125; .1130; .1700; .1900; .2100 (adopted) .....	903
4685.1800 (repealed) .....	903
4692.0010-.0045 (adopted) .....	1132
4705.1600 (adopted) .....	1067
4745.0010-.0060 (proposed) .....	1160

### Higher Education Coordinating Board

4830.7000-.7900 (adopted emergency) .....	1138
---	------

### Housing Finance Agency

4900.2000; .2500 (adopted) .....	1214
----------------------------------	------

### Labor & Industry Department

5210.0010 (adopted) .....	1177
---------------------------	------

### Pollution Control Agency

7001.0520; 7045.0020; .0075; .0120; .0121; .0255; .0290; .0292; .0454; .0526; .0558; .0574; .0626 (proposed) .....	1203
7001.0650; 7045.0065; .0125; .0371 (adopted) .....	976
7005.5010; .5015; .5020; .5025; .5030; .5035; .5040; .5045; .5050; .5055; .5060; .5065; .5070; .5075; .5080; .5085; .5090; .5095; .5100; .5105 (adopted) .....	905
7046.0020 (proposed) .....	1210

### Public Employment Relations Board

7320.0010-.0120 (proposed) .....	1305
----------------------------------	------

### Public Safety Department

7513.0100; .0200 (adopted) .....	1132
7520.0100; .0200; .0350; .0680 (adopted) .....	1008
7520.0650; .1000; .1100 (proposed) .....	1053
7520.0680 (repealed) .....	1008

### Public Utilities Commission

7820.1500; .1600; .1700; .1800; .1900; .2000; .2010; .2100; .2150; .2200; .2300 (proposed) .....	1313
7825.2390; .2400; .2500; .2600; .2700; .2800; .2810; .2830; .2900; .2910; .2920 (adopted) .....	977
7825.2400 s. 6, 14; .2900 s. 2, 3, 4; .3000 (repealed) .....	977

### Minnesota Racing Commission

7869.0100; .7873.0110; .0120; .0140; .0150; .0190; .0191; .0300; 7876.0110; 7877.0120; .0170; .0175; .0185; 7878.0120;	
---	--

7883.0130; .0140; .0150; 7890.0140; 7892.0120; 7895.0100;  
.0125; .0250; .0275; .0300; .0350; 7897.0150; .0160; .0170  
(proposed) ..... 1057

**Secretary of State**

8250.0350; .1400 (proposed) ..... 1320

**Unlicensed Mental Health Service Providers Board**

9000.0050-.0190 (proposed) ..... 1170

**Veterans Department**

9050.0010-.0900 (proposed) ..... 948 and 1096

9050.0010-.0900 (adopted emergency) ..... 1178

**Human Services Department**

9500.1100 (proposed) ..... 1005

9500.1272 (proposed) ..... 892

9500.2060; .2100; .2140; .2340; .2380; .2420; .2440; .2500;  
.2580; .2640; .2680; .2700; .2740; .2800; .2820;  
.2880 (withdrawn) ..... 1066

9500.2060 s.118 (proposed repealer withdrawn) ..... 1066

9510.1020; .1040; .1050; .1070; .1110 (proposed) ..... 1199

9575.0010; .0020; .0090; .0380; .0530; .0620;  
.0720 (adopted) ..... 1008

9575.0350; .1500 (proposed) ..... 1042

9575.0090 s.2, 3 (repealed) ..... 1008

## Proposed Rules

Pursuant to Minn. Stat. §§ 14.22, 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 25 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 the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 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 §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

## Department of Commerce

### Proposed Permanent Rules Relating to Real Estate Brokers

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

**NOTICE IS HEREBY GIVEN** that the State Department of Commerce intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statutes* § 45.023 (1988).

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Scott Borchert  
Department of Commerce  
500 Metro Square Building

St. Paul, Minnesota 55101  
(612) 296-9431

**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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The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed. A copy of the proposed rule is attached to this notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Scott P. Borchert upon request.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rule, must submit the written request to Scott P. Borchert.

Dated: 14 November 1989

Michael A. Hatch  
Commissioner of Commerce

### Rules as Proposed

#### 2800.0100 DEFINITIONS.

[For text of subs 1 to 5, see M.R. 1989]

Subp. 6. **Override clause.** "Override clause" means a provision in a listing agreement or similar instrument allowing the broker to receive a commission when, after the listing agreement has expired and, if the seller has not executed a listing contract with another licensed real estate broker, the property is sold to persons with whom a broker or salesperson had negotiated or exhibited the property prior to the expiration of the listing agreement.

[For text of subs 7 to 14, see M.R. 1989]

#### 2800.7200 COURSE APPROVAL.

[For text of subs 1 to 6, see M.R. 1989]

Subp. 7. **Allocation of course hours.** Wherever the requirements of this chapter indicate that the total hours required for a particular course are to be allocated among various topics with specific hours assigned to the various topics, that allocation shall be deemed to be a suggested guideline for such allocation and not a mandate. The commissioner may approve courses with the different allocations of hours if the commissioner believes that the requirements have been met.

#### 2805.0100 DEFINITIONS.

[For text of subs 1 to 5, see M.R. 1989]

Subp. 6. **Override clause.** "Override clause" means a provision in a listing agreement or similar instrument allowing the broker to receive a commission when, after the listing agreement has expired and, if the seller has not executed a listing contract with another licensed real estate broker, the property is sold to persons with whom a broker or salesperson had negotiated or exhibited the property prior to the expiration of the listing agreement.

[For text of subs 7 to 14, see M.R. 1989]

#### 2805.0900 PENALTY FOR NONCOMPLIANCE WITH STANDARDS OF CONDUCT.

The methods, acts, or practices ~~set forth~~ in parts 2800.1600, and 2805.1000 to 2805.1800 are standards of conduct governing the activities of real estate brokers and salespersons under *Minnesota Statutes*, chapter 82. Failure to comply with these standards shall constitute grounds for license denial, suspension, or revocation, or for censure of the licensee.

Nothing contained in this part limits the authority of the commissioner to take formal action against a broker or salesperson for failure to comply with a standard of conduct not specifically described in this part.

#### 2805.1200 LISTING AGREEMENTS.

[For text of subpart 1, see M.R. 1989]

Subp. 2. **Contents.** All listing agreements shall be in writing and shall include:

[For text of items A to E, see M.R. 1989]

F. information regarding an override clause, if applicable, including a statement to the effect that the override clause will not be effective;

(1) unless if the licensee supplies has not supplied the seller with a protective list within 72 hours after the expiration of the listing agreement; and or

(2) if the seller has entered into another listing contract with another licensed real estate broker;

[For text of item G, see M.R. 1989]

[For text of subp 3, see M.R. 1989]

Subp. 4. **Override clauses.** Licensees shall not seek to enforce an override clause;

A. unless if a protective list has not been furnished to the seller within 72 hours after the expiration of the listing agreement;

or

B. if the seller has entered into another listing contract with another licensed real estate broker.

Subp. 5. **Protective lists.** A broker or salesperson has the burden of demonstrating that each person on the protective list has, during the period of the listing agreement, either made an affirmative showing of interest in the property by responding to an advertisement or by contacting the broker or salesperson involved or has been physically shown the property by the broker or salesperson. For the purpose of this part the mere mailing or other distribution by a licensee of literature setting forth information about the property in question does not, of itself, constitute an affirmative showing of interest in the property on the part of a subsequent purchaser.

The protective list shall contain the following notice in boldface type:

**"IF YOU RELIST WITH ANOTHER BROKER WITHIN THE OVERRIDE PERIOD AND THEN SELL YOUR PROPERTY TO ANYONE WHOSE NAME APPEARS ON THIS LIST, YOU COULD BE LIABLE FOR FULL COMMISSIONS TO BOTH BROKERS. IF THIS NOTICE IS NOT FULLY UNDERSTOOD, SEEK COMPETENT ADVICE YOU WILL NOT BE OBLIGATED TO PAY THE LICENSEE A FEE OR COMMISSION UNDER THIS AGREEMENT IF YOU HAVE EXECUTED ANOTHER LISTING AGREEMENT PURSUANT TO WHICH YOU ARE OBLIGATED TO PAY A FEE OR COMMISSION TO ANOTHER LICENSEE FOR THE SALE, LEASE, OR EXCHANGE OF THE LISTED REAL PROPERTY."**

The protective list need not contain this notice if the written listing agreement specifically states that after its expiration the seller will not be obligated to pay the licensee a fee or commission if the seller has executed another valid listing agreement pursuant to which the seller is obligated to pay a fee or commission to another licensee for the sale, lease, or exchange of the real property in question.

#### **2805.1700 COMPENSATION.**

[For text of subps 1 and 2, see M.R. 1989]

Subp. 3. **Limitation on broker when transaction not completed.** When the owner fails or is unable to consummate a real estate transaction, through no fault of the purchaser, the listing broker may not claim any portion of any trust funds deposited with the broker by the purchaser, ~~absent a separate agreement with the purchaser.~~

## **Public Employment Relations Board**

### **Proposed Permanent Rules Relating to Public Employees; Arbitration**

#### **Notice of Intent to Adopt Rules Without a Public Hearing and Notice of Intent to Adopt Rules With a Public Hearing if Twenty-Five or More Persons Request a Hearing**

**NOTICE IS HEREBY GIVEN** that the Minnesota Public Utilities Commission (Commission) intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes* §§ 14.22 to 14.28 (1988). The Commission's authority to adopt the rule is set forth in *Minnesota Statutes* § 216B.08 (1988) and *Minnesota Statutes* § 216B.095 (1989 Supp.).

All persons have until 4:30 p.m. on Wednesday, December 27, 1989, to submit comments in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. PLEASE USE DOCKET NO. G,3-999/R-86-322 ON ALL CORRESPONDENCE.

Any person may make a written request for a public hearing on the rules within the comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed.

**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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If a public hearing is required, the Commission will proceed pursuant to *Minnesota Statutes* §§ 14.131 to 14.20 (1988). PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON WEDNESDAY, JANUARY 17, 1990, AND, IF NECESSARY, THURSDAY, JANUARY 18, 1990, IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING OF THESE SAME RULES PUBLISHED IN THIS *STATE REGISTER* AND MAILED TO PERSONS REGISTERED WITH THE COMMISSION. To verify whether a hearing will be held, please call the Commission between January 1, 1990, and January 5, 1990 at (612) 296-7124.

Comments or written requests for a public hearing must be submitted to:

Dan Lipschultz  
Minnesota Public Utilities Commission  
780 American Center Building  
150 East Kellogg Boulevard  
St. Paul, Minnesota 55101  
(612) 296-9617

The proposed rules may be modified if the modifications are supported by data and views submitted to the Commission and do not result in a substantial change in the proposed rules as noticed.

The proposed rules, if adopted, will amend the Commission's disconnection during cold weather rules, *Minnesota Rules*, parts 7820.1500 to 7820.2300. The proposed rules are published below. One free copy of the rules is available upon request from the Commission by contacting the Commission's receptionist, Kris Kline, at the above address or by calling (612) 296-7124.

**A STATEMENT OF NEED AND REASONABLENESS** that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from the Commission by contacting the Commission's receptionist, Kris Kline, at the above address or by calling (612) 296-7124.

**YOU ARE HEREBY ADVISED**, pursuant to *Minnesota Statutes* § 14.115 (1988 and 1989 Supp.), "Small business considerations in rulemaking," that the proposed rules will affect small utility businesses. The proposed rules require utilities to provide customer notices, allow eligible customers to pay ten percent of monthly income to retain service, allow eligible customers to enter a reconnection plan, and provide for various customer and utility appeals.

Pursuant to *Minnesota Statutes* § 14.11, subd. 1 (1988), the Commission estimates that the total cost to all local public bodies in the state to implement the rules for the two years immediately following adoption of the rules will not exceed \$100,000 in either of the two years.

The adoption of these rules by the Commission will not have a direct impact on agricultural land. Therefore, *Minnesota Statutes* § 14.11, subd. 2 (198) is inapplicable to this rulemaking proceeding.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 rule submitted to the Attorney General, must submit a written request to Dan Lipschultz at the above address.

Lee Larson  
Acting Executive Secretary

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

**NOTICE IS HEREBY GIVEN** that the State Public Employee Relations Board intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing, *Minnesota Statutes*, sections 14.22 to 14.29. The statutory authority to adopt the rule is *Minnesota Statutes* 179A.05, subd. 6, which requires the Board to adopt rules pursuant to Chapter 14 relative to the administration of its arbitrator roster.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reasons for the request and any change proposed. If a public hearing is required the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

Comments or written requests for public hearing must be submitted to:

Jermaine Foslien, Executive Director  
Public Employment Relations Board  
1380 Energy Lane, Suite Three  
St. Paul, Minnesota 55108  
(612) 649-5450

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

**A STATEMENT OF NEED AND REASONABLENESS** that describes the need for and the reasonableness of each provision of the proposed rule and identifies that data and information relied upon to support the proposed rule has been prepared and is available from Jermaine Foslien, Executive Director, Public Employment Relations Board, 1380 Energy Lane, Suite Three, St. Paul, Minnesota, 55108.

**YOU ARE HEREBY ADVISED** pursuant to *Minnesota Statutes*, section 14.115 (1988) that the proposed rules have an impact on small business. The proposed rules set forth the requirements for enpanelment, referral, conduct and removal of persons on the arbitrator roster maintained by the board. Small businesses are impacted by the proposed rules should they apply and are appointed to serve on the Board's arbitrator roster. The requirements of these proposed rules are similar to the requirements of other state and federal agencies which empanel labor arbitrators and, therefore, do not impose additional requirements of a substantive or burdensome nature than would normally be faced by persons engaged in this profession. The agency has considered all of the provisions of *Minnesota Statutes*, section 14.115, subd. 2, in reducing the impact of these rules upon small business, has solicited opinions, and is providing a copy of this notice and the proposed rules to all small businesses known to be affected by the rules. *Minnesota Statutes* 14.11 is not applicable as the proposed rules do not require expenditure of public money by local public bodies.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rule, must submit the written request to Jermaine Foslien, Executive Director, Public Employment Relations Board, 1380 Energy Lane, Suite Three, St. Paul, Minnesota 55108.

Dated: 8 November 1989

Jermaine Foslien  
Executive Director

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

#### **7320.0010 APPLICATION.**

This chapter applies to the impanelment, referral, conduct, and removal of persons on the arbitrator roster maintained by the board. This chapter applies to all persons on the arbitrator roster, to all applicants for placement on the roster, to all users of the roster, and to all arbitration proceedings conducted as the result of a referral from the roster.

#### **7320.0020 POLICY.**

It is the policy of the state of Minnesota to promote orderly and constructive relationships between labor and management and to avoid unresolved disputes that can be injurious to the public as well as the parties. The use of collective bargaining procedures and binding arbitration to resolve grievances and certain interest disputes between labor and management are specifically encouraged. This chapter shall be liberally construed to effectuate these policies and the provisions of *Minnesota Statutes*, chapter 179A.

#### **7320.0030 DEFINITIONS.**

Subpart 1. **Applicant.** "Applicant" means an individual who is seeking appointment to the roster.

Subp. 2. **Arbitrator roster or roster.** "Arbitrator roster" or "roster" means a listing of persons determined by the board to be qualified and available for referral as an arbitrator of labor disputes under this chapter.

Subp. 3. **Board.** "Board" means the Public Employment Relations Board.

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## Proposed Rules

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Subp. 4. **Chair.** "Chair" means the chair of the Public Employment Relations Board.

Subp. 5. **Close of the record.** "Close of the record" means the last date of hearing or the final date for posthearing submission of written material, if any, whichever is later.

Subp. 6. **Executive director.** "Executive director" means the executive director of the Public Employment Relations Board.

Subp. 7. **Issuance of award.** "Issuance of award" means the date an award is signed and issued by the arbitrator. If an award is undated, the date of receipt by the board is considered the date of issuance for purposes of this chapter.

Subp. 8. **Mock award.** "Mock award" means any public sector interest and grievance arbitration award written by an applicant while serving as an intern to an arbitrator. These awards are solely written to complete the requirements of part 7320.0080 and are not binding upon the parties.

Subp. 9. **Panel.** "Panel" means a listing of roster members compiled by the board for referral to the parties, from which they may subsequently select an arbitrator.

Subp. 10. **Party or parties.** "Party" or "parties" means an employer or exclusive representative directly involved and affected by a dispute for which a roster member has been requested or referred, or a designated representative.

### 7320.0040 COMPUTATION OF TIME.

In computing any period of time prescribed or allowed by this chapter, the day of act or event from which the designated period of time begins to run shall not be included. The last day of the time period so computed shall be included unless it is a Saturday, Sunday, or legal holiday. For any time period of ten days or less, Saturdays, Sundays, or legal holidays shall not be included in computing the period of time.

### 7320.0050 ROLE OF BOARD.

The role of the board under this chapter is limited to matters relating to the appointment of persons to and removal or referral of names from the arbitrator roster. The board has no role, responsibility, or authority under this chapter to:

- A. compel parties to agree to arbitrate;
- B. enforce an agreement to arbitrate;
- C. compel parties to appear before an arbitrator;
- D. influence, alter, enforce, or set aside the decisions or awards of arbitrators; or
- E. compel, deny, or modify the payment of fees and expenses to an arbitrator.

### 7320.0060 STATUS OF ARBITRATORS.

Persons listed on the roster, whether or not selected or appointed to hear matters under this chapter, do not become employees or agents of the state of Minnesota or the board by virtue of their placement on the roster or their subsequent selection or appointment as an arbitrator. Except for the reporting and performance requirements of this chapter, the arbitrator's relationship is solely with the parties to the dispute. Appointment by the board to the arbitrator roster is not an inherent right to continued service on the roster.

### 7320.0070 ARBITRATOR QUALIFICATIONS.

Subpart 1. **Roster.** The Public Employment Relations Board shall maintain a roster of arbitrators qualified to arbitrate grievance and interest cases. To qualify for appointment to the roster, an applicant must meet the qualifications of this part and complete the requirements of part 7320.0080. The arbitrator roster shall not exceed more than 40 arbitrators.

Subp. 2. **Conflict of interest.** An arbitrator must not currently be nor within the past six months been an advocate of public or private sector employers or employer organizations, or public or private sector employees or employee organizations. An advocate is an individual who represents an organization in matters of personnel and labor relations, including but not limited to: unit determination and exclusive representation, collective bargaining, arbitration, unfair labor practices and labor-related litigation, wage and benefit administration, equal employment opportunity, unemployment compensation, and occupational health or safety standards.

Subp. 3. **Knowledge and abilities.** An arbitrator must have:

- A. knowledge of the Minnesota Public Employment Labor Relations Act and other labor law relevant to the public sector;
- B. knowledge of Bureau of Mediation Services and Public Employment Relations Board rules regarding grievance and interest arbitration;
- C. knowledge of hearing procedures and the ability to conduct arbitration hearings and to develop an accurate record of proceedings;
- D. knowledge of principles of arbitrator ethics;
- E. knowledge of labor relations concepts, principles and practices about contract negotiation, contract administration, and grievance and interest arbitration;

- F. knowledge of limits of arbitrator authority;
- G. knowledge of public sector finance;
- H. ability to calculate costs of wage and fringe benefits and improvements;
- I. ability to write clear concise arbitration awards based on logical rationale; and
- J. ability to produce a written award within reasonable time limits.

**7320.0080 ARBITRATOR APPLICANT REQUIREMENTS AND APPOINTMENT PROCEDURES.**

Subpart 1. **How to make application.** An individual may obtain an application for appointment to the arbitrator roster from the board's executive director. An applicant must provide complete and accurate information on the application form and during the interview. Failure to do so shall result in rejection for appointment to the roster. An applicant attempting to influence board or staff members regarding appointment to the roster through means other than the formal appointment procedure will be rejected and barred from reapplying for one year.

Subp. 2. **Category placement of applicant.** Upon receipt of a completed application, the board must review the application and place the applicant in one of the following three categories:

- A. highly qualified;
- B. moderately qualified; or
- C. inexperienced.

Each application will be evaluated for evidence of the applicant's competence and proficiency in those areas of arbitrator qualifications cited in part 7320.0070. Placement in a specific category is determined by the extent of labor relations experience and expertise demonstrated by the applicant. An applicant must be experienced in public sector labor relations to be placed in the highly qualified or moderately qualified category. If an applicant does not have experience in the public sector, the applicant must be placed in the inexperienced category.

Subp. 3. **Appeal of category placement.** Within ten working days after receipt of the board's notification of the category into which the applicant has been placed, the applicant may appeal that designation in writing to the board. If an appeal is made, the applicant must be interviewed before the board and the board will decide the appeal.

Subp. 4. **Category placement requirements.** Once placement is determined, the applicant will be required to submit to the board a number of actual or mock public sector arbitration awards as specified in items A to C.

A. A highly qualified applicant must submit a total of three awards, two of which must be grievance arbitration awards and one of which must be an interest arbitration award.

B. A moderately qualified applicant must submit a total of six awards, three of which must be grievance arbitration awards and three of which must be interest arbitration awards.

C. An inexperienced applicant must submit a total of nine awards, five of which must be grievance arbitration awards and four of which must be interest arbitration awards.

If the awards by the applicant are mock arbitration awards written while an intern to an arbitrator, the applicant must have interned with a minimum of three arbitrators.

Subp. 5. **Notice to arbitrators.** The board will advise arbitrators, who serve on the roster, by letter when an arbitrator has been placed into one of the three applicant categories and is thereby ready to serve an internship under the board's procedures.

Subp. 6. **Interview of applicant.** The board will schedule an applicant for an interview to determine appointment to the roster upon receipt of a written statement from the applicant that the requirements of the applicant's respective category have been completed and written copies of the actual or mock arbitration awards. The awards will be returned to the applicant and not filed in the board's office. If applicable, the board must also be in receipt of any written evaluations by arbitrators of the applicant's performance as an intern before an interview can be scheduled. It is the responsibility of the applicant to request the arbitrators to forward to the board the written evaluations. In the interview, the board will inquire as to whether the applicant is qualified to serve as an arbitrator pursuant to the criteria set forth in part 7320.0070.

Subp. 7. **Appointment to roster.** After the interview, the board must vote as to whether the applicant is qualified to serve as an

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## Proposed Rules

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arbitrator on the roster. A majority vote is required for appointment to the roster. Applicants must be notified by mail of their appointment or rejection. Those rejected may reapply for consideration no sooner than six months following notification of rejection.

### 7320.0090 ARBITRATOR CONDUCT, STANDARDS, AND RESPONSIBILITIES.

Subpart 1. **Scope.** The criteria and standards in subparts 2 to 13 apply to all persons on the roster. Arbitrators must continuously demonstrate competence in labor relations, including procedural and substantive matters, integrity, and impartiality.

Subp. 2. **Professional and ethical responsibilities.** Except as otherwise provided in this chapter, the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes approved and published by the National Academy of Arbitrators is incorporated by reference and is applicable to and shall govern the professional behavior of persons appointed to the roster. The code was adopted in 1975 and amended in 1985 and is not subject to frequent change. The code is available for inspection and copying at the Minnesota State Law Library, 117 University Avenue, Saint Paul, Minnesota.

Subp. 3. **Arbitrator solicitation.** Arbitrators shall not solicit parties for selection to cases. An arbitrator must uphold the integrity of the profession and must not advertise or solicit arbitration assignments. To discourage solicitation, the board must not notify arbitrators that their names have been placed on a list submitted to the parties for the selection of an arbitrator or panel of arbitrators.

Subp. 4. **Use of assistants or associates.** An arbitrator may, without prior consent of the parties, delegate research, clerical, and drafting responsibilities to an assistant. However, the assistant may not be delegated decision-making functions or authority, and the arbitrator retains responsibility and accountability for all aspects of the award and its handling. An arbitrator may, if unable to handle all decision-making aspects of a case in a timely manner, suggest to the parties an allocation of responsibility between the arbitrator and an assistant or associate. The parties may, but are not obligated to, accept such a suggestion.

Subp. 5. **Timeliness.** It is the responsibility of the arbitrator to schedule time commitments in a manner consistent with the needs of the parties and the expeditious handling of disputes. Assignment to an arbitration case must be declined if the arbitrator is unable to schedule and conduct a hearing in a timely manner. When scheduling problems arise, priority should be given to cases in process. The arbitrator must adhere to the time limits of the parties' arbitration procedure. If, after accepting and hearing a case, the arbitrator discovers that it is not possible to render an award within the time limits specified in the arbitration procedure, the arbitrator shall notify each party in writing of the reason for delay and shall seek approval for establishing an alternative date for completion of the award.

Subp. 6. **Required disclosures.** Arbitrators are responsible for providing the board with complete and accurate data and to keep the board informed of changes in personal status and availability to arbitrate cases. Revisions regarding changes in biographical and availability data must be submitted to the board's executive director by the arbitrator as changes occur. Before acceptance of an arbitration case, an arbitrator must disclose to the parties and the executive director of the board any personal or professional relationships to the parties or other circumstances that might reasonably raise a question regarding the arbitrator's impartiality. If the circumstances requiring disclosure are not known to the arbitrator before acceptance of the case, disclosure must be made when circumstances become known to the arbitrator. An arbitrator shall withdraw from an arbitration at any time the arbitrator perceives a conflict of interest. Arbitrators shall file written requests with the board designating the cases for which they do not want their names proposed on arbitration panels due to a conflict of interest. The requests must be reviewed and approved by the board.

Subp. 7. **Prehearing conduct.** An arbitrator or panel, upon notification by the board of appointment to an arbitration case, must communicate with the parties as soon as possible to arrange for the date, time, and location of the hearing and any other necessary procedural matters. All prehearing communications between the arbitrator and the parties must be done in a manner that promotes complete impartiality by the arbitrator. It is the arbitrator's responsibility to ensure that copies of any prehearing correspondence between the arbitrator and either party are made available to the other party.

Subp. 8. **Hearing conduct.** The parties are entitled to a hearing that is conducted in a fair and impartial manner, allowing the parties adequate opportunity to present their respective evidence and argument. The arbitrator is responsible for conducting an orderly proceeding and may:

- A. restate the substance of issues or arguments for clarification;
- B. encourage stipulations of fact;
- C. obtain additional pertinent information by questioning the parties' representatives or witnesses; and
- D. request that the parties verify or provide additional evidence, either at the hearing or by subsequent filing.

An accurate record must be developed by the arbitrator. The arbitrator may, with notice to the parties, use a tape recorder to supplement notetaking. Notes, recorded tapes, and other records of the hearing developed by the arbitrator shall remain the property of the arbitrator and must be retained by the arbitrator for 90 days after delivery of a copy of the award to the parties. The provision of an official transcript must be arranged for by the arbitrator if either party requests one before the hearing. The transcript must be paid for by the party or parties requesting it. A copy of the official transcript must be submitted to the arbitrator and made available to the parties.

Subp. 9. **Posthearing conduct.** The purpose of posthearing briefs is to discuss and summarize evidence presented at the hearing and to present arguments. An arbitrator may permit the parties to file posthearing briefs and shall determine a time limit for filing. The arbitrator will determine whether briefs that are filed late are acceptable. The arbitrator shall inform the parties that submission of new evidence that was not introduced at the hearing will not be accepted. Each party shall be required by the arbitrator to submit a copy of its brief to the other party.

Subp. 10. **Discussion of a case.** While an arbitrator is considering a case for which a decision is pending, discussion of the case by the arbitrator must be limited to situations where advance approval or consent of both parties is obtained or where identity of the parties and details of the case are sufficiently obscured to eliminate any realistic probability of identification. An exception is the discussion of a problem in a case with another arbitrator or the arbitrator's assistant as provided in subpart 4; however, the arbitrator selected to hear the case retains sole responsibility and authority to render the award.

Subp. 11. **Jurisdiction.** In ruling on a grievance, an arbitrator must comply with the limitations of authority found in a labor agreement. In interest arbitration cases, the arbitrator or arbitration panel has jurisdiction to rule on the issues or the arbitrability of the issues certified to impasse by the commissioner of the bureau of mediation services. At any stage of interest or grievance arbitration proceedings, the parties may settle some or all of the issues. In those circumstances, the agreement of the parties must be incorporated by the arbitrator into the award. The jurisdiction of the arbitrator continues until all issues certified to impasse have been resolved.

Subp. 12. **Rendering an award.** In deciding and writing the award, an arbitrator shall consider the following principles:

- A. the necessity for adequately addressing the issues on a rational basis;
- B. the desirability of brevity;
- C. the use of a style that can be readily understood by the parties;
- D. the need for clarity; and
- E. the avoidance of discourse not essential to resolution of the issues.

The board encourages the parties to submit written evaluations of the arbitrator's awards. The arbitrator must not discuss an award with either party until after the award has been simultaneously issued to both parties. The arbitrator's responsibility does not extend to the enforcement of an award. Request for clarifications or interpretation of an award shall be made by a party or parties in conformity with *Minnesota Statutes*, chapter 572.

Subp. 13. **Filing copies of awards.** Members of the roster shall provide the board with a copy of all arbitration awards for which they have been selected and the interest or grievance arbitration case has originated with the board.

#### **7320.0100 REMOVAL PROCEDURE.**

Subpart 1. **Grounds for removal.** An arbitrator must be removed from the arbitrator roster if the arbitrator requests to be withheld from proposal for inclusion on arbitration panels for more than six months. Arbitrators so removed may reapply for placement on the list in accordance with the board's regular qualification procedures.

Arbitrators may be removed from the roster on any of the grounds in items A to F:

- A. failure to comply with board arbitration statutes or rules;
- B. failure to meet, on a continuing basis, the board's arbitrator qualifications;
- C. failure to provide the board with complete and accurate biographical data and to keep the board informed of changes in personal status and availability to arbitrate cases;
- D. refusal to comply with requests from the board concerning arbitration activities and potential conflicts of interest;
- E. delinquency in submitting awards. An award is delinquent, regardless of any waiver of the parties, if 45 calendar days have elapsed since the close of the record; or
- F. unacceptability to the parties, which may be evidenced by a low rate of selection over a period of years.

In reviewing the arbitrator's low rate of selection, the board must take into consideration factors such as the date of placement on the roster and unavailability due to illness.

Subp. 2. **Notice of removal and suspension.** An arbitrator who is being considered for removal must be provided written notice to that effect at least 45 calendar days before the board's hearing on the removal. The notice must include: the board's basis for removal;

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## Proposed Rules

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provide an opportunity for written response; and the time and date of the board's hearing to consider removal. An arbitrator may provide a written response to the board about the removal. The written response must be received by the board within 30 calendar days of the date of notice for removal. An arbitrator who is being considered for removal may be immediately suspended from the roster upon a flagrant violation of this chapter and it is in the best interest of the parties to suspend the arbitrator from further referrals. Notice of the immediate suspension must be included in the notice of consideration for removal from the arbitrator roster.

Subp. 3. **Hearing.** Before removing an arbitrator from the roster, the board must provide a hearing to consider and decide whether to remove the arbitrator. At the hearing, the arbitrator must be provided an opportunity to orally respond to the board's basis for removal. The decision of the board is final. Written notice of the decision must be provided to the arbitrator, including the reasons for the board's removal.

Subp. 4. **Removal from an arbitration case.** An arbitrator who has been removed from the roster may also be removed from an arbitration case if either party petitions the board for the arbitrator's removal from the case. The petition must contain a written request for removal and a concise statement as to why the party seeks the arbitrator's removal from the case. The board must review the petition and provide notice by certified mail to the arbitrator that removal from the arbitration case is being considered. If the arbitrator does not respond within ten calendar days from the certified mailing date, the arbitrator will be removed from the case, and be notified that a new panel of arbitrators will then be submitted to the parties so that the selection process can begin and another arbitrator selected to hear and decide the matter. If a timely response is received from the arbitrator, the board will review and decide whether continued assignment to the case would be in the best interests of the parties. The chair may act on behalf of the board if the reasons for removal from the arbitration case require an expeditious decision. The board is not liable for any costs relating to the case from which the arbitrator has been removed.

### 7320.0110 RANKING OF ARBITRATORS.

On an annual basis, the board must review statistics showing the selection rates of its arbitrators, and rank the arbitrators according to their usage by the number of times proposed and the number of times selected.

### 7320.0120 ARBITRATION PANELS.

Subpart 1. **Random selection.** Arbitration panels shall be created by a random selection process. Each arbitration panel shall contain a mix of frequently-used, moderately-used, and infrequently-used arbitrators, pursuant to the ranking list determined in the board's review. The panels shall be drawn according to subparts 2 to 6.

Subp. 2. **Interest arbitration.** If the arbitrator list contains an even number of names, panels will be drawn up using every fifth name, every seventh name, and every ninth name on the ranking list. If the list contains an odd number of arbitrators, panels will be drawn up using every fourth name, every sixth name, and every eighth name on the ranking list.

Subp. 3. **Grievance arbitration.** If the arbitrator list contains an even number of names, panels will be drawn up using every ninth name, every 13th name, and every 11th name on the ranking list. If the list contains an odd number of arbitrators, panels will be drawn up using every eighth name, every tenth name, and every 12th name on the ranking list.

Subp. 4. **Assignment of panels to pending cases.** Each panel shall be assigned a number. To propose an arbitration panel, a number will be randomly selected and assigned to a pending case. That number will not be available again for selection until all numbers have been exhausted.

Subp. 5. **Replacements of arbitration panels.** The board must replace arbitration panels under the following circumstances.

A. In proposing an arbitration panel, if the number which has been selected for a particular case is assigned to a panel which includes an arbitrator who has on file a written notice of a conflict of interest in that case, that number shall not be used for that case and another number shall be selected.

B. The board will consider any objections raised by either party, as to whether an arbitrator on the proposed panel has a conflict of interest in that particular case. The party raising the objection must submit a written request for a replacement panel and the rationale for which the objection is being raised. A copy of the request for a replacement panel must be forwarded to the other party of the dispute. Any response by the other party must be in writing and submitted to the board within ten calendar days from the date of the request for the replacement panel. The board at its next scheduled meeting will determine if pursuant to part 7320.0070, subpart 2, a conflict of interest exists. If it is found that a conflict exists, a replacement panel must be provided to the parties. If it is determined that a conflict of interest does not exist, the parties shall proceed to select an arbitrator from the initial panel of arbitrators submitted to the parties. The decision is final.

C. All joint written requests to substitute a proposed list of arbitrators with a second list shall be honored.

Subp. 6. **Selection of arbitration panels.** Approximately once a week, pursuant to a schedule established at a regular board meeting, the chair and executive director will meet to select the arbitration panels to be proposed in pending cases.

The board may designate any of its members, other than the chair, or the executive director to select the arbitration panels for pending cases.

Subp. 7. **Arbitrator requests for inactive status.** An arbitrator may request in writing not to be proposed on arbitration panels for up to six months without being subject to removal from the arbitrator list.

An arbitrator who requests to be withheld from proposal on arbitration panels for more than six months shall be removed from the arbitrator list. That arbitrator may reapply for placement on the list according to the board's qualification procedures.

## **Public Utilities Commission**

### **Proposed Permanent Rules Relating to Utility Service Disconnection During Cold Weather**

#### **Notice of Hearing and Notice of Intent to Cancel Hearing if Fewer Than Twenty-Five Persons Request a Hearing In Response to Notice of Intent to Adopt Rules Without a Public Hearing**

**NOTICE IS HEREBY GIVEN** that the Minnesota Public Utilities Commission (Commission) will hold a public hearing in the above-entitled matter in the Commission's Large Hearing Room, commencing at 9:00 a.m. on Wednesday, January 17, 1990, and, if necessary, Thursday, January 18, 1990, and continuing until all interested or affected persons will have an opportunity to participate by submitting either oral or written data, statements, or arguments. Statements or briefs may be submitted to the presiding Administrative Law Judge, as hereinafter indicated, without appearing at the hearing.

**PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELLED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A PUBLIC HEARING PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE COMMISSION.** To verify whether a hearing will be held, please call the Commission between January 1, 1990 and January 5, 1990 at (612) 296-7124.

The matter will be heard before Administrative Law Judge Allen E. Giles, Office of Administrative Hearings, 500 Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415, (612) 349-2543. The rule hearing procedure is governed by *Minnesota Statutes* §§ 14.131 to 14.20 (1988) and by the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.0200 to 1400.1200 (1985). Questions concerning the rule hearing procedure should be directed to the Administrative Law Judge at the address and telephone number stated above.

The subject of the hearing will be the proposed rules governing disconnection during cold weather, *Minnesota Rules*, parts 7820.1500 to 7820.2300. The proposed rules are authorized by *Minnesota Statutes* § 216B.08 (1988) and *Minnesota Statutes* § 216B.095 (1989 Supp.). The proposed rules are published below. One free copy of the rules is available on request by contacting:

Kris Kline  
Minnesota Public Utilities Commission  
780 American Center Building  
150 East Kellogg Boulevard  
St. Paul, Minnesota 55101  
(612) 296-7124

**NOTICE IS HEREBY GIVEN** that a Statement of Need and Reasonableness is now available for review at the Commission offices and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the Commission anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the Commission offices or at the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Any person may present his or her views on the proposed rules in one or more of the following ways: by submitting written data to the Administrative Law Judge at any time before the close of the hearing; by submitting oral or written data at the hearing; and by submitting written data to the Administrative Law Judge during the comment period following the hearing. The comment period will be not less than five working days after the public hearing ends. The comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the Administrative Law Judge at the hearing. The written material received during the comment period shall be available for review at the Office of Administrative Hearings. Within three business days after the expiration of the

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## Proposed Rules

comment period, the Commission and interested persons may respond in writing to any new information received during the comment period; however, no additional evidence may be submitted during this three-day period.

The Commission requests that any person submitting written views or data to the Administrative Law Judge prior to the hearing or during the comment period also submit a copy of the written data to Dan Lipschultz at the Commission address stated above.

The proposed rules may be modified if the data and views received during the hearing process warrant modification and the modification does not result in a substantial change in the proposed rules.

Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the Commission may not take any final action on the rules for a period of five working days. If you desire to be so notified, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules are adopted and filed with the Secretary of State. The notice must be mailed on the same day that the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the Commission at any time prior to the filing of the rules with the Secretary of State.

**YOU ARE HEREBY ADVISED**, pursuant to *Minnesota Statutes* § 14.115 (1988 and 1989 Supp.), "Small business considerations in rulemaking," that the proposed rules will affect small utility businesses. The proposed rules require utilities to provide customer notices, allow eligible customers to pay ten percent of monthly income to retain service, allow eligible customers to enter a reconnection plan, and provide for various customer and utility appeals.

Pursuant to *Minnesota Statutes* § 14.11, subd. 1 (1988), the Commission estimates that the total cost to all local bodies in the state to implement the rules for the two years immediately following adoption of the rules will not exceed \$100,000 in either of the two years.

The adoption of these rules by the Commission will not have a direct impact on agricultural land. Therefore, *Minnesota Statutes* § 14.11, subd. 2 (1988) is inapplicable to this rulemaking proceeding.

**PLEASE BE ADVISED** that *Minnesota Statutes* ch. 10A (1988) 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 *Minnesota Statutes* § 10A.01, subd. 11 (1988) 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 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.

The statute contains certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101-2520, telephone (612) 296-5148.

Lee Larson  
Acting Executive Secretary

### Rules as Proposed

#### 7820.1500 PURPOSE AND AUTHORITY.

Parts 7820.1500 to 7820.2300 are prescribed by the commission pursuant to *Minnesota Statutes*, chapter 216B, in its entirety and in particular *Minnesota Statutes*, sections 216B.01, 216B.02, 216B.026, 216B.08, 216B.09, 216B.095, 216B.17, and 216B.23, and the Public Utilities Regulatory Policies Act of 1978, United States Code, title 15, sections 3201 et seq. and United States Code, title 16, sections 2601 et seq. to prohibit disconnection of a residential utility customer who is unable to pay for utility service during cold weather months. Parts 7820.1500 to 7820.2300 do not relieve a residential customer's responsibility for utility bills.

#### 7820.1600 DEFINITIONS.

Subpart 1. [Unchanged.]

Subp. 1a. Calendar days. "Calendar days" means Mondays through Sundays, including legal holidays. When calculating a period of time under parts 7820.1500 to 7820.2300, if the last day of the period falls on a legal holiday, that day shall be omitted from the computation.

Subp. 2. [Unchanged.]

Subp. 2a. Financial counseling provider. "Financial counseling provider" means an entity that provides budget counseling and:

A. is affiliated with the National Foundation on Consumer Credit Counseling or the Counsel on Accreditation of Services for Families and Children, Inc.;

B. is licensed with the Minnesota Department of Commerce to offer a debt prorating plan; or

C. has licensed social workers or staff registered with the Board on Unlicensed Mental Health Providers.

Subp. 2b. Household income. "Household income" means the income, as defined in Minnesota Statutes, section 290A.03, subdivision 3, of a residential customer and all persons residing with the residential customer. Household income does not include any amount received for energy assistance.

Subp. 2c. Local energy assistance provider. "Local energy assistance provider" means a subgrantee for the purposes of implementing the low-income home energy assistance block grant as provided by Public Law Number 97-35, as amended.

Subp. 2d. Monthly income. "Monthly income" means the actual monthly income, as defined in Minnesota Statutes, section 290A.03, subdivision 3, of a residential customer. For a residential customer who is normally employed only on a seasonal basis and whose annual income is over 135 percent of the federal poverty level, as provided under Public Law Number 97-35, as amended, monthly income is the average monthly income of the residential customer computed on an annual calendar year basis. Monthly income does not include any amount received for energy assistance.

Subp. 3. Notice of residential customer rights and possible assistance. "Notice of residential customer rights and possible assistance" means a commission-approved, easy-to-understand explanation of the residential customer's rights and responsibilities under parts 7820.1500 to 7820.2300. It shall also include a list of organizations with addresses and phone numbers which may provide financial aid to the residential customer. At a minimum this list shall include the local welfare agency, and the local community action program which disperses emergency fuel assistance.

Subp. 3a. 185 percent of the federal poverty level. "185 percent of the federal poverty level" means 185 percent of the federal poverty level, as provided by Public Law Number 97-35, as amended.

Subp. 4. Payment schedule. "Payment schedule" means any mutually acceptable agreement between the residential customer and utility that provides for the payment of the balance of any outstanding bills and future bills for estimated usage during the period covered by the payment schedule. Payment schedule also means a budget payment plan pursuant to Minnesota Statutes, section 325E.015. Payment schedule does not include the ten percent plan or a reconnection plan.

Subp. 4a. Reasonably on time with payments. "Reasonably on time with payments" means payment within seven calendar days of agreed-to payment dates.

Subp. 4b. Reconnection plan. "Reconnection plan" means a payment plan for a residential customer whose service remains disconnected as of October 15 pursuant to part 7820.2300.

Subp. 5. [Unchanged.]

Subp. 5a. Ten percent plan. "Ten percent plan" means payment by the residential customer to the utility of ten percent of the residential customer's monthly income or the full amount of the current month's utility bill, not including arrearages, pursuant to part 7820.1800, subpart 1, item B.

Subp. 6. [Unchanged.]

Subp. 6a. Utility. "Utility" means a public utility as defined in Minnesota Statutes, section 216B.02, as modified by Minnesota Statutes, section 216B.026. Utility also means a cooperative electric association when a complaint is filed under Minnesota Statutes, section 216B.17, subdivision 6a. Utility also means a municipally owned gas or electric utility for nonresident consumers of the municipally owned utility when a complaint is filed under Minnesota Statutes, section 216B.17, subdivision 6.

Subp. 7. [Unchanged.]

#### **7820.1700 EARLY NOTIFICATION OF RIGHTS AND THIRD PARTY NOTICE OPTION.**

All utilities shall include a "third party notice" and a commission-approved, easy-to-understand general statement of the protections of parts 7820.1500 to 7820.2300 annually as a separate mailing or in the monthly billing mailed to residential customers immediately prior to the commencement of the billing cycle which includes October 15. These notices shall also be provided to all new residential customers when they are first provided service by the utility.

#### **7820.1750 DEPOSITS AND DELINQUENCY CHARGES PROHIBITED.**

No utility shall charge a deposit or delinquency charge to a residential customer who has:

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## Proposed Rules

A. declared to the utility inability to pay and is income eligible, or, if appealed, been determined by the commission to be unable to pay; or

B. requested from the utility the ten percent plan and is income eligible, or, if appealed, been determined by the commission to be eligible for the ten percent plan.

### **7820.1800 DISCONNECTION RESTRICTION FOR OCCUPIED RESIDENTIAL UNITS.**

**Subpart 1. Prohibited disconnection.** No utility shall disconnect the service of any residential unit during "cold weather months," notwithstanding any other customer service rule, except part 7820.1100, if the disconnection would affect in any way the primary heat source of the residential unit and:

A. The residential customer, or any designated third party, has declared ~~his or her~~ inability to pay and is income eligible, as provided in part 7820.1900; or, if appealed, the commission has determined the residential customer is unable to pay. To declare ~~his or her~~ inability, the residential customer must meet the following requirements: the residential customer expresses willingness to enter into a mutually acceptable payment schedule for the current cold weather months, pursuant to part 7820.2100; and the residential customer was fully paid up or was reasonably on time with ~~his or her~~ payments under a payment schedule as of the billing cycle immediately preceding the start of the current cold weather months; or

B. If the residential customer has not declared his or her inability to pay or when the commission has determined that the residential customer is able to pay and, in either case, The residential customer, or any designated third party, requests the ten percent plan and is income eligible, as provided in part 7820.1900; or, if appealed, the commission has determined the residential customer is eligible for the ten percent plan. To request the ten percent plan, the residential customer must pay the utility at least the lesser of the following amounts:

(1) ten percent of the residential customer's monthly income; or

(2) the full amount of the current month's utility bill not including arrearages.

Payment must be received within seven calendar days of the due date or regularly scheduled payment date or payment must be received by the date agreed upon by the utility and the residential customer; or

C. The residential customer has entered into a payment schedule and is reasonably on time with ~~his or her~~ payments under the schedule.

**Subp. 2. Multiple utilities.** If a residential customer receives service from more than one utility, the ten percent amount in subpart 1, item B, subitem (1), must be prorated between utilities. The utility providing the major portion of the residential customer's total energy costs during the cold weather months shall receive 70 percent of the ten percent amount. Other utilities shall receive equal portions of the remaining 30 percent of the ten percent amount.

### **7820.1900 DECLARATION OF INABILITY TO PAY OR PLAN REQUEST.**

**Subpart 1. Notice before disconnecting disconnection of service.** Prior to disconnecting the service affecting the primary heat source of any residential unit for failure to make payment for such service, the utility shall serve, personally or by first class mail, the following upon the residential customer and any designated third party:

A. a commission-approved notice of proposed disconnection;

B. a commission-approved notice of residential customer rights and possible assistance; ~~and~~ which must include:

(1) for each county served by the utility, a list of the names and phone numbers of local energy assistance providers, weatherization providers, conservation providers, and other entities that assist residential customers in reducing the consumption of energy;

(2) an explanation of no-cost and low-cost methods to reduce the consumption of energy, including, for example, lower thermostat and hot water heater settings, turn off lights and close off rooms not in use, reduce hot water usage, block drafts around doors, cover windows with plastic sheets, replace furnace filters, caulk, weather strip, install hot water heater wraps, and similar methods. The explanation shall also include, if applicable, a description of utility conservation services which could assist the residential customer in implementing these measures;

(3) an explanation of the residential customer's rights and responsibilities under part 7820.2010 and, for each county served by the utility, a list of the names and phone numbers of local energy assistance providers, financial counseling providers, and other entities from which the residential customer can receive budget counseling; and

(4) a written explanation of how utility payments will be prorated under the ten percent plan when the residential customer is served by multiple utilities;

C. a commission-approved, addressed, postage-prepaid form on which a residential customer, or any designated third party, shall state that the customer received budget counseling pursuant to part 7820.2010; and

D. a commission-approved, addressed, postage-prepaid form on which a residential customer, or any designated third party, may declare his or her inability to pay or request the ten percent plan. The residential customer shall indicate on the form whether the customer receives any type of public assistance, including energy assistance, that uses household income eligibility at or below 185 percent of the federal poverty level. The residential customer shall provide on the form:

(1) written consent to the utilities' exchange of billing information when the residential customer is served by multiple utilities;

(2) acknowledgment that the residential customer has received, read, and understood the notice served under item B; and

(3) a declaration that the information provided is true and correct.

Subp. 1a. Notice to local energy assistance provider. Upon receipt of a residential customer's declaration of inability to pay or request for the ten percent plan, the utility shall mail the following information to the local energy assistance provider:

A. the name and address of the residential customer;

B. the expiration date of the notice of proposed disconnection and the date of proposed disconnection; and

C. the amount due.

Subp. 1b. Income verification and appeal. If the residential customer does not receive any type of public assistance, including energy assistance, that uses household income eligibility at or below 185 percent of the federal poverty level, the utility shall notify the local energy assistance provider. The local energy assistance provider shall verify to the utility that the residential customer's household income is at or below 185 percent of the federal poverty level within 21 calendar days after the local energy assistance provider receives notification from the utility. The local energy assistance provider shall document its verification and, upon request, provide a copy to the commission.

If the local energy assistance provider determines that the residential customer's household income is greater than 185 percent of the federal poverty level, the utility shall provide the residential customer and any designated third party with a commission-approved written notice of the right to appeal the local energy assistance provider determination. Any appeal must be made within seven working days after the residential customer's receipt of personally served notice, or for ten working days after the utility has deposited first class mail notice in the United States mail. In determining an appeal, the procedures set forth in part 7820.2000 shall apply. The determination shall be based upon 185 percent of the federal poverty level.

The utility shall not disconnect service while an appeal is pending, or until any appeal involving income verification has been determined by the commission. If no appeal is made by the residential customer or designated third party, the utility may disconnect service pursuant to the procedures and requirements of parts 7820.1000 to 7820.1400, 7820.2400, and 7820.2500.

Subp. 2. [Unchanged.]

Subp. 3. Appeal of customer's declaration of inability to pay or request. The utility may accept the residential customer's declaration of inability to pay or appeal the residential customer's declaration of inability to pay to the commission if the local energy assistance provider does not need to verify income or if the utility appeals on other grounds, the utility has 14 working days after receipt of the form from the residential customer to file an appeal. An appeal must be in writing, on forms prescribed by the commission, within seven working days after receipt. The utility shall not prevent any residential customer or designated third party from making a declaration or request. If it appeals, a copy of the appeal, and a commission-approved letter explaining that the residential customer may have his service terminated, shall be mailed by the utility to the local welfare agency and any local community organization responsible for dispersing fuel emergency assistance the local energy assistance provider on the same day as the utility files mails its appeal to the commission.

#### **7820.2000 COMMISSION DETERMINATION OF ~~INABILITY TO PAY.~~ DECLARATION OR REQUEST.**

Subpart 1. Determination of appeal. All appeals of declarations of inability to pay or eligibility for the ten percent plan shall be determined on an informal basis by the commission within 30 calendar days after receipt of the utility's written appeal. The commission shall determine the residential customer's inability to pay or eligibility for the ten percent plan based upon the following: a finding that the residential customer is in compliance with part 7820.1800, item A, and a finding of "lower budget," as defined in the Bureau of Labor Statistics Guidelines, which are contained in the United States Department of Labor News (82-139) dated April 16, 1982, "Autumn 1981 Urban Family Budgets and Comparative Indexes for Selected Urban Areas" for the Minneapolis-Saint Paul, Minnesota area that the residential customer's household income is less than 185 percent of the federal poverty level.

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## Proposed Rules

In making its determination, the commission shall consider one or more of the following:

- A. documentation of income verification by the local energy assistance provider, if applicable;
- B. documentation that the residential customer is a recipient of any type of public assistance, including energy assistance, that uses household income eligibility in an amount at or below 185 percent of the federal poverty level;
- C. the most recent income tax return(s) filed by members of the residential customer's household; or
- ~~B~~ D. for each employed member of the residential customer's household, either paycheck stubs for the last two months or a written statement from the employer of wages earned during the preceding two months; or
- ~~C~~ E. a medicaid card or food stamps eligibility document; or
- ~~D~~ F. documentation that the residential customer is on a pension from the Department of Human Services, the Social Security Administration, the Veterans Administration or other pension providers; or
- ~~E~~ G. a letter showing the residential customer's dismissal from a job or other documentation of unemployment; or
- F H. other documentation which supports the residential customer's declaration of inability to pay.

Subp. 2. **Disconnection during 30-day appeal period.** The utility shall not disconnect the service until expiration of the 30-day appeal period. If the commission determines that the residential customer is able to pay or if the commission determines that the residential customer is not eligible for the ten percent plan, the utility may disconnect the service, pursuant to parts 7820.1000 to 7820.1400, 7820.2100, 7820.2400, and 7820.2500.

### **7820.2010 BUDGET COUNSELING.**

Subpart 1. Requirement. The following residential customers shall receive budget counseling from a local energy assistance provider, financial counseling provider, or other entity that provides budget counseling:

A. a residential customer who has declared inability to pay to the utility and is income eligible, or if appealed, has been determined by the commission to be unable to pay; and

B. a residential customer who has requested the ten percent plan from the utility and is income eligible, or if appealed, has been determined by the commission to be eligible for the ten percent plan.

A residential customer shall receive budget counseling within 90 calendar days after declaring inability to pay or requesting the ten percent plan. The residential customer and the local energy assistance provider, financial counseling provider, or other entity that provides budget counseling shall sign and date the form provided by the utility under part 7820.1900, subpart 1. The residential customer shall mail the completed form to the utility. Budget counseling is not a prerequisite for protection under parts 7820.1800, 7820.1900, and 7820.2000.

Subp. 2. Appeals. Prior to disconnecting a residential customer for failure to receive budget counseling, the utility shall provide the residential customer and any designated third party with a commission-approved written notice of the right to appeal. Any appeal must be made within seven working days after the residential customer's receipt of personally served notice, or for ten working days after the utility has deposited first class mail notice in the United States mail. In determining an appeal, the procedures set forth in part 7820.2000 shall apply.

In determining an appeal, the commission shall consider whether the residential customer made a good faith effort to obtain budget counseling.

The utility shall not disconnect service while an appeal is pending, or until any appeal involving budget counseling has been determined by the commission. If no appeal is made by the residential customer or designated third party, the utility may disconnect service pursuant to the procedures and requirements of parts 7820.1000 to 7820.1400, 7820.2400, and 7820.2500.

### **7820.2100 PAYMENT SCHEDULE.**

Subpart 1. [Unchanged.]

Subp. 2. **Inability to pay.** The residential customer or third party should notify the utility immediately of any circumstances making it impossible for the residential customer to comply with the payment schedule and should propose specific modifications to the payment schedule. Upon receipt of a request for modification of a payment schedule, the utility shall consider changes in the residential customer's consumption pattern, utility rate increases effective since the date of the original schedule, and changes in the residential customer's financial circumstances. No residential customer who has declared ~~his or her~~ inability to pay and is income eligible, or if appealed, has been determined to be unable to pay, shall be disconnected during cold weather months for failure to make payments under a payment schedule which applies to that period of time.

Subp. 3. **Appeals.** The utility shall provide the residential customer and any designated third party with a commission-approved written notice of the right to appeal to the commission when the utility and residential customer are unable to agree on the establishment, reasonableness or modification of a payment schedule, or on the reasonable timeliness of the payments under a payment schedule.

Any appeal must be made within seven working days after the residential customer's receipt of personally served notice, or for ten working days after the utility has deposited first class mail notice in the United States mail. In determining an appeal, the procedures set forth in part 7820.2000 shall apply. The determination shall be based upon ~~the criteria set forth in the Bureau of Labor Statistics Guidelines~~ 185 percent of the federal poverty level.

The utility shall not disconnect service while a payment schedule is pending appeal, or until any appeal involving payment schedules has been determined by the commission. If no appeal is made by the residential customer or designated third party and the residential customer has been determined to have the ability to pay ~~his or her~~ the utility bill pursuant to part 7820.2000, the utility may disconnect service pursuant to the procedures and requirements of parts 7820.1000 to 7820.1400, 7820.2400, and 7820.2500.

#### **7820.2150 TEN PERCENT PAYMENT PLAN APPEALS.**

The utility shall provide the residential customer and any designated third party with a commission-approved written notice of the right to appeal to the commission when the utility and residential customer are unable to agree on the timeliness of the payment or the proration among multiple utilities under the ten percent plan. Any appeal must be made within seven working days after the residential customer's receipt of personally served notice, or for ten working days after the utility has deposited first class mail notice in the United States mail. In determining an appeal, the procedures set forth in part 7820.2000 shall apply.

The utility shall not disconnect service while an appeal under this part is pending, or until any appeal under this part has been determined by the commission. If no appeal is made by the residential customer or designated third party and the residential customer has been determined to be ineligible for the ten percent plan pursuant to part 7820.2000, the utility may disconnect service pursuant to parts 7820.1000 to 7820.1400, 7820.2400, and 7820.2500.

#### **7820.2200 DISCONNECTION OF POTENTIALLY UNOCCUPIED UNITS.**

Subpart 1. [Unchanged.]

Subp. 2. **Notice.** ~~If contact is made with the residential customer, the utility shall provide the residential customer with the notice of residential customer rights and possible assistance and an addressed, postage prepaid form with which the residential customer may make a statement of inability to pay for the service, in which case parts 7820.1900 and 7820.2000 shall apply information required by part 7820.1900, subpart 1. If the residential customer declares inability to pay or requests the ten percent plan, parts 7820.1900 and 7820.2000 shall apply.~~ At least seven working days before disconnecting the residential customer, the utility shall notify by telephone and a commission-approved letter the local welfare office and ~~any local community organization responsible for dispersing fuel emergency assistance~~ the local energy assistance provider of the proposed disconnection.

If the utility is unable to contact the residential customer, and it reasonably appears from the on-site inspections that the unit is unoccupied, the utility shall provide notice by first class mail to the recorded billing address of the residential customer. Such notice shall include an easy-to-understand explanation of the protections of this rule, ~~notice of residential customer rights and possible assistance, and an addressed, postage prepaid form with which the residential customer may make a declaration of inability to pay and the information required by part 7820.1900, subpart 1.~~ If no response has been received by the utility after ten working days after the utility has deposited first class mail notice in the United States mail, the service may be disconnected, pursuant to parts 7820.1000 to 7820.1400, 7820.2400, and 7820.2500.

Subp. 3. [Unchanged.]

#### **7820.2300 RECONNECTION AT BEGINNING OF COLD WEATHER MONTHS.**

**Subpart 1. Reinstatement of service.** The utility shall reinstate service which in any way affects the primary heat source of a residential unit if such service remains disconnected as of October 15 if the residential customer makes application for reinstatement and is ~~reasonably on time with his or her payments under~~ enters either a reconnection plan or a payment schedule.

**Subp. 2. Reconnection plan.** Under a reconnection plan, the residential customer must pay the current utility bills and arrearages in monthly installments until paid in full. Each monthly installment must not exceed ten percent of one-twelfth of the residential customer's annual income.

**Subp. 3. Appeal of reconnection plan.** The utility shall provide the residential customer and any designated third party with a commission-approved written notice of the right to appeal to the commission when the utility and residential customer are unable to agree on the establishment, amount, or reasonable timeliness of the payments under a reconnection plan. Any appeal must be made within seven working days after the residential customer's receipt of personally served notice, or for ten working days after the utility has deposited first class mail notice in the United States mail. In determining an appeal, the procedures set forth in part 7820.2000 apply.

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## Proposed Rules

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The utility shall not deny service while a reconnection plan is pending appeal, or until any appeal involving reconnection plans has been determined by the commission. If no appeal is made by the residential customer or designated third party, the utility may deny service.

Subp. 4. Payment schedule. Any residential customer disconnected as of October 15 shall have the same rights as provided in part 7820.2100, governing payment schedules.

## Secretary of State

### Proposed Permanent Rules Relating to State Primary Ballot

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

**NOTICE IS HEREBY GIVEN** that the Secretary of State intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statutes* 204D.08 subd. 1 (supp. 1989).

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the Secretary of State will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Joseph Mansky  
Director of Elections  
180 State Office Building  
St. Paul, MN 55155  
(612) 296-6011

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

**A STATEMENT OF NEED AND REASONABLENESS** that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from the Secretary of State upon request.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to the legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this matter to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to the Secretary of State.

Dated: 13 November 1989

Joseph Mansky  
Director of Elections

#### Rules as Proposed

##### **8250.0350 FORM OF STATE PRIMARY BALLOT.**

The state partisan primary ballot must be prepared in the same manner as the white ballot, except as provided in this part. The columns containing the names of candidates must be 5-1/4 inches wide. If fewer than three major political parties appear on the ballot, the center column containing instructions must be three inches wide.

The statements required by *Minnesota Statutes*, section 204D.08, subdivision 2, must be printed in upper case in as large as practicable but not smaller than 10-point type. Directly above the statement preceding the party names the words "INSTRUCTIONS TO VOTERS" must be printed in upper case and bold face in as large as practicable but not smaller than 12-point type.

**8250.1400 EXAMPLE BALLOT.**

At least 32 days before a the state primary and state general election, the secretary of state shall supply each auditor with a copy of an example ballot. The secretary of state shall have printed on the ballot the names of all candidates for all statewide offices appearing on the ~~white ballot~~ state primary and state general election ballots. The state ~~white ballot shall~~ primary and state general election ballots must conform in all respects to the example ballot.

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**Commissioners' Orders****Department of Natural Resources****Commissioner's Order No. 2361: Regulations for the Taking of Turkeys During the Spring of 1990**

**PURSUANT TO AUTHORITY VESTED** in me by *Minnesota Statutes* § 97A.045, 97A.435, 97B.711, 97B.723, 97B.725 and other applicable law, I, Joseph N. Alexander, Commissioner of Natural Resources, hereby prescribe the following regulations for the taking of turkeys during the spring of 1990.

**Section 1. DEFINITIONS.**

(a) **Legal firearms:** Only shotguns 20 gauge or larger, or muzzleloading shotguns 12 gauge or larger, using fine shot size No. 4, 5 or 6 shall be used.

(b) **Legal bow and arrow:** Bows must have a pull of no less than 40 pounds at or before full draw. It shall be unlawful to hunt turkeys with any poisoned arrow or arrow with explosive tip. The bow may not be drawn, held, or released by mechanical means, except for permits issued under *Minnesota Statutes* Sec. 97B.106, or except that a person may use a mechanical device attached to the bowstring if the person's own strength draws, holds, and releases the bowstring. Arrowheads must:

(1) be sharp, have a minimum of two metal cutting edges, be of a barbless broadhead design, and have a diameter of at least seven-eighths inch; or

(2) be of a blunthead design.

(c) **Legal turkey:** Any turkey with a visible beard (feathered appendage protruding from the breast, generally found only on males).

(d) **Drawings:** Computerized random drawings will be conducted by the Department of Natural Resources to determine those who will be eligible to apply for a turkey license. Beginning with the 1990 spring hunt drawing, preference in the drawings will be given to each applicant based upon the number of times he or she has correctly applied for a permit but has been unsuccessful in the spring hunt drawing.

(e) **Agricultural or grazing land means land:** (1) that is plowed or tilled; (2) that has standing crops or crop residues; or (3) within a maintained fence for the purpose of enclosing domestic livestock.

(f) **Party hunting:** While two or more persons are hunting turkey as a party and maintaining unaided visual and vocal contact, a member of the party may take and possess more than one turkey, but the total number of turkey taken and possessed by the party may not exceed the number of persons in the party that may take and possess turkey. Only hunters licensed for the same zone and time period may hunt as a party.

**Sec. 2. LICENSE ELIGIBILITY.**

A person is not eligible for a turkey license unless the person:

(a) is at least 16 years of age or possesses a valid Minnesota Firearms Safety Certificate prior to April 12, 1990;

(b) has maintained a legal residence in Minnesota for a period of 60 days immediately preceding April 12, 1990; and

(c) has not had any small game hunting privileges revoked within one year prior to February 9, 1990.

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## Commissioners' Orders

### Sec. 3. TURKEY HUNT DRAWING.

(a) **License application drawings:** Persons desiring to hunt turkeys must take part in one of the computerized license application drawings conducted by the Department of Natural Resources. The drawings shall be subject to the quotas set forth in Sec. 6. All persons selected by the drawings may apply for a license to hunt turkeys, as set forth in Sec. 4.

(b) **Participation in drawings:** All persons desiring to take part in one of the turkey license application computer drawings must complete an official application form for either the general turkey hunt or, if appropriate pursuant to paragraph (c) of this section, for the resident landowner-tenant turkey hunt.

(1) All information requested on the forms must be supplied. Applicants age 16 or over by April 12, 1990 must provide their individual Minnesota drivers license number of 13 characters or an official State of Minnesota Identification number of 13 characters issued by the Department of Public Safety. Applicants age 12 to 15 by April 12, 1990 may supply either of the above numbers or must provide a Minnesota Firearms Safety Certificate number. Individuals who apply with a Minnesota Firearms Safety Certificate and are unsuccessful will not gain preference in the 1991 drawing. Persons submitting the landowner-tenant form must provide a complete and accurate description of the qualifying land. All applicants must choose one of the nine (9) zones and one of the six (6) time periods.

(2) Applications for a group must all be for the same zone and time period. Two, but not more than four persons desiring to hunt together may apply together by submitting their drawing applications in one envelope. The individual within a group with the lowest preference rating will determine the preference rating of the group. Properly completed applications which are submitted in one envelope will either all be selected or none selected. Mixing landowner-tenant applications with general applications will not be permitted for purposes of applying as a party.

(3) Any person who makes a faulty application or who applies as a landowner or tenant but does not live on at least 40 acres of agricultural or grazing land or does not live within the zone applied for, will be ineligible for both the landowner-tenant drawing and general drawing.

(4) Applications must be returned to the DNR License Bureau, 500 Lafayette Road, Box 26, St. Paul, MN 55155-4026. If mailed, applications must be postmarked no later than December 8, 1989. If hand delivered, applications must be delivered no later than 4:30 p.m., December 8, 1989.

(c) **Special landowner or tenant drawing:** A special landowner-tenant license application drawing will be held subject to the following restrictions:

(1) Applicants must be able to meet all eligibility requirements in Sec. 2 of this order.

(2) Applicants must be a landowner or tenant, or a member of their immediate family, living on 40 acres or more of agricultural or grazing land, defined by Section 1 of this order, which is located within the zone for which the application is made.

(3) For each zone and time period, not more than twenty percent of the successful participants shall be drawn from the special landowner-tenant applications.

(4) Individual participants in the landowner-tenant drawing may submit only one drawing application and only for the turkey zone in which they reside.

(5) Valid applications of participants unsuccessful in the landowner-tenant drawing will be included in the general drawing.

(6) Applicants for the landowner-tenant drawing that are determined to be ineligible for the landowner-tenant drawing will be disqualified from the entire 1990 turkey computer drawing.

(7) All participants who are successful in the special landowner-tenant drawing must allow turkey hunting on their lands. The Commissioner will provide descriptions of these lands to licensed turkey hunters.

(d) **Application Fee:** Each applicant must submit along with his/her application a cashiers check, money order or personal check in the amount of \$3.00 payable to the Minnesota Department of Natural Resources. Any checks that are returned to the Department of Natural Resources for non-payment shall invalidate the application and the check will be destroyed. Refunds of application fees shall not be made for any reason.

(e) **Penalties:** No person shall submit more than a total of one application for participation in the drawings. Any person who submits more than one application for the spring season shall be ineligible to receive a turkey license in that season and shall be guilty of a misdemeanor.

### Sec. 4. LICENSING.

(a) Only applicants successful in a computerized drawing will be notified.

(b) Applicants successful in the drawing will receive a license application with instructions for obtaining their licenses. Successful applicants who do not return the license application and the fee according to the provisions specified on the license

application or who do not provide all of the requested information will be disqualified. All accumulated preference is lost upon issuance of a turkey hunting license.

(c) Before hunting turkeys, participants successful in a drawing must:

- (1) Apply for and receive a 1990 turkey hunting license.
- (2) Purchase a 1990 Minnesota small game hunting license if age 16 or older, except that persons exempt from the small game hunting license requirement pursuant to *Minnesota Statutes* Sec. 97B.601, subd. 4(b) need not purchase a small game license.
- (3) Possess a valid Minnesota Firearms Safety Certificate if not age 16 or older prior to April 12, 1990.

**Sec. 5. SEASON DATES, ZONES, HOURS AND WEAPONS.**

(a) **Dates:** The 1990 turkey season is open in all nine zones during the following dates:

April 12-16	May 2-6
April 18-22	May 7-11
April 25-29	May 12-16

Each hunter may hunt only during the five day period designated on his or her license. All dates are inclusive.

(b) **Zones:** Each hunter may hunt only within the zone designated on his or her license.

**(1) Turkey Zone 1.**

That portion of the state lying within the following described boundary:

Beginning at the intersection of State Trunk Highway (STH) 26 and STH 16; thence along STH 16 to STH 44; thence along STH 44 to County State Aid Highway (CSAH) 4, Houston County; thence along CSAH 4 to the southern boundary of the state; thence along the southern boundary of the state to the eastern boundary of the state; thence along the eastern boundary of the state to STH 16; thence along STH 16 to the point of beginning.

**(2) Turkey Zone 2.**

That portion of the state lying within the following described boundary:

Beginning at the intersection of State Trunk Highway (STH) 26 and STH 16; thence along STH 16 to STH 44; thence along STH 44 to County State Aid Highway (CSAH) 4, Houston County; thence along CSAH 4 to the southern boundary of the state; thence along the southern boundary of the state to CSAH 28, Fillmore County; thence along CSAH 28 to STH 43; thence along STH 43 to Interstate 90; thence along Interstate 90 to CSAH 33, Winona County; thence along CSAH 33 to U.S. Highway 14; thence along U.S. Highway 14 to CSAH 33, Winona County; thence along CSAH 33 to STH 248; thence along STH 248 to CSAH 31, Winona County; thence along CSAH 31 to CSAH 28, Winona County; thence along CSAH 28 to CSAH 25, Winona County; thence along CSAH 25 to the intersection of CSAH 25 and U.S. Highway 61; thence due east to the eastern boundary of the state; thence along the eastern boundary of the state to STH 16; thence along STH 16 to the point of beginning.

**(3) Turkey Zone 3.**

That portion of the state lying within the following described boundary:

Beginning at the intersection of Interstate 90 and U.S. Highway 63; thence along Interstate 90 to State Trunk Highway (STH) 43; thence along STH 43 to County State Aid Highway (CSAH) 28, Fillmore County; thence along CSAH 28 to the southern boundary of the state; thence along the southern boundary of the state to U.S. Highway 63; thence along U.S. Highway 63 to the point of beginning.

**(4) Turkey Zone 4.**

That portion of the state lying within the following described boundary:

Beginning at the intersection of Interstate 90 at County State Aid Highway (CSAH) 7, Olmsted County; thence along CSAH 7 to State Trunk Highway (STH) 42; thence along STH 42 to the intersection of STH 42 and U.S. Highway 61; thence along U.S. Highway 61 to the Zumbro River; thence along the Zumbro River to the Mississippi River; thence due east to the eastern boundary of the state; thence along the eastern boundary of the state to a point lying directly east of the intersection of U.S. Highway 61 and CSAH 25, Winona County; thence due west to the intersection of CSAH 25 and U.S. Highway 61; thence along CSAH 25 to CSAH 28, Winona County; thence along CSAH 28 to CSAH 31, Winona County; thence along CSAH 31 to STH 248; thence along STH 248 to CSAH 33, Winona County; thence along CSAH 33 to U.S. Highway 14; thence along U.S. Highway 14 to CSAH 33, Winona County; thence along CSAH 33 to Interstate 90; thence along Interstate 90 to the point of beginning.

**(5) Turkey Zone 5.**

That portion of the state lying within the following described boundary:

# Commissioners' Orders

Beginning at the intersection of U.S. Highway 61 and County State Aid Highway (CSAH) 18, Goodhue County; thence along CSAH 18 to the intersection of U.S. Lock and Dam No. 3 access road located at the north quarter corner of Section 5, Township 113 North, Range 15 West, Goodhue County; thence due east to the eastern boundary of the state; thence along the eastern boundary of the state to a point due east of the intersection of the Zumbrotta River and Mississippi River; thence due west to the Zumbrotta River; thence along the Zumbrotta River to U.S. Highway 61; thence along U.S. Highway 61 to State Trunk Highway (STH) 42; thence along STH 42 to STH 247; thence along STH 247 to CSAH 12, Olmsted County; thence along CSAH 12 to U.S. Highway 52; thence along U.S. Highway 52 to U.S. Highway 14; thence along U.S. Highway 14 to STH 57; thence along STH 57 to CSAH 30, Goodhue County; thence along CSAH 30 to CSAH 8, Goodhue County; thence along CSAH 8 to STH 56; thence along STH 56 to STH 19; thence along STH 19 to STH 20; thence along STH 20 to U.S. Highway 61; thence along U.S. Highway 61 to the point of beginning.

**(6) Turkey Zone 6.**

That portion of the state lying within the following described boundary:

Beginning at the intersection of State Trunk Highway (STH) 30 and U.S. Highway 169; thence along STH 30 to STH 22; thence along STH 22 to STH 60; thence along STH 60 to U.S. Highway 169; thence along U.S. Highway 169 to the point of beginning.

**(7) Turkey Zone 7.**

That portion of the state lying within the following described boundary:

Beginning at the intersection of U.S. Highway 169 and State Trunk Highway (STH) 68; thence along STH 68 to County State Aid Highway (CSAH) 42, Blue Earth County; thence along CSAH 42 to CSAH 23, Nicollet County; thence along CSAH 23 to STH 111; thence along STH 111 to CSAH 5, Nicollet County; thence along CSAH 5 to CSAH 2, Nicollet County; thence along CSAH 2 to CSAH 3, Nicollet County; thence along CSAH 3 to CSAH 9, Sibley County; thence along CSAH 9 to CSAH 8, Sibley County; thence along CSAH 8 to CSAH 9, Sibley County; thence along CSAH 9 to STH 5; thence along STH 5 to STH 25; thence along STH 25 to CSAH 3, Scott County; thence along CSAH 3 to STH 19; thence along STH 19 to U.S. Highway 169; thence along U.S. Highway 169 to the midpoint of the Minnesota River; thence along the midpoint of the Minnesota River to U.S. Highway 14; thence along U.S. Highway 14 to U.S. Highway 169; thence along U.S. Highway 169 to the point of beginning.

**(8) Turkey Zone 8.**

That portion of the state lying within the following described boundary:

Beginning at the intersection of State Trunk Highway (STH) 25 and County State Aid Highway (CSAH) 14, Sibley County; thence along CSAH 14 to CSAH 53, Carver County; thence along CSAH 53 to U.S. Highway 212; thence along U.S. Highway 212 to STH 101; thence along STH 101 to CSAH 17, Scott County; thence along CSAH 17 to STH 13; thence along STH 13 to STH 19; thence along STH 19 to CSAH 3, Scott County; thence along CSAH 3 to STH 25; thence along STH 25 to the point of beginning.

**(9) Turkey Zone 9.**

That portion of the state lying within the following described boundary:

Beginning at the intersection of State Trunk Highway (STH) 98 and U.S. Highway 61; thence along U.S. Highway 61 to County State Aid Highway (CSAH) 30, Chisago County; thence along CSAH 30 to CSAH 18, Chisago County; thence along CSAH 18 to CSAH 14, Chisago County; thence along CSAH 14 to County Road 77, Chisago County; thence along County Road 77 to U.S. Highway 8; thence along U.S. Highway 8 to STH 98; thence along STH 98 to the point of beginning.

**(c) Hours and weapons:** Legal turkeys may be taken by licensed hunters using legal shotgun or legal bow and arrow, as defined in Section 1, from one-half hour before sunrise to 12:00 noon daily during the dates and within the zones described in this section.

**Sec. 6. QUOTAS.**

The following quotas on hunter numbers are established for each zone and time period. These quotas may be subject to modification in order to accommodate party members if the last applicant to be drawn for a zone is a member of a party.

**Zones and Quotas**

Time Period	1	2	3	4	5	6	7	8	9
April 12-16	200	350	250	100	150	10	20	10	10
April 18-22	200	350	250	100	150	10	20	10	10
April 25-29	200	350	250	100	150	10	20	10	10
May 2-6	200	350	250	100	150	10	20	10	10
May 7-11	200	350	250	100	150	10	20	10	10
May 12-16	<u>200</u>	<u>350</u>	<u>250</u>	<u>100</u>	<u>150</u>	<u>10</u>	<u>20</u>	<u>10</u>	<u>10</u>
	1200	2100	1500	600	900	60	120	60	60

GRAND TOTAL: 6,600

**Sec. 7. SPECIAL PROVISIONS.**

(a) **Bag limit:** Except for party hunting as defined in Section 1(f), no hunter shall: take more than one legal turkey; tag a turkey that he or she did not take; or tag a turkey with the tag of another hunter. All turkeys taken must be killed before being removed from the site where taken.

(b) **Assisting:** Only a turkey hunter licensed for the same zone and time period may assist any other licensed turkey hunter in hunting turkeys.

(c) **12-15 Year Olds:** A licensed turkey hunter who is not age 16 or older prior to April 12, 1990 must have a valid Minnesota Firearms Safety Certificate in possession. Licensed turkey hunters age 12 or 13 must be accompanied by a parent or guardian while turkey hunting. "Guardian" is a legal guardian or any person age 18 or older authorized by the parent or legal guardian to supervise the person age 12 or 13. Licensed turkey hunters age 14 or 15 may hunt turkeys unaccompanied by a parent or guardian.

(d) **Tagging:** Immediately after taking a turkey, hunters must punch date of kill, sign and attach the tag to the turkey. This tag must remain attached to the turkey during transit.

(e) **Registration:** Every person taking a turkey must register the turkey at a designated registration station no later than 2:00 p.m. of the same day when taken. The feathers, head and feet must remain on the turkey until it is registered. No unregistered turkey shall be possessed outside the zone where taken unless it is being transported in a direct route to a registration station. Registration stations will include the following. If necessary, additions, deletions or changes to this list may be made.

- |                   |  |
|-------------------|--|
| 1. Caledonia      | Begins Hardware<br>139 S. Kingston                 |
| 2. LaCrescent     | Tri-State Bait and Tackle<br>103 Hillview Blvd.    |
| 3. Rushford       | Larry's Mobil<br>Jct. Hwys. US 16 and STH 43       |
| 4. Chatfield      | Chatfield Motor Mart<br>302 South Main             |
| 5. Lanesboro      | Root River Oil Co.<br>US Hwy. 16                   |
| 6. Rochester      | Wild Goose Sports<br>1117 N. Broadway              |
| 7. Red Wing       | Four Season Sport Shop<br>213 Hill St.             |
| 8. Elba           | Mauer Brothers Liquor<br>Hwy. 74                   |
| 9. Houston        | Halverson Standard Oil<br>Hwy. 16 East             |
| 10. Spring Valley | Fowler Standard Oil<br>221 North Section           |
| 11. Harmony       | Harmony Amoco<br>Hwy. 52                           |
| 12. Winona        | West End Bait Co.<br>950 West 5th Street           |
| 13. Nicollet      | Wildlife Taxidermy Studio<br>221 Cedar St.         |
| 14. Wyoming       | Sunrise Sporting Goods<br>26796 Kettle River Blvd. |
| 15. Cannon Falls  | Curt's Cannonball<br>Hwy. 52 S.                    |
| 16. Kellogg       | Prairie Bait Shop<br>County Road 30 (old Hwy. 61)  |
| 17. Zumbro Falls  | Falls Standard Station<br>Hwy. 63                  |

## Commissioners' Orders

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|------------------|--|
| 18. Lake City    | Severson Food Plus<br>303 S. Lakeshore Dr. |
| 19. Jordan       | Tri Mart<br>Junction 169 & 282             |
| 20. Henderson    | Benders Coast to Coast<br>527 Main St.     |
| 21. Good Thunder | Dick's Locker Plant<br>(no address given)  |

Registration stations normally open at 8:00 a.m.

(f) Turkeys may not be taken with the aid of dogs. No person shall be accompanied by a dog or dogs while hunting or assisting in hunting turkeys.

(g) Turkeys may not be taken with the aid of any electronic device.

(h) Use of live decoys is prohibited.

(i) While afield hunting turkeys, no person shall have in his possession or control any firearm or bow and arrow except those defined by Section 1 of this order as legal for taking turkeys.

(j) No turkeys shall be taken in any manner in any area of the state except as herein expressly provided or as otherwise provided by statute or Commissioner's Order.

(k) Except as specifically provided herein, none of the provisions of this order shall be construed as modifying or superseding any order establishing legal game refuges within the state nor as permitting the taking of any wild animals within such refuges or within state parks.

(l) The Lost Lake Refuge in Fillmore County and the Whitewater State Game Refuge in Winona County are open for the taking of turkeys during the 1990 Spring Turkey Hunt.

(m) That portion of the Carlos Avery Wildlife Management Area posted with "Wildlife Sanctuary Do Not Trespass" signs that lies within Zone 9 shall be open for the taking of turkeys during the 1990 spring turkey hunt.

Dated at Saint Paul, Minnesota, this 8th day of November, 1989.

Joseph N. Alexander, Commissioner  
Department of Natural Resources

## Official Notices

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Pursuant to the provisions of Minnesota Statutes §14.10, 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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## Department of Finance

### Notice of Maximum Interest Rate for Municipal Obligations During November

Pursuant to *Minnesota Statutes*, Section 475.55, Subdivision 4, Commissioner of Finance, Tom Triplett, announced today that the maximum interest rate for municipal obligations in the month of November, 1989 would be nine (9) percent per annum. Obligations which are payable wholly or in part from the proceeds of special assessments or which are not secured by General Obligations of the municipality may bear an interest rate of up to ten (10) percent per annum.

Peter Sausen  
Assistant Commissioner  
Cash & Debt Management

## Gaming Department

### Lottery Division

### Meeting Notice

The Minnesota State Lottery Board will hold a meeting on November 30, 1989 at 1:00 p.m. at Minneapolis Room, Comfort Inn, 2715 Long Lake Road, Roseville, MN.



## Official Notices

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### Department of Revenue

#### Appeals and Legal Services Division

#### Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules Governing Administration of the Income and Excise Taxes: The Filing of a Single Return for Members of an Affiliated Group of Corporations

NOTICE IS HEREBY GIVEN that the State Department of Revenue is seeking information or opinions from sources outside the agency in preparing to propose the amendment of the rules governing the filing of one return on behalf of the members of an affiliated group of corporations that are required to file a combined income report. The adoption of these rules are authorized by *Minnesota Statutes*, section 290.37, subd. 1(a) which requires the agency to promulgate rules for the administration and enforcement of *Minnesota Statutes*, sections 290.07 to 290.9742 not inconsistent with its provisions.

The State Department of Revenue requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

Stephen E. Krenkel  
Department of Revenue  
Appeals and Legal Services Division  
10 River Park Plaza  
Mail Station 2220  
St. Paul, MN 55146-2220

Oral statements will be received during regular business hours over the telephone at (612) 296-1022 and in person at the above address.

All statements of information and opinions shall be accepted until December 15, 1989. Any written material received by the state Department of Revenue shall become part of the rulemaking record to be submitted to the Attorney General or Administrative Law judge in the event the rule is adopted.

Dated: 15 November 1989

Stephen E. Krenkel  
Attorney

## State Contracts and Advertised Bids

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Pursuant to the provisions of Minn. Stat. §14.10, an agency must make reasonable effort to publicize the availability of any 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. Certain quasi-state agencies are exempted from some of the provisions of this statute.

Commodities contracts with an estimated value of \$15,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers whose initials appear in parentheses next to the commodity for bid, by calling (612) 296-6152.

**Awards of contracts and advertised bids for commodities and printing, as well as awards of professional, technical and consulting contracts, appear in the midweek STATE REGISTER Contracts Supplement, published every Thursday. Call (612) 296-0931 for subscription information.**

### Department of Administration: Materials Management Division

#### Contracts and Requisitions Open for Bid

Call 296-2600 for information on a specific bid, or to request a specific bid.

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## State Contracts and Advertised Bids

**Commodity:** IBM PS/2 model 30 computer  
**Contact:** Bernadette Vogel 296-3778  
**Bid due date at 2pm:** December 4  
**Agency:** Mesabi Community College  
**Deliver to:** Virginia  
**Requisition #:** 27150 50138

**Commodity:** Furniture  
**Contact:** John Bauer 296-2621  
**Bid due date at 2pm:** December 4  
**Agency:** National Sport Center  
**Deliver to:** Blaine  
**Requisition #:** 22300 03449

**Commodity:** Zenith Supersport 286  
**Contact:** Bernadette Vogel 296-3778  
**Bid due date at 2pm:** December 4  
**Agency:** Transportation Department  
**Deliver to:** St. Paul  
**Requisition #:** 79000 03327

**Commodity:** Zenith Supersport 286  
**Contact:** Bernadette Vogel 296-3778  
**Bid due date at 2pm:** December 4  
**Agency:** Transportation Department  
**Deliver to:** St. Paul  
**Requisition #:** 79000 03400

**Commodity:** ACS 4030 bridge  
**Contact:** Bernadette Vogel 296-3778  
**Bid due date at 2pm:** December 1  
**Agency:** Human Services Department  
**Deliver to:** St. Paul  
**Requisition #:** 55000 02634

**Commodity:** Printer, miscellaneous EDP equipment—rebid  
**Contact:** Pat Anderson 296-1053  
**Bid due date at 2pm:** December 18  
**Agency:** Transportation Department  
**Deliver to:** Various  
**Requisition #:** Price Contract

## Department of Administration: Print Communications Division

Printing vendors for the following printing contracts must review contract specifications in printing buyers office at 117 University Avenue, Room 134-B, St. Paul, MN.

**Printing vendors NOTE: Other printing contracts can be found in the Materials Management Division listing above, and in the Professional, Technical & Consulting Contracts section immediately following this section.**

**Commodity:** Benefit folder, 250M, 11¼" × 17", camera ready, 2-sided, 1-fold  
**Contact:** Printing Buyer's Office  
**Bids are due:** December 5  
**Agency:** Jobs & Training Department  
**Deliver to:** St. Paul  
**Requisition #:** 3230

**Commodity:** Police-Fire consolidation fund form, 10,800 3-part sets, 9½" × 11" with pinfeeds, continuous, negs available, 2-sided  
**Contact:** Printing Buyer's Office  
**Bids are due:** December 1  
**Agency:** Public Employees Retirement Association (PERA)  
**Deliver to:** St. Paul  
**Requisition #:** 3250

**Commodity:** 3-types decals: exploratory contractor, 100; limited well contractor, 1,000; and elevator shaft contractor, 100—all 11" × 8½" with rounded corners, camera ready, 1-sided, permanent adhesive backing  
**Contact:** Printing Buyer's Office  
**Bids are due:** December 1  
**Agency:** Health Department  
**Deliver to:** Minneapolis  
**Requisition #:** 3254 5 6

# Professional, Technical & Consulting Contracts ---

## Department of Health

### Maternal and Child Health

#### Notice of Request for Part-Time Consultant to Provide Pediatric Nurse Practitioner Services

**NOTICE IS HEREBY GIVEN** that the Minnesota Department of Health, Maternal and Child Health Division (MCH), intends to issue a part-time Consultant Contract to obtain the services of a Pediatric Nurse Practitioner. The consultant will provide pediatric nursing activities to the Early Periodic Screening/Early Periodic Screening, Diagnosis and Treatment Program (EPS/EPSDT) including participation in screener training seminars, provision of on-site consultation to EPS/EPSDT screeners and provision of consultation to MCH staff on related EPS/EPSDT program tasks.

This contract will be awarded to the candidate best demonstrating the needed consulting and teaching skills, experience, and education.

The Minnesota Department of Health will make the final selection of a consultant and issue a contract not to exceed \$4,000.00 for the period from January 1, 1990 through June 30, 1990.

Please submit qualifications by December 15, 1989, to:

Jean Cronje, Supervisor  
Child Health Screening/Health Promotion Unit  
Section of Maternal and Child Health Technical Services  
Minnesota Department of Health  
717 Delaware Street Southeast  
Minneapolis, Minnesota 55440  
(612) 623-5542

## Department of Health

### Community Health Services—Emergency Medical Services Section

#### Notice of Request for Proposal to Study First Responder Units Within the Emergency Medical Services System

The EMS Section is requesting proposals from interested parties to undertake a study of first responder units within the Minnesota EMS (Emergency Medical Services) system and to submit a report of findings to the department.

**Amount Available:** \$34,500.

**Timetable:** From early 1990 to September 15, 1990, when final report to MN Department of Health is due.

**Purpose of Project:** As a result of public interest and a legislative directive, the EMS Section is initiating this study on first responder units.

**Scope of Project:** Currently, first responder units are not regulated in Minnesota and their numbers, composition and roles in the EMS System are not clearly known or defined. Among factors to be researched and described are: What first responder units are and do, where they are located, who are in the units and their levels of training, equipment used and needed, physician participation and medical control. The contractor shall provide recommendations for policy options regarding first responder units which can be implemented with or without legislative action.

**Letter of Intent:** Due December 11, 1989, to person and address below. Senders of Letter of Intent will automatically receive the Request for Proposal.

**Request for Proposal:** A copy of the Request for Proposal containing full instructions and application materials will be available after December 15, 1989.

**Proposal Due Date:** January 15, 1990, by 4:30 p.m. in office and address below:

Juli Kane	P.O. Box 54900
Emergency Medical Services Section	St. Paul, MN 55164-0900
Minnesota Department of Health	(612) 643-2169
393 North Dunlap Street	

## **Department of Human Services**

### **Health Care and Residential Programs**

#### **Notice of Availability of Contract for Consultant to Initiate Implementation of Ancillary Care Services for Residents of State Operated Community Residential Facilities (SOCS)**

The Department of Human Services requires the services of a consultant experienced in the field of provision of ancillary care services to persons who are developmentally disabled, mentally ill, chemically dependent, or elderly. Ancillary services include care such as physician services, mental health services, nursing services, dietician services, speech-language pathology and audiology services, and physical and occupational therapy. The consultant is sought by the department to implement the establishment of the first service site for ancillary services for residents of SOCS.

The consultant's experience and background will consist of shown experience in the following areas:

- 1) Experience as a health care professional providing one or more of the above identified ancillary services.
- 2) Experience as a manager or administrator of a health care provider organization providing one or more of the above identified ancillary services.
- 3) Experience establishing and implementing a new medicaid program or service coverage area for a state medicaid agency.
- 4) Experience working with a wide variety of interested parties, including state agency staff, client advocacy groups, local agencies, and current providers, on a project that will involve and affect such parties.
- 5) Experience and knowledge about the basics of the Minnesota Medical Assistance program, including federal compliance issues, provider enrollment, knowledge of the various provider types, current Minnesota state law and rule applicable to the program, cost avoidance and surveillance and utilization review, and claims processing.

**COST ESTIMATE:** The estimated total cost of the contract is \$40,000.

Individuals desiring consideration should submit a resume of their experience before December 18, 1989. Additional information on the project may be obtained by contacting:

Bob Baird  
Deputy Assistant Commissioner  
Health Care and Residential Programs  
Department of Human Services  
444 Lafayette Road  
St. Paul, MN 55155-3848  
Telephone: 612/296-2766

## **Department of Labor & Industry**

### **Request for Proposals for Technical Management Consultants**

The Minnesota Department of Labor and Industry is requesting proposals from Public Relations/Marketing Consultants in designing a comprehensive constituent outreach program for the Regulation and Enforcement Division of the Department. The Division works to ensure that conditions of employment, safety standards, and wages paid comply with legal requirements. The Regulation and Enforcement Division consists of the following programs:

Labor Standards  
Apprenticeship  
Code Enforcement  
OSHA Compliance  
OSHA Consultation

The goal of this project is to develop a complete outreach plan to increase the public's awareness of the Regulation and Enforcement Division, the laws it is responsible for regulating and the services it offers to Minnesota constituents.

This request for proposal does not obligate the State to complete the project and the State reserves the right to cancel this solicitation if it is considered to be in its best interest.

## Professional, Technical & Consulting Contracts

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Responder may propose additional tasks or activities if they will substantially improve the results of the project.

Prospective responders who have any questions regarding the request for proposal may contact:

James Collins, Director, Technical Services Division  
MN Department of Labor and Industry  
Regulation and Enforcement Division  
443 Lafayette Road  
St. Paul, Minnesota 55155-4308

All proposals must be sent to and received by:

James Collins, Director, Technical Services Division  
MN Department of Labor and Industry  
Regulation and Enforcement Division  
443 Lafayette Road  
St. Paul, Minnesota 55155-4308

Proposals must be received no later than 4:30 p.m., November 20, 1989. Late proposals will not be accepted. Submit four (4) copies of proposal. Proposals are to be sealed in mailing envelopes or packages with the responder's name and address clearly written on the outside. Each copy of the proposal must be signed, in ink, by an authorized member of the firm. Prices and terms of the proposals as stated must be valid for the length of the project.

The Department has estimated that the cost of this project should not exceed \$5,000.00.

The project will be completed within three (3) months from the date of project authorization.

## Board of Water and Soil Resources

### Request for Proposals for Environmental Agriculturalist Education Contracts

This Request for Proposal 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 interests.

#### A. SCOPE OF INTEREST

The Environmental Agriculturalist Education Program was established in Chapter 326, Article 2, Section 3 of the *Laws of Minnesota 1989* to develop and/or promote agricultural practices which protect our ground water and other natural resources. Projects which are funded must result in product(s) which provide a direct educational benefit to agricultural producers.

#### B. GOALS AND OBJECTIVES

The goal of this program is to produce and/or apply products (including programs, processes) which can improve the knowledge and understanding of agricultural producers of how they can alter their land management practices to provide a greater degree of ground water and other natural resources protection.

The objectives of the total program include:

- (1) to work with agricultural producers;
- (2) to advise and inform agricultural producers on the impact of certain farming practices and integrated pest management;
- (3) to promote sustainable agriculture through use of best management practices and integrated pest management;
- (4) to demonstrate and evaluate alternative pesticide practices;
- (5) to develop and promote farm profitability through a reduction in farm inputs.

Responders need not address all objectives but must specify which objective they are proposing to work on.

#### C. PROJECT TASKS

Because of the variability of the objectives, a standard set of tasks is inappropriate. However, responder should consider that the State has an interest in the process as well as the product because successful project completion will require meaningful input from the affected clientele. Responder should, therefore, suggest in detail the process that will be followed if awarded a contract. Include details of such coordination mechanisms as steering groups, task forces, advisory groups, work groups, including proposed membership, focus, work plan, and results expected. Responder is expected to propose additional tasks or activities if they will substantially improve the results of the project.

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## Professional, Technical & Consulting Contracts

### D. DEPARTMENT CONTACTS

Prospective responders who have any questions regarding this Request for Proposal may contact:

Patricia A. Bloomgren, Assistant Director  
Board of Water and Soil Resources  
Suite 104, 155 South Wabasha  
St. Paul, Minnesota 55107  
(612) 296-3767

**PLEASE NOTE:** Other Board personnel are not allowed to discuss the project with responders before the submittal of proposal deadline.

### E. SUBMISSION OF PROPOSALS

All proposals must be sent to and reviewed by:

Patricia A. Bloomgren, Assistant Director  
Board of Water and Soil Resources  
Suite 104, 155 South Wabasha  
St. Paul, Minnesota 55107

—Not later than 4:30 p.m., January 15, 1990.

Late proposals will not be accepted. Submit 5 copies of proposal. Proposals are to be sealed in mailing envelopes or packages with the responder's name and address clearly written on the outside. Each copy of the proposal must be signed, in ink, by an authorized member of the firm. Prices and terms of the proposal as stated must be valid for the length of the project.

### F. PROJECT COSTS

The Board has been authorized to spend a total of \$400,000 for the biennium ending June 30, 1991. Responders for both large and small projects are encouraged to submit proposals.

### G. PROJECT COMPLETION DATES

Successful bidders must complete their projects by June 30, 1991. Completed project products/reports must be submitted by August 15, 1991.

### H. PROPOSAL CONTENTS

The following will be considered minimum contents of the proposal:

1. A restatement of the objectives, goals and tasks to show or demonstrate the responder's view of the nature of the project.
2. Identify and describe the deliverables to be provided by the responder.
3. Outline the responder's background and experience with particular emphasis on local, state, and federal government work. Identify personnel to conduct the project and detail their training and work experience. No change in personnel assigned to the project will be permitted without the approval of the Board.
4. Responder will prepare a detailed cost and work plan which will identify the major tasks to be accomplished and be used as a scheduling and managing tool as well as the basis for invoicing.
5. Identify the level of the Board's participation in the project as well as any other services to be provided by the Board.

### I. EVALUATION

"All proposals received by the deadline will be evaluated by representatives of the Board of Water and Soil Resources. In some instances, an interview will be part of the evaluation process. Factors upon which proposals will be judged include, but are not limited to, the following:

1. Expressed understanding of project objectives.
2. Project work plan.
3. Project cost detail.
4. Qualifications of both company and personnel. Experience of project personnel will be given greater weight than that of the firm.

Evaluation and selection will be completed by March 1, 1990, or upon review by the Legislative Water Commission, whichever occurs later. Results will be sent immediately by mail to all responders."

# State Grants

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In addition to requests by state agencies for technical/professional services (published in the State Contracts section), the *State Register* also publishes notices about grant funds available through any agency or branch of state government. Although some grant programs specifically require printing in a statewide publication such as the *State Register*, there is no requirement for publication in the *State Register* itself.

Agencies are encouraged to publish grant notices, and to provide financial estimates as well as sufficient time for interested parties to respond.

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## Minnesota Department of Corrections

### Notice of Availability of Funds for Statewide Battered Women Services

The Minnesota Department of Corrections, Victim Services Unit, announces the availability of grant funds for statewide battered women services. Both existing and new programs are eligible to apply for these funds.

A total of \$79,248 is available for direct services to battered women in totally unserved/underserved geographical areas for a six month period, January 1, 1990 through June 30, 1990. These funds are being made available through appropriation by the Minnesota Legislature (State—\$56,419) and the Victims of Crime Act (VOCA—\$22,829).

VOCA funding requires a 20% in-kind or cash match for organizations currently providing effective services to victims and 35% cash or in-kind match for organizations not yet providing victim services. Successful applicant(s) may be eligible for continued funding after the initial grant period.

Non-profit and governmental units are eligible to apply. The deadline for the grant proposal submission is *Friday, January 5, 1990, 4:30 p.m.* To receive a request for proposal which describes how to apply for this funding, contact: Tammy Osowski, Minnesota Department of Corrections, Victim Services Unit, 300 Bigelow Building, 450 North Syndicate, St. Paul, Minnesota 55104, Telephone (612) 642-0251.

16 November 1989

## Minnesota Department of Corrections

### Notice of Availability of Funds for Services and Special Projects for General Crime Victims

The Minnesota Department of Corrections, Victim Services Unit, announces the availability of grant funds for services and special projects for general crime victims. (Proposals for battered women, sexual assault and child abuse services are not eligible for funding under this RFP.) Priority will be given to programs serving categories of crime victims not historically funded by the Department of Corrections, Victim Services Unit. Some funding categories have match requirements.

A total of \$165,000 is available for a six month period, January 1, 1990 through June 30, 1990. These funds are being made available through appropriation by policy of the Commissioner of Corrections as authorized by the Minnesota State Legislature (State—\$38,777) and the Victims of Crime Act (VOCA—\$126,223). Successful applicant(s) for direct service to crime victims may be eligible for continued funding after the initial grant period. Special projects should be time limited.

Non-profit and governmental units are eligible to apply. The deadline for grant proposal submission is *Friday, January 5, 1990, 4:30 p.m.* For information on services and project categories or to receive a request for proposal which describes how to apply for this funding, contact: Tammy Osowski, Minnesota Department of Corrections, Victim Services Unit, 300 Bigelow Building, 450 North Syndicate, St. Paul, Minnesota 55104; Telephone: (612) 642-0251.

16 November 1989

## Minnesota Housing Finance Agency

### Migrant Housing Demonstration Program

#### Request for Proposals for Funds for Affordable Housing for Migrant Laborers

The Minnesota Housing Finance Agency (MHFA) announces the availability of \$100,000 in grant funds to eligible organizations for the acquisition, construction and/or rehabilitation of affordable housing for migrant laborers. These funds were appropriated by the 1989 Minnesota Legislature.

**Eligible Applicants:** Eligible grant applicants are public agencies, growers' associations (on behalf of individuals), and for profit and non-profit entities that can demonstrate the ability to develop and manage or monitor housing for migrant workers.

**Eligible Housing:** Projects must add to the supply of available housing and the housing must be decent, safe and sanitary. Funds may be used for the acquisition or construction of new units or the rehabilitation of presently unused structures. The housing must be for the use of migrant laborers and/or their families and may be single-family homes, mobile homes, dormitory style, or multi-unit buildings and may be for year round or seasonal use. All housing must meet Minnesota Department of Health standards for migrant housing and applicable local building codes. Projects may have all units on one site or on scattered sites. Applications for scattered-site housing must include a plan to monitor the use and quality of the housing.

**Available Funds:** Applicants may request up to \$100,000. Grants may not exceed one-third of the development cost. The grant recipient must match each dollar of grant funds with at least two dollars of other funds. Applicants should demonstrate efforts to combine grant funds with money from other nonpublic sources, including private entities engaged in the business of producing and processing agricultural products. Funds may be used in conjunction with the Farmers' Home Administration Farm Labor Housing Loan and Grant Program.

**Application Process:** Application packets should be requested from the MHFA. Applicants will be asked to demonstrate the ability to develop and manage the housing, the need for the housing and highlight the demonstration value of the project as a solution to the need for affordable migrant labor housing in Minnesota.

Applications are due at the Minnesota Housing Finance Agency offices by 4:30 p.m. on Wednesday, January 31, 1990. An interagency committee will review the applications and is expected to make recommendations for funding by the end of March. Applicants should demonstrate the ability to have additional housing in place by May 1990 if funded.

APPLICANTS ARE ENCOURAGED TO CONTACT THE MINNESOTA HOUSING FINANCE AGENCY TO DISCUSS THEIR PROPOSAL PRIOR TO SUBMISSION OF THE APPLICATION. THE GRANTS ARE MADE IN THE FORM OF DEFERRED LOANS, FORGIVEN AT TWENTY PERCENT PER YEAR FOR THE FIVE YEAR TERM OF THE LOAN.

For further information, you may contact:

Rhonda Lundquist  
Migrant Housing Demonstration Project  
Minnesota Housing Finance Agency  
400 Sibley Street, Suite 300  
St. Paul, MN 55101  
(612) 296-0746

## **Minnesota Housing Finance Agency**

### **Notice of Fund Availability and Request for Proposals for the Housing Trust Fund Housing Program**

The Minnesota Housing Finance Agency (MHFA) and the Housing Trust Fund Advisory Committee (HTFAC) announce the availability of \$500,000 in grant and loan funds to eligible sponsors to assist them in the development, construction, acquisition, preservation and rehabilitation of rental or limited equity cooperative housing for low income persons. These funds were generated by interest earnings on real estate broker's trust accounts.

Funds are awarded to projects in the form of a zero interest deferred loan. To encourage the long term affordability of the housing provided under this program, a thirty year repayment schedule is used. The loan must be repaid in full if the project fails to operate as affordable housing for low income persons during the first ten years of the loan. During the next twenty years, five percent of the loan is forgiven each year provided that the housing remains affordable for low income persons and families.

Twenty percent (approximately \$100,000) of the total funds available will be set aside for projects that are not compatible with the 30 year repayment schedule. The MHFA's and the HTFAC's intent is to use this set aside of funds to encourage innovative proposals which would otherwise not be possible to fund given the 30 year use commitment. All other requirements of the Housing Trust Fund program will apply to these projects.

**ELIGIBLE APPLICANTS:** Eligible applicants are individuals, for-profit entities, nonprofit entities, Minnesota Cities, joint power boards established by two or more cities, and Minnesota Housing and Redevelopment Authorities.

**ELIGIBLE PROJECTS:** The legislation requires that the money from the trust fund account be used "to provide loans or grants for projects for the development, construction, acquisition, preservation, and rehabilitation of low income rental and limited equity cooperative housing units. At least 75 percent of the units must be rented to or cooperative owned by persons and families whose income at the time the person or family originally occupied the unit was at or below 30 percent of the median family income for the metropolitan area." As of February 1989, 30 percent of the Minneapolis/St. Paul area median income was \$12,690.

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## State Grants

It is the desire of the MHFA and the HTFAC to use the Housing Trust Fund Housing Program to encourage and support innovative approaches to housing problems which provide affordable housing with strong local support. It is expected that these funds will be used to leverage other funds or to provide the final piece of a financing package. They can be used in conjunction with other MHFA, State, or Federal programs as appropriate.

**APPLICATION PROCESS:** Applicants should request application packets from MHFA staff.

Minnesota Housing Finance Agency  
400 Sibley Street, Suite 300  
St. Paul, MN 55101  
Attention: Steve Peacock (612) 296-9822

*Applications are due by 4:30 PM on Friday, February 2, 1990.* The Housing Trust Fund Advisory Committee will review the applications and should make funding recommendations to the MHFA Board by March 22, 1990.

Any questions concerning the Housing Trust Fund Housing Program or the application process should be directed to Steve Peacock (612) 296-9822 at MHFA. Applicants are encouraged to discuss the feasibility of their project proposal with MHFA staff prior to submitting an application for funds.

This Request for Proposals (RFP) is subject to all applicable federal, state, and municipal laws, rules, and regulations. MHFA reserves the right to modify or withdraw this RFP at any time and is not able to reimburse any applicant for costs incurred in the preparation or submittal of applications.

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## Supreme Court Calendar

Listed below are the cases scheduled to be heard by the Minnesota Supreme Court in the next few weeks. This listing has been compiled by the Minnesota State Law Library for informational purposes only. Cases may be rescheduled by the Court subsequent to publication in the *State Register*. Questions concerning dates, locations, cases, etc., should be directed to: Clerk of the Appellate Courts, Room 230 State Capitol, St. Paul, MN 55155 612-296-2581.

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### Cases Scheduled to be Heard During December, 1989

#### Compiled by Dale A. Hansen, (612) 297-4050

Listed below are the cases scheduled to be heard by the Minnesota Supreme Court in the next few weeks. This listing has been compiled by the Minnesota State Law Library for informational purposes only. Cases may be rescheduled by the Court subsequent to publication in the *State Register*. Questions concerning the time and location of hearings should be directed to: Clerk of the Appellate Courts, Room 230 State Capitol, St. Paul, MN 55155, (612) 296-2581.

#### Monday, December 4, 1989 9:00 am

**C3-88-1760 In Re Petition for Disciplinary Action against JOHN REMINGTON GRAHAM, an Attorney at Law of the State of Minnesota** (Attorney: John Remington Graham). Petition for Disciplinary Action.

Is an attorney absolutely privileged as to an affidavit in support of a recusal motion, a complaint of judicial misconduct and accusations supporting a request for criminal investigation, such that he may make false statements recklessly and frivolously without disciplinary consequence?

What standards are constitutionally required for determining whether an attorney's statements are "frivolous" and "reckless" under Rules of Professional Conduct 3.1 and 8.2(a)?

In disciplinary proceedings what account may the court take of a respondent attorney's conduct during the proceedings?

**C0-88-2283 In Re Petition for Disciplinary Action against WENDY ALISON NORA, an Attorney at Law of the State of Minnesota** (Attorney: Wendy Alison Nora. Of Counsel: George R. Ramier). Petition for Disciplinary Action.

**C1-89-1623 In Re Petition for Disciplinary Action against ROBERT V. MAKI, an Attorney at Law of the State of Minnesota** (Attorney: Robert V. Maki). Petition for Disciplinary Action.

#### Tuesday, December 5, 1989 9:00 am

**C8-85-2372 In Re Petition for Disciplinary Action against PARIS DONRAY GETTY, an Attorney at Law of the State of Minnesota** (Attorney: Paris DonRay Getty). Petition for Disciplinary Action.

**C2-89-58 In Re Petition for Disciplinary Action against DAVID K. PORTER, an Attorney at Law of the State of Minnesota** (Attorney: Thomas J. Davern of Arderly & Davern. Of Counsel: John D. Hagen, Jr.). Petition for Disciplinary Action.

**Wednesday, December 6, 1989 9:00 am**

**C6-88-1297 STATE OF MINNESOTA, petitioner, Appellant** (Attorney: Linda K. Jenny, Assistant Hennepin County Attorney) vs. **JEROME JOHN KREJCI, petitioner, Respondent** (Attorney: Steven P. Russett, Assistant State Public Defender). Opinion Court of Appeals.

Was venue proper in Hennepin County when the state failed to prove that any element of the offense occurred in Hennepin County?

If venue is deemed improper in Hennepin County, may Respondent be retried in a county in which venue is deemed proper?

Was Respondent's waiver of his right to counsel not knowingly and intelligently made where the trial court failed to advise Respondent of the perils of proceeding pro se or inquire into Respondent's reasons for rejecting the public defender?

**C8-89-1182 GORDON ALLEN FRATZKE, petitioner, Appellant** (Attorney: Mark D. Nyvold, Special Assistant State Public Defender) vs. **STATE OF MINNESOTA, Respondent** (Attorneys: Paul R. Kempainen, Assistant State Attorney General and John Hoffman, Mille Lacs County Attorney). Order Mille Lacs County.

Did the post-conviction court abuse its discretion in refusing to permit Appellant an evidentiary hearing to establish his ineffective assistance of counsel claims?

Did the post-conviction court abuse its discretion in refusing to grant Appellant a continuance to work with counsel to prepare a legally sufficient petition?

**Thursday, December 7, 1989 9:00 am**

**C8-89-1148 SUZANNE TOMFOHR, as trustee for the heirs of JOHN TOMFOHR, deceased, Plaintiff** (Attorney: John C. Goetz of Schwebel, Goetz & Sieben) vs. **THE MAYO FOUNDATION and ST. MARY'S HOSPITAL, Defendants** (Attorneys: Craig A. Beck of Dorsey & Whitney, Rochester; Thomas Tinkham, Michael J. Wahoske, and Laurie A. Vasichek of Dorsey & Whitney, Minneapolis. Of Counsel: Ann E. Decker, Legal Counsel, Mayo Clinic). Certified Question United States District Court, District of Minnesota, First Division.

In a medical malpractice action where a person with severe depression, concerned with controlling his own impulses, expressing suicidal and homicidal thoughts, voluntarily enters a psychiatric hospital, is placed on a locked psychiatric ward, is put on suicide precautions, and when alone in his room commits suicide by hanging, is it proper under Minnesota law to submit to the jury the hospital's duty to safeguard the patient in terms of whether there was a reasonably foreseeable occurrence of self-inflicted injury regardless of whether it was the product of the patient's volitional or negligent act, or should the issue of the hospital's duty be submitted along with the issue of the patient's alleged negligence for his own safety under a capacity-based instruction on contributory fault?

**C4-89-353 STATE OF MINNESOTA, Respondent** (Attorney: Paul R. Kempainen, Assistant State Attorney General) vs. **MATTHEW CHARLES GORE, Appellant** (Attorney: Steven P. Russett, Assistant State Public Defender). Judgment Olmsted County.

Did the trial court properly refuse to instruct the jury on "heat of passion" manslaughter in phase one of the trial?

Did the trial court properly allow the testimony of the physician who treated Appellant upon his arrest on the basis that Appellant waived his physician-patient privilege by offering evidence of Appellant's alleged attempted suicide?

Did Appellant establish by a preponderance of the evidence that because of mental illness he did not know the nature of his act or that it was wrong?

Did the trial court act within its discretion in ruling that the defense expert's proffered testimony regarding the behavior of Appellant at trial was not proper rebuttal?

Did the trial court properly not submit a verdict form on second degree felony murder in the second phase of the trial, after Appellant had already been found guilty of first degree murder in the first phase?

**Monday, December 11, 1989 9:00 am**

**CX-88-2226 HOWARD E. HARMS, Respondent** (Attorney: Michael J. Vanselow of Oppenheimer, Wolff & Donnelly) vs. **INDEPENDENT SCHOOL DISTRICT NO. 300, LaCRESCENT, MINNESOTA, petitioner, Appellant** (Attorneys: Steven M. Hardy and Philip A. Gartner of Gartner, Shulman & Erwin). Opinion Court of Appeals.

Does *Minnesota Statutes* § 125.12, subd. 6b(e) require school districts to take reasonable steps to realign personnel and positions when a vacancy occurs to accommodate seniority rights of teachers on unrequested leave of absence?

**C5-89-1477 MONTGOMERY WARD & CO., INC., Relator** (Attorneys: Michael R. Trittipio and Thomas R. Wilhelmy of Fredrikson & Byron) vs. **COUNTY OF HENNEPIN, Respondent** (Attorney: Mark Chapin, Assistant Hennepin County Attorney). Order Minnesota Tax Court.

## Supreme Court Calendar

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Did Relator waive its right to seek discovery of an appraisal prepared for a competing department store in another tax case when the Minnesota Tax Court, in a pretrial order, took both parties' discovery requests under advisement subject to further motion by either party and Relator failed to renew its motion?

Was there sufficient evidence that Relator's department store was not an "anchor department store" to the Terrace Mall, that the Terrace Mall was not a shopping center, and to justify disregarding rent levels paid by anchor department stores to support the finding that the assessor's estimated market value for Relator's property did not exceed its actual market value?

### Tuesday, December 12, 1989 9:00 am

**C9-89-1093 & C0-89-1094** MARY ANN USELMAN, et al., Appellants (C9-89-1093) (Attorneys: Jeffrey P. Anderson and Bradley C. Warner of Nichols, Kaster & Anderson) vs. JERRY L. USELMAN, individually, as President and sole director of Usie Corporation, and as former officer and director of Uselman's Inc., et al., Respondents (Attorney: Thomas S. Fraser of Fredrikson & Byron), NORWEST BANK MINNEAPOLIS, N.A., formerly known as Northwestern National Bank of Minneapolis, trustee for the Nicholas Uselman Trust Agreement, Respondents (Attorney: Robert L. Meller, Jr. of Best & Flanagan), and CAROL A. O'TOOLE, Appellant (C0-89-1094) (Attorneys: David F. Herr and Mary R. Vasaly of Maslon, Edelman, Borman & Brand). Judgment Hennepin County.

**C3-89-70** CITY OF WINONA, Respondent (Attorneys: Thomas J. Radio and Mark F. Ten Eyck of Popham, Haik, Schnobrich & Kaufman. Of Counsel: Richard J. Blahnik of Robertson, Blahnik & Jennings) vs. MINNESOTA POLLUTION CONTROL AGENCY, petitioner, Appellant (Attorney: Ann M. Seha, Special Assistant Attorney General). Opinion Court of Appeals.

Must the Minnesota Pollution Control Agency (MPCA) hold a contested case hearing to determine whether there is a feasible and prudent alternative to the new waste incinerator Winona County proposes to build and operate in the City of Winona?

May the MPCA deny the City a contested case hearing because the City's petition was based in part on factual studies, reports, and health risk assessments authored by others?

### Wednesday, December 13, 1989 9:00 am

**C0-89-43** RICHARD RUDNITSKI, et al., Devises of Alice Rudnitski, Respondents (Attorney: Jerry O. Relph of Hughes, Thoreen & Sullivan) vs. ELIZABETH SEELY, petitioner, Appellant (Patrick W. Stewart of Stevens, Egan, Stewart & Lauer). Opinion Court of Appeals.

Does the statutory cancellation of a contract for deed for breach of covenants bar the vendor, under the doctrine of election of remedies, from bringing a separate suit against vendee for damages for waste to the real estate and conversion of personal property which occurred during vendee's occupation of the property concerned?

**C8-89-310** AMERICAN FAMILY MUTUAL INSURANCE COMPANY, petitioner, Appellant (Attorneys: James A. Stein and Lee A. Henderson of Hessian, McKasy & Soderberg) vs. ROBERT VANMAN, et al., Respondents (Attorneys: Randall G. Spence and Michael C. Snyder of Meshbesher, Singer & Spence). Opinion Court of Appeals.

Does a reparation obligor/assignee or the assigned claims plan bureau have a right of subrogation for basic economic loss no-fault benefits paid to an uninsured pedestrian injured by an uninsured motorist?

### Thursday, December 14, 1989 9:00 am

**C8-84-1650** Hearing to Consider Proposed Amendments to the Minnesota Rules of Professional Conduct.

## Supreme Court Decisions

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### Decisions Filed 22 November 1989

**C0-89-1290** In the Matter of the Proposed Termination of Jeanne Volz, Teacher, by Independent School District #858, St. Charles, Minnesota. Court of Appeals.

Reversed and remanded. Keith, J.

### Orders

**C6-87-2176** In Re Reinstatement of Richard J. Chrysler, an Attorney at Law of the State of Minnesota. Supreme Court.

Reinstated. Kelley, J.

**C0-89-1175** In the Matter of the Proposed Placement on Unrequested Leave of Marie Bristol, Victoria Svetlik, Jane Maurer & Douglas Ekmark. Court of Appeals.

Reversed and remanded. Keith, J.

# Announcements

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**New Arts Programs:** The Minnesota State Arts Board has developed plans for three new programs for artists and arts organizations in response to suggestions from constituents. The **Headlands Project** is a new residency program for Minnesota's visual, literary, and performing artists, giving participating artists housing, studio space, travel subsidy and a monthly living stipend for six months while living and working at Headlands Center for the Arts, near San Francisco. Application deadline is Jan. 26, 1990. The National Alliance of Media Arts Centers provided funding for **New Frontiers Video**, a cooperative project designed to bring video exhibitions to rural audiences throughout the state. The program will begin with a statewide survey of potential video presenters. **Folk Arts Sponsorship Grants**, a new grant program for Minnesota's folk art presenters, provides matching funds between \$500 and \$4,000 to nonprofit, tax-exempt organizations (such as community groups, museums, and state, regional, or local government agencies) for public programs that present and interpret Minnesota folk arts. For more information, contact the State Arts Board, 432 Summit Ave., St. Paul, MN 55102, (612) 297-2603, or toll-free in Minnesota 1-800-652-9747.

**Governor's Appointments:** Governor Rudy Perpich made the following appointments: Milt Knoll, Maplewood, to the Citizens' Council on Voyageurs National Park; Molly Wise, Monticello, to the Governor's Advisory Council on Technology for Persons with Disabilities; Robert Jirik, St. Paul, Greg Boll, Worthington, Janet Donaldson, Long Lake, Timothy Salazar, Mound, JoEllen Ambrose, Coon Rapids, and Opal Peterson, Forest Lake, to the Bicentennial U.S. Constitutional Commission.

**Hearing Dates for Corn Promotion Order:** The Minnesota Department of Agriculture and the Minnesota Corn Research and Promotion Council have scheduled hearings to receive producer testimony on the creation of a Corn Promotion Order. The proposed order would research the utilization of new corn products and promote existing future corn products. Activities would be financed through a half-cent, per bushel assessment at the first point of sale with the commercial grain buyer. Sales between farmers, Commodity Credit Corporation crop loans and corn retained for farm use would be exempt from assessment. Potential for expansion includes markets for corn sweeteners, ethanol-enriched fuels and bio-degradable plastics. Together, these products use approximately 1 billion bushels of corn per year adding an estimated 25 cents to the price of each bushel. Corn producers are welcome to testify at any of the hearings. All testimony will be taken under advisement by the council to determine if there should be any changes to the proposed order. A referendum for creation of the order is tentatively scheduled for early next year. The hearings are scheduled as follows: • Thursday, Nov. 30, 9 a.m.—Olmsted County Extension Office, Room D, 1421 Third Ave. S.E., Rochester, Minnesota. • 2 p.m.—Blue Earth County Extension Office, County Government Center, Third Floor Meeting Room, 410 Fifth St. S., Mankato, Minnesota. • Thursday, Dec. 7, 2 p.m.—West Central Experiment Station, University of Minnesota, Morris, Highway 329, Morris, Minnesota. • Friday, Dec. 8, 10 a.m.—Lyon County Extension Office, Ag Service Center, 1400 Lyon St. E., Marshall, Minnesota.

**North Dakota/South Dakota Centennial Celebration:** Governor Rudy Perpich announced plans for the North Dakota/South Dakota Centennial Celebration, a reception for former residents of those states who now reside in Minnesota. Governor Perpich will be joined by South Dakota Governor George Mickelson and North Dakota Governor George Sinner for the reception, which will be held from 11 a.m. to 2 p.m. on Saturday, Dec. 9, in the Minnesota State Capitol Rotunda. People attending the reception are asked to bring nonperishable food items for the Minnesota Foodshelf Network or unwrapped toys to be distributed among various organizations conducting gift drives for less fortunate children. Persons planning to attend the reception are asked to call the state's toll-free number, 1-800-652-9747, from locations in Greater Minnesota or 297-5556 in the Twin Cities metropolitan area and tell the operator they are calling about the North Dakota and South Dakota celebration. Responses are requested by Dec. 5.

**Minnesotans Encouraged to Send Jacob Wetterling Posters:** Governor Rudy Perpich encouraged Minnesotans to continue the search for 11-year-old Jacob Wetterling by sending posters of the missing child to friends and relatives nationwide. Jacob was abducted at gunpoint in St. Joseph on Oct. 22. "Jacob and his family have become a part of Minnesota families. We must all do what we can to keep the search going for this missing child," said Governor Perpich. "We can do this by asking our friends and relatives across the country to post Jacob's picture around their communities in hopes that someone will recognize him." Posters are available by contacting: Friends of Jacob Wetterling, P.O. Box 877, 32 First Ave. N.W., St. Joseph, MN 56374, or you may call (612) 363-0470.

**Arts Grants Meetings:** The Metropolitan Council Regional Arts Council plans to expand its production assistance grant program to include support for ongoing art activities—such as a series of exhibitions or publications or a season of performances—in addition to single projects. It has also revised its grant application forms. Parties interested in this grant program are encouraged to attend one of the meetings. The first will be held from 3 to 5 p.m. Thursday, Dec. 7, at the Metropolitan Council offices, Mears Park Centre, 230 E. Fifth St., downtown St. Paul. The second is set for 6:30 to 8:30 p.m. Monday, Dec. 11, in the downtown Minneapolis Public Library, Third and Nicollet. For more information and to register, call 291-6303. Eligible arts groups must be based in and offer art activities in the seven-county Metro Area, have annual budgets under \$300,000 (local governments and schools must have art and culture budgets under \$300,000) and not be recipients of general operating support from the Minnesota State Arts Board. Guidelines and application forms for the next grant cycle will be available in January, 1990. The application deadline will be March 1.

## Resolve Bargaining Disputes and Grievances

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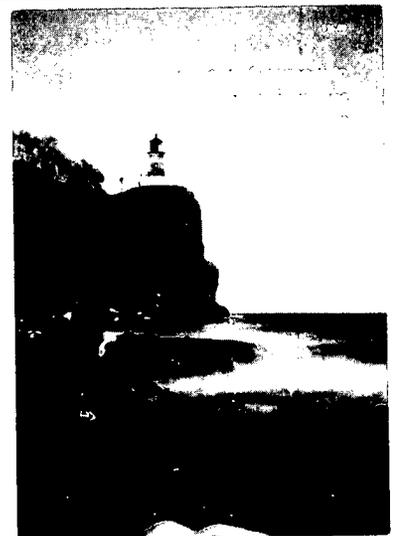
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