

# State Register

STATE OF  
MINNESOTA



## HIGHLIGHTS:

### RULES

- State Water Bank Program
- Placement of Smoke Detectors

### PROPOSED RULES

- Hearing on Continuation of DPW 49 Governing Welfare Per-Diem for Nursing Home Providers

### OFFICIAL NOTICES

- Banking Bulletin on Maximum Mortgage Interest Rates
- Outside Opinion Solicited on Nursing Assistant Education Programs
- Ethical Practices Board; Meeting Notice, Advisory Opinions, and Requests for Advisory Opinions

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A detailed table of contents appears inside.

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Carol Anderson Porter  
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Richard L. Brubacher  
Commissioner  
Department of Administration

James Clancy, Paul Hoffman, Robin PanLener, Jack Richter  
Editorial Staff

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Secretarial Staff

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The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4 have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption as proposed and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

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

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## Department of Natural Resources Waters Division

### Adopted Rules Governing the State Water Bank Program

The proposed rules published at *State Register*, Volume 2, Number 7, pp. 287-293, August 22, 1977 (2 S.R. 287), are adopted and are identical to their proposed form, with the following amendments:

#### Rule as Adopted

#### NR 5300 Basic provisions.

##### A. Authority and scope.

1. Minn. Stat. § 105.391, subd. 3, establishes the conditions under which waterbasins which have been designated public waters may be drained. There are two such conditions, either:

a. The public water being drained will be replaced by a waterbasin which will have equal or greater public value, or

b. The public water is eligible for the state water bank program, but the commissioner of natural resources does not elect, within 60 days of receipt of an application for a permit to drain the basin, to offer the landowner the landowner's choice of:

(1) Placing the waterbasin in the state water bank program;

(2) Selling the basin in fee title to the state under the provisions of Minn. Stat. § 97.481, or

(3) One of the following appropriate means of indemnification:

— place the basin in the federal water bank program (if applicable);

— sell a perpetual easement in the nature of a conservation restriction;

— lease the basin to the state.

2. Minn. Stat. § 105.392, subd. 2, establishes which public waterbasins are eligible for inclusion in the state water bank program. The public water must fit all the following criteria:

a. It is wetland type 3 or 4, as defined in U.S. Fish and Wildlife Circular No. 39 (1974 edition);

b. It is less than 50 acres in area;

c. It was designated public waters, (by the process described in Minn. Stat. § 105.391); because of its beneficial public value as wildlife habitat;

d. It is lawful, feasible and practical to drain;

e. Drainage would provide high quality cropland, and that is the projected land use.

These rules are promulgated under the authority of Minn. Stat. §§ 105.392, subd. 2, and 105.415. Their purpose is to implement and make specific the state water bank program and the indemnification process established by Minn. Stat. § 105.391, subd. 3 for the purpose of compensating farmers for not converting certain kinds of wetlands to cropland.

##### B. Purpose.

1. It is in the public interest to preserve the wetlands of the state and thereby to conserve surface waters, to preserve wildlife habitat, to reduce runoff, to provide for floodwater retention, to reduce stream sedimentation, to contribute to improved subsurface moisture, to enhance the natural



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beauty of the landscape, and to promote comprehensive and total water management planning. These rules define and outline procedures authorized by Minn. Stat. ch. 105.392, and establish the state water bank program.

## C. B. Definitions.

1. "Commissioner" means the Commissioner of the Department of Natural Resources or his designated agents.

2. "Drain" means to conduct drainage activities that will remove or reduce the surface water from the basin. Acts constituting draining include, but are not limited to pumping, lowering the outlet, enlarging the outlet tiling or reducing the amount of water entering the basin. (Drainage does not include temporary water level reduction for conservation purposes.)

3. "Equal or greater public value" means the new waterbasin offers a total beneficial public value at least that of the one being drained. The new values do not have to be identical to the ones being lost, but in general the new waterbasin should be as large and of the same wetland type as the one being drained.

4. 3. "Public waters" for purposes of the conditions for draining described in A.1., these rules means waters of the state so designated in a county by the process described in Minn. Stat. § 105.391, and those waters that have been determined to be public waters or navigable waters by the district court or if appealed, by the State or Federal supreme court.

5. "Receipt of an application" means receipt of any completed form the commissioner may require for applications to drain, together with all data specified by the form, and any required application fees.

6. 4. "Adjacent land" means any lands abutting a basin that is eligible for inclusion in the state water bank program.

7. "Offer the landowner the landowner's choice" means mail to the owner the following offers of indemnification of which he may choose one: the water bank offer, lease offer, purchase offer, easement offer, and the federal water bank program (if applicable). None of the offers will contain a dollar value until an appraisal has been conducted.

8. "Conservation restriction" has the meaning given in Minn. Stat. § 84.64. It may include right of entry by the

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commissioner and his agents and representatives to maintain or improve wildlife habitat values.

9. 5. "Less than 50 acres in area" means the area of a plane bounded by the natural ordinary high water mark of the waterbasin. The natural ordinary high water mark is a mark delineating the highest water level which has been maintained for a sufficient period of time to leave evidence on the landscape. The ordinary high water mark is commonly that point where the vegetation changes from predominantly aquatic to predominantly terrestrial. maintained for a sufficient period of time to leave evidence upon the landscape. This evidence includes, but is not limited to, shoreline defined by wave action and the limits of terrestrial and aquatic vegetation. Aquatic vegetation includes, but is not limited to, grasses, bulrushes, spikerushes, cattails, arrowhead, pickerelweed, smartweed, nainds, cluckweed, spatter docks and wild rice.

10. 6. "Fair market value" is an estimate of a property's value based upon standard and accepted land appraisal methods. The appraisal for eligible wetlands will estimate the potential value of the area as agricultural cropland less the cost of drainage.

11. "High quality cropland" is a value of four or less which is established by multiplying an area's growing degree days rating value by its soil property rating value (see D. 1. a. (5)).

12. 7. "Professional soil classifier" is a person who qualifies as a professional soil classifier on the basis of criteria specified by the Minnesota Association of Professional Soil Classifiers. The requirements are a Bachelor of Science degree in Soil Science or adequate credits (15 semester or 23 quarter hours) in Soil Science, and four years of field experience in mapping soils.

## D. C. Procedures.

1. Application for a permit to drain basins that are potentially eligible for compensation from the Department because of being declared public waters shall be made on such forms as the Commissioner may provide, and shall include all data specified by the form and any required application fees.

a. The applicant shall include the following infor-

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mation to enable the Commissioner to determine the feasibility, practicality, and lawfulness of the proposed drainage:

(1) A statement by the owner that there are no burdens on the property or agreements which drainage would violate.

(2) A demonstration by the owner that the right to use the outlet can be obtained.

(3) A description of the proposed drainage project.

(4) A demonstration of the project costs. Show how the costs were estimated, together with an explanation of why the investment would be profitable.

5-

b. A statement by a Professional Soil Classifier that the basin would be high quality cropland. The determination shall be based on the following criteria:

The kind of soils that will qualify as high quality cropland are based on the following method arranged from best to poorest.

Rating Value	Soil Properties
1	Loamy or clayey mineral soils (loamy or clayey average particle size in the control section).
2	Deep organic soils (Typic subgroups), and shallow organic soils with a loamy or clayey substratum (Terric subgroups with loamy or clayey particle size).
3	Shallow organic soils with a sandy or gravelly substratum (Terric subgroups with sandy or sandy skeletal particle size).
4	Sandy or gravelly mineral soils (Aquepts, aquepts, and Aquolls with sandy or sandy skeletal average particle size in the control section).
5	Other soils (mostly soils with limnic materials dominating the control section).

Growing degree days (GDD) will be used as a climatic parameter for assessing soil quality. The groups from best to poorest are:

Rating Value	Climate Parameter
1	More than 4400 GDD
2	3400-4400 GDD
4	Less than 3400 GDD

The following counties fall within the individual climate parameters:

### More than 4400 GDD

Anoka	Lac Qui Parle	Rice
Big Stone	Le Sueur	Rock
Blue Earth	Lincoln	Scott
Brown	Lyon	Sibley
Carver	McLeod	Steele
Chippewa	Martin	Stevens
Cottonwood	Meeker	Swift
Dakota	Mower	Traverse
Dodge	Murray	Wabasha
Faribault	Nicollet	Waseca
Fillmore	Nobles	Washington
Freeborn	Olmsted	Watonwan
Goodhue	Pipestone	Wilkin
Hennepin	Ramsey	Winona
Houston	Redwood	Wright
Jackson	Renville	Yellow Medicine
Kandiyohi		

### 3400-4400 GDD

Aitkin	Hubbard	Otter Tail
Becker	Isanti	Pennington
Beltrami	Itasca	Pine
Benton	Kanabec	Polk
Carlton	Kittson	Pope
Cass	Koochiching	Red Lake
Chisago	Lake of the Woods	Roseau
Clay	Mahnomen	Sherburne
Clearwater	Marshall	Stearns
Crow Wing	Mille Lacs	Todd
Douglas	Morrison	Wadena
Grant	Norman	

### Less than 3400 GDD

Cook	Lake	St. Louis
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To arrive at a value, an index is determined by multiplying the soil property rating by the GDD rating. A value of four or less shall be considered high quality cropland.

The determination of soil properties shall be done by a Professional Soil Classifier with at least one observation of soil properties to depths of 50 inches for each ten acres of the wetland. Points of observations should be lo-

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cated systematically in the wetland, recorded on a map, and a log of soil made for each observation. The information shall be included with the permit application.

b. ~~The application to drain must be signed by all landowners riparian to the basin.~~

2. ~~If the public waterbasin has been enrolled in any other compensatory program, such as, but not limited to, the Federal Water Bank Program or the U.S. Fish & Wildlife Services' easement for waterfowl management, the area is not eligible for state compensation under Minn. Stat. § 105.391, subd. 3, until the expiration date of the original agreement.~~

3. ~~Landowners are not eligible for compensation under Minn. Stat. § 105.391, subd. 3, if the public water basin proposed for drainage is serving as a replacement basin for another public waterbasin that was legally drained.~~

4. ~~2.~~ If the public waterbasin is eligible for compensation the Commissioner shall mail to the applicant, within 60 days of ~~written~~ receipt of an application for a permit to drain, the various choices of indemnification. The Commissioner's offer shall include the following:

a. An offer

(1) ~~To~~ to place the basin in the state water bank program, together with a sample water bank agreement.

b. ~~(2) An offer to~~ To acquire the basin and such interest as is necessary to make entry upon the acquired area available to the public.

c. ~~(3) An offer to~~ To acquire an perpetual easement in the nature of a conservation restriction as described by Minn. Stat. §§ 84.64 and 84.65. ~~The right of entry by the Commissioner to inspect and to maintain or enhance wildlife habitat shall be included in the agreement, together with a sample of such conservation an easement, shall accompany the offer.~~

d. ~~(4) An offer to~~ To acquire a lease on the basin, together with a sample lease agreement.

e. b. A statement

(1) ~~If~~ if such be the case, that the wetland appears to be eligible for the federal water bank program and who the landowner should contact. The state program, however, does not incur any obligations on the federal program and if

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the landowner chooses to select this option he will be subject to the federal program's priorities and procedures.

(2) That the landowner may suggest any other appropriate indemnification method along with the proposed terms and conditions he would like to have included.

f. ~~(3) A statement that~~ That the landowner and commissioner may agree to include adjacent property in the terms of the agreements.

g. ~~(4) A statement that~~ That the landowner has his choice of any one of the indemnification offers. ~~It will be further spelled out that an appraisal will be conducted to determine the fair market value of the property. Appraisals for purchasing or obtaining an easement interest in lands, by law, must be submitted to the Department of Administration or any other method of indemnification that the commissioner will agree to.~~ for certification. Once approved, the landowner will be advised of the values assigned to each of the offers.

c. An explanation of the balance of these procedures in order to establish the dollar amount of each offer as soon as the landowner specifies what adjacent land, if any, he would like to have included.

5. ~~3.~~ If the area does not meet the criteria for eligibility is ineligible for compensation the Commissioner will so inform the applicant and advise him that a Minn. Stat. § 105.44 hearing on the issue of eligibility may be demanded.

6. ~~4.~~ If within 60 days of receipt of an application for a permit to drain, the Commissioner does not mail the landowner his choice of indemnification, the landowner is entitled to drain the basin.

7. ~~5.~~ If the Commissioner timely mails the landowner the choices Upon receipt of an offer of indemnification, the landowner: a. ~~Will be required to specify~~ shall inform the commissioner of the amount (if any) and location of adjacent lands that the landowner would like to have included in the agreement before an appraisal can be initiated, and what alternative (if any) methods of indemnification he would like the commissioner to consider.

b. Upon receiving the certified appraisals, the Commissioner shall initiate negotiations with the land owner and inform him of the details of each offer.

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The landowner may then:

- (1) ~~Accept the state water bank program; or~~
- (2) ~~Place the basin in the federal water bank program (if applicable); or~~
- (3) ~~Agree to sell the basin, together with the required access and adjacent lands, to the Commissioner; or~~
- (4) ~~Accept the lease offer; or~~
- (5) ~~Accept the easement offer.~~

6. Within 60 days of receiving the above information the commissioner shall complete an appraisal of the property and submit it to the Department of Administration for certification. If it is not so submitted within the 60 day period, the landowner may drain the basin.

7. When an appraisal has been certified, the commissioner shall inform the landowner of the dollar amount of each offer, and begin negotiations. The outcome of the negotiations can be either:

a. The landowner accepts one of the offers made or agreed to by the commissioner.

b. The landowner places the basin in a federal waterbank program.

c. The landowner signs a consent to condemnation pursuant to Minn. Stat. § 84.027, subd. 9, specifying which of the methods of indemnification offered or agreed to by the commissioner he has selected; or

d. The landowner does none of the above, in which case the basin cannot be drained unless and until a new application for a permit to drain is submitted and the commissioner does not make an offer of indemnification.

e. 8. If the landowner chooses to sell the basin and access area to the commissioner he shall obtain from the County Board of Commissioners the approval to sell the property as required by Minn. Stat. § 97.481. The Commissioner must be supplied with a copy of the Board's resolution and if the County Board refuses approval, the applicant must select from among those options not requiring County Board approval. This procedure does not apply in those counties where blanket approval to sell the property to the State has been granted to those landowners who are eligible for compensation under Minn. Stat. § 105.391, subd. 3.

d. ~~Unless otherwise agreed upon, the applicant has~~

~~six months from initiation of the negotiations to accept one of the offers. If the applicant does not do so, the offers expire on that date. The applicant may not again apply for a permit to drain the same basin before two years after the expiration date of the previous offer.~~

9. Water bank, lease and easements obtained on an area shall be recorded and indexed in the office of the county recorder in the county where the basin lies.

E. D. Effective date.

4. ~~These rules apply to applications for permits to drain received after the waterbasin involved has been designated a public water pursuant to Minn. Stat. § 105.391, or has been identified as public waters or navigable waters by a district court or if appealed, by the state or federal supreme court.~~

F. E. Payment rates.

1. Annual payment rates for the state water bank program will be determined by multiplying the fair market value of the basin times ~~four~~ five percent.

a. An appraisal will be conducted by the state to determine the fair market value of the property.

b. Water bank payments for adjacent lands will be determined by multiplying the fair market value of the adjacent lands times four percent.

2. Annual lease payments for the water basin and any adjacent lands will be based on a fair market rental rate.

3. Conservation restrictions in the form of easements are perpetual and their value will be established by an appraisal.

4. ~~Water bank, lease and easements obtained on an area shall be recorded and indexed in the office of the county recorder in the county where the basin lies.~~

The rate for any other method of indemnification that is agreed to will be negotiated with the landowner and judged on its merits based upon the proposed restrictions and their relationship to the other payment rates.

G. F. Terms for the water bank and lease agreements.

1. Agreement period and beginning date.

a. Eligible basins are placed in the state water bank program for a period of ten calendar years and under a lease agreement for, not to exceed, twenty calendar years.

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b. The lease agreement is continuous and shall transfer with the property if ownership changes during the time of the lease agreement.

c. A water bank or lease agreement finalized during the current calendar year shall be effective January 1 of that year. Exception: In cases where compliance with the terms of agreement cannot be rendered during the current calendar year, the beginning date of the agreement shall be January 1 of the following year.

d. Water bank or lease payments for the first year of an agreement will be made as soon as possible after an agreement has been finalized. Payments for the duration of a water bank or lease agreement will be made on or about August 1 of each continuous year thereafter.

## 2. Terms.

### a. Waterbasins.

(1) In return for receipt of an annual payment the landowner must agree not to adopt any practice which would tend to defeat the purposes of the agreement. At a minimum, the designated basin may not be:

(a) drained, burned, filled, clipped, or otherwise used in such a manner that would effect its wetland character. Exception: Noxious weeds may be controlled by the landowner: by spot clipping and spot spraying. If cutting is used the area should not be clipped closer than 6 inches so as to protect nesting wildlife;

(b) harvested for agricultural purposes;

(c) grazed;

(d) used as a source of irrigation water;

(e) used as a receptacle for draining other wetlands.

Exception: The Commissioner may approve designated acreage to receive limited drainage waters if such use is in keeping with sound wetlands management and prescribed in a mutually agreed upon conservation plan.

### b. Adjacent lands.

~~(1) The landowner shall not adopt any practice on the adjacent land that may destroy the wetland character of~~

~~the designated area. Of specific concern is an increase in sediment load caused by encroachment on the basin.~~

(2) (1) ~~The~~ If the Commissioner finds that it is desirable to retain natural area adjacent to wetlands because of their benefit to wildlife, ~~The landowner and Commissioner~~ he may mutually agree ~~with the landowner~~ upon the amount and location of adjacent ~~land~~ lands to include in the agreement.

(a) Up to one acre of adjacent land may be obtained for each acre of waterbasin.

(b) The Commissioner may negotiate and outline a conservation plan for the waterbasin and adjacent lands. Upon signing the agreement, the landowner shall agree to effectuate the wetland conservation and development plan. Terms that may be included are:

(i) development of food and/or cover plots,

(ii) specified planting and harvesting dates,

(iii) areas desirable for permanent cover,

(iv) habitat improvement methods such as:

(aa) clearing

(bb) tilling

(cc) re-establishment of former wetlands or the creation of new wetlands.

(dd) fencing to protect the area

(v) advice on conservation and development practices,

(vi) any other mutually agreed upon practice that would effectuate wetland conservation and development.

## 3. Signatures.

a. The agreement shall be on forms provided by the Commissioner and shall be signed by:

(1) the owner of the designated acreage, and

(2) the Commissioner

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### H. G. Modifications of water bank and lease agreements.

The Commissioner and the land owner may mutually agree to any modification of agreement terms that may be desirable to carry out the purposes of the program or facilitate its administration. Exception: No changes in payment rates for acreage under agreement is authorized during the term of the water bank or lease agreement.

1. Change in ownership of lands underlying public waters.

a. All landowners shall notify the Commissioner of the sale of property that is covered by the water bank or lease agreement.

b. Upon transfer of an individual's right and interest in lands subject to a water bank agreement during the agreement period, the former land owner forfeits all rights to further payments under the agreement and refunds to the state all payments received thereunder during that year of the transfer. This is not required for those participating in a lease agreement nor if the transferee of any such land agrees with the Commissioner to assume all obligations of the former owner. Forfeiture of payments is not required for those participating in a lease agreement nor if the transferee of any such land agrees with the commissioner to assume all obligations of the former owner.

(1) The new land owner may choose not to participate in the water bank program; however, any water declared public shall not be drained. If an alternative form of indemnification is desired, or if the new owner wishes to have payment rates adjusted on the existing water bank agreement, a permit application will have to be submitted to the Commissioner to initiate the procedures in these rules. The requirement for soils information and borings shall be waived on those basins that have been determined eligible for the water bank program by previous permit applications.

c. When two or more farms are combined that share mutual public waters the land owner who is adding to his property shall have the option of adding the new property to his original agreement, continuing the former owners agreement, or deciding not to participate in the program and not being able to drain the basin.

d. When a transfer of ownership occurs on or before August 1 of the current calendar year and the new owner agrees to continue the former owner's obligation, payments due will be made to the new owner.

2. Registration of modification.

a. all modifications will be completed on amendment forms provided by the Commissioner.

b. modification will be noted on the original agreement and the original amendment forms will be retained by the Commissioner.

~~I. H.~~ Agreement terminations.

1. Upon termination of an agreement the landowner shall forfeit all rights to further payments.

2. The Commissioner may terminate any agreement with mutual consent of the landowner if the Commissioner determines that termination would be in the public interest. If such be the case, no refund of payments made under the agreement is required.

~~3. Any agreement may be terminated by the agreement signer if all payments made under the agreement are refunded. However,~~

~~a. the affected basin cannot be drained, and~~

~~b. no permit application will be considered until a transfer of ownership has taken place.~~

~~4.~~

3. The landowner must refund to the state all payments, partial or in full, received under the agreement upon any violation of the agreement terms during the time that the landowner has control of the property.

a. Subject to the Commissioner's determination that the violation is of the nature that warrants termination of the agreement the landowner shall:

(1) Refund, to the state, all payments received,

(2) Forfeit all rights to further payments,

(3) Not be entitled to drain the affected basin, and

(4) Not have the basin considered for a permit to drain or be allowed compensation under Minn. Stat. § 105.391, subd. 3, until a transfer of ownership had taken place.

b. Subject to the Commissioner's determination that the violation does not warrant termination of the agreement, the Commissioner may require partial refunds or make payment adjustments as he deems appropriate.

~~5.~~

4. Termination action.

a. The Commissioner shall notify each party to the agreement of the termination. ~~The notice shall state:~~

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- (1) The reason for termination,
- (2) The amount of payment refunded due, ~~and~~

(3) That the landowner is no longer required to comply with the agreement terms and that the public waters cannot be drained.

b. The landowner may challenge the termination by demanding a hearing under Minn. Stat. § 105.44.

†

### I. Extension of water bank or lease agreement.

1. At the end of an agreement period the Commissioner shall offer the landowner his choice of the five indemnification offers without requiring a new application for a permit to drain.

2. The landowner has 60 days to notify the Commissioner, in writing, if he will be:

a. continuing the former agreement terms, subject to any rate redetermination, or

b. dissolving the former agreement, and

c. changing to another form of indemnification, or

d. deciding not to participate in the program with the knowledge that the basin cannot be drained.

3. If the landowner chooses to select another indemnification method, the choice must be specified in the landowner's notice to the Commissioner.

4. If the notification of the landowners intent to continue in the program is not given, the landowner will be required to submit an application for a permit to drain the basin to establish future eligibility for the water bank program.

5. Upon receipt of the landowner's choice, the Commissioner shall conduct an appraisal to establish the fair market value of the property. Once completed, the agreement may be finalized.

## Department of Public Safety Fire Marshal Division Placement of Smoke Detectors in Dwellings, Apartment Houses, Hotels, and Lodging Houses

The rules proposed and published at *State Register*, Volume 2, Number 16, page 891, October 24, 1977 (2 S.R. 891) are now adopted and are identical to their proposed form, with the following amendments:

### Rule as Adopted

#### Chapter Six: Smoke detectors.

##### 11 MCAR § 1.5067 Purpose and scope.

A. The purpose of these rules is to specify the placement of smoke detectors in dwelling units, apartment houses, hotels, and lodging houses.

B. These rules are enacted pursuant to Laws of 1977, ch. 333, § 2, subd. 2.

##### 11 MCAR § 1.5068 Definitions.

A. Administrative authority. The fire chief, or his authorized representative, of the fire department having jurisdiction, or the state fire marshal or his authorized representative.

B. Alarm signal. An audible signal indicating a fire condition.

C. Smoke detector. A device which detects visible or invisible products of combustion.

**11 MCAR § 1.5069 Smoke detector placement.** ~~All detectors shall be located within 42 inches of the ceiling but not closer than 6 inches to the ceiling.~~ Care shall be exercised to insure that the installation will not interfere with the operating characteristics of the detector. When actuated, the detector shall provide an alarm signal in the dwelling unit or guest sleeping room.

A. In dwelling units, smoke detectors shall be mounted on the ceiling or wall at a point centrally located in the of a corridor or area giving access to rooms used for sleeping purposes.

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## 11 MCAR 1.5070

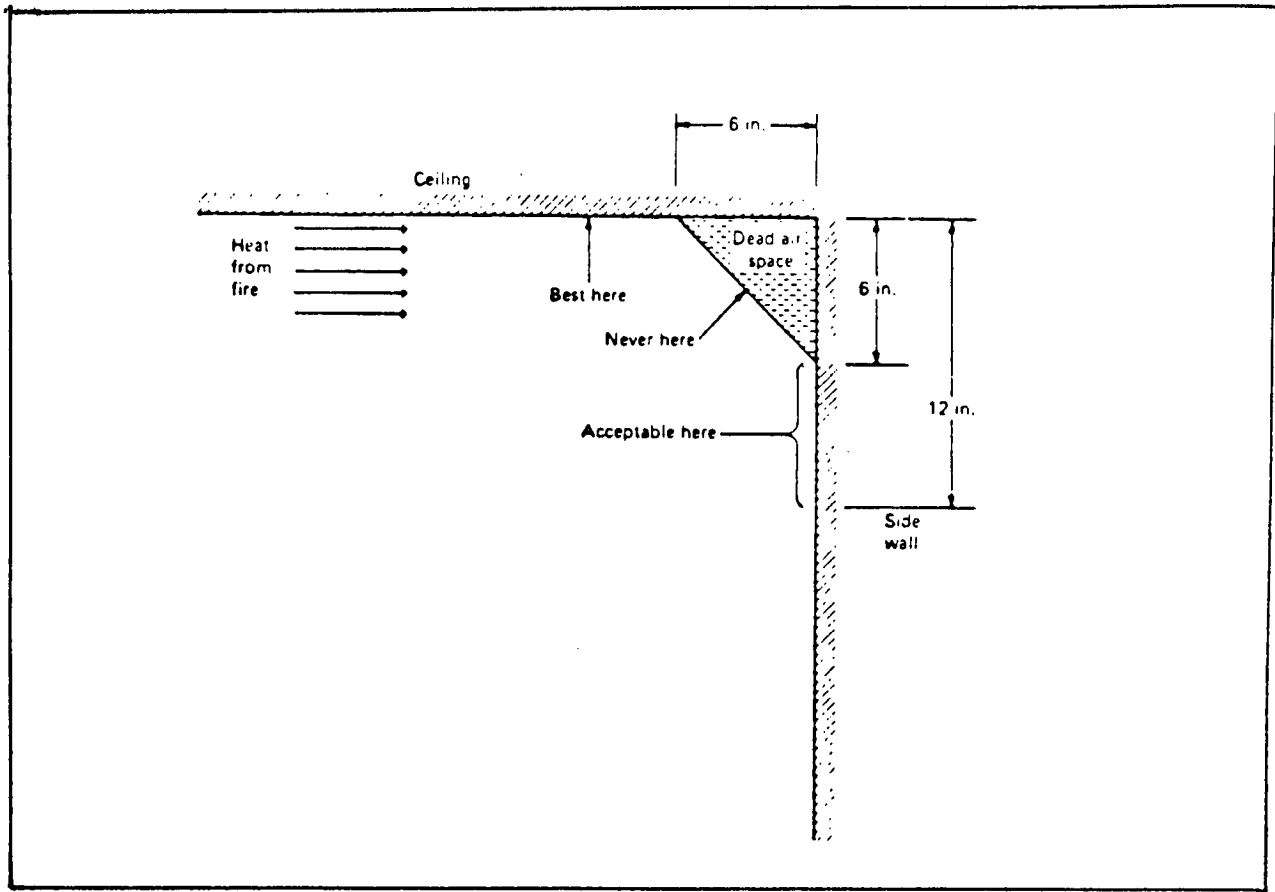
1. Ceiling mounted smoke detectors shall be located as close to the center of the ceiling as possible, but not within 6 inches of a wall.

2. As an alternate, smoke detectors may be mounted on a wall within 12 inches of the ceiling, but not closer than 6 inches from the intersection of the wall and ceiling.

B. In a hotel guest sleeping rooms, hotel suites and lodging houses, the detector shall be centrally located on the ceiling of the main room or hotel guest sleeping room.

Where sleeping rooms are on an upper level, the detector shall be placed at the center of the ceiling directly above the stairway. In hotel suites, where sleeping rooms are on more than one floor, the detector for the area of the sleeping rooms on the upper level shall be placed at the center of the ceiling directly above the stairway.

**11 MCAR § 1.5070 Alternate locations.** The administrative authority may approve alternate locations provided the proposed locations are substantially equivalent to the requirements of these rules so as not to alter the operating characteristics of the detector.



Example of proper mounting for spot-type detectors. (Refers to 11 MCAR § 1.5069 A.)



# PROPOSED RULES

Pursuant to Minn. Stat. § 15.0412, subd. 4, agencies must hold public hearings on proposed new rules and/or proposed amendment of existing rules. Notice of intent to hold a hearing must be published in the *State Register* at least 30 days prior to the date set for the hearing, along with the full text of the proposed new or amended rule. The agency shall make at least one free copy of a proposed rule available to any person requesting it.

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend, or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

## Department of Public Welfare

### Continuation of the Administration of Rule 49 Governing Welfare Per-Diem Rates for Nursing Home Providers Under the Title XIX Medical Assistance Program

#### Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in the State Office Building, Room 57, Wabasha Street (between Aurora and Fuller), St. Paul, Minnesota, 55155, on May 26, 1978, commencing at 9:00 A.M. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Steve Mihalchick, Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota, 55104, (612) 296-8112, either before the hearing or within five working days after the public hearing ends, or for a longer period not to exceed 20 days if ordered by the hearing examiner.

Minnesota DPW Rule 49 establishes the cost and statistical criteria by which welfare rates are established for providers of nursing home and boarding care services. Minn. Stat. § 256B.45, subd. 1 requires the Department of Public Welfare to conduct a public hearing to determine the change in the investment allowance percentage for the following fiscal year. The current proprietary investment allowance percentage is nine (9) percent of the original value of the facility for depreciation purposes plus one (1) percent of the nine (9) percent base for every year of continuous ownership, but no more than twenty-five (25) percent. The Department of Public Welfare proposes to continue for the next fiscal year the determination of this investment allowance at the current percentages as currently contained in Rule 49 (2 S.R. 245). Since there will be no change in the current methodology, the existing rule is unchanged and the rule is not printed in the *State Register*.

Copies of the current DPW Rule 49 are now available and one free copy may be obtained by writing to Jackie Bovaird, Department of Public Welfare, 1st Floor, Centennial Office Building, St. Paul, Minnesota, 55155, (612) 296-2738. Additional copies will be available at the door on the date of the hearing. The agency's authority to promulgate the proposed rule is contained in Minn. Stat. chs. 15, 246, 253A, 256 and 257. A "statement of need" explaining why the agency feels the proposed rule is necessary and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rulemaking by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than \$250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than \$250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota, 55155, phone number (612) 296-5615.

April 7, 1978

Edward J. Dirkswager, Jr.  
Commissioner

**KEY: PROPOSED RULES SECTION:** Underlining indicates additions to pre-existing rule language. ~~Strike outs~~ indicate deletions from pre-existing rule language. If all proposed rules in a set are totally new (i.e. non-amendatory) the entire set is printed in standard type face. **RULES SECTION:** Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

# OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

## Department of Commerce Banking Division

### Banking Division Bulletin No. 1895, Maximum Lawful Rate of Interest for Mortgages for the Month of May, 1978

Notice is hereby given that the Banking Division, Department of Commerce, State of Minnesota, pursuant to Minn. Stat. § 47.20, the Conventional Home Loan Assistance and Protection Act, as amended by Laws of 1977, ch. 350, hereby determines that the maximum lawful rate of interest for home mortgages for the month of May, 1978, is nine and three-quarters (9.75) percent.

Robert A. Mampel  
Commissioner of Banks

## Department of Education Vocational-Technical Education Division

### Notice of Intent to Solicit Outside Opinion Regarding Rules for Nursing Assistant Education Programs

The Department of Education, Division of Vocational-Technical Education, is drafting rules to implement Minn. Stat. §§ 144A.61-144A.611, which permit the Commissioner of Education to promulgate rules which establish criteria for approval of nursing assistant education programs as well as categories of nursing assistants who are not required to comply with the educational requirements of Minn. Stat. §§ 144A.61-144A.611 (1977).

The Department invites interested persons or groups to provide information, comment and advice on the subject in writing or orally to Mr. Robert Van Tries, Assistant Commissioner, 564 Capitol Square Building, 550 Cedar Street, St. Paul, MN 55101.

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

## Ethical Practices Board

### Notice of Meeting

12:30 p.m. Monday, April 24, 1978  
Room 14  
State Office Building

### Agenda

1. Minutes
2. Chairperson Report
3. Legal Counsel Report
4. Advisory Opinion Requested by George and Knickerbocker
5. Advisory Opinion Requested by Beauchamp
6. Advisory Opinion Requested by National Order Systems, Inc.
7. Advisory Opinion Requested by E. I. (Bud) Malone
8. Campaign Finance Rules
9. Economic Interest Rules
10. Executive Director Report
  - a. Financial Statement/March
  - b. Delinquent Economic Interest Filers
  - c. Delinquent Campaign Finance Committees
  - d. Delinquent Lobbyists
11. Other Business

### Advisory Opinion # 45

Approved by the Ethical Practices Board on April 13, 1978.

Issued to:

John Cairns, Counsel  
People for Ann O'Loughlin  
Minneapolis, Minnesota

### Summary

45. Expenses personally paid by a candidate or by a principal campaign committee of a candidate to a day care facility are not campaign expenditures. Child care payments

## OFFICIAL NOTICES

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made by the principal campaign committee shall be reported as a non-campaign disbursement. Any contribution to a principal campaign committee for child care must be accounted for and reported and disclosed as required by law.

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

### Advisory Opinion #46

Approved by the Ethical Practices Board on April 13, 1978.

Issued to:

Earl B. Gustafson, Court Administrator, Judge  
Tax Court of Minnesota  
St. Paul, Minnesota 55155

#### Summary

46. Judges of the Tax Court are not public officials as defined by Laws of 1978, ch. 463, § 15, and therefore not subject to economic interest disclosure.

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

### Advisory Opinion #47

Approved by the Ethical Practices Board on April 13, 1978.

Issued to:

Duane R. Harves, Chief Hearing Examiner  
Office of Hearing Examiners  
St. Paul, Minnesota 55155

#### Summary

47. Part-time Hearing Examiners in the office of Hearing Examiners are public officials as defined by Laws of 1978, ch. 463, § 15. Therefore, the examiner is required to file a Statement of Economic Interest.

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

### Outside Opinion Solicited on Request for an Advisory Opinion Regarding Use of Credit Cards for Political Campaign Contributions

The State Ethical Practices Board solicits opinions of any individual or association regarding the following request for an advisory opinion prior to review for approval of an advisory opinion.

April 10, 1978

Mr. Allen B. Clutter  
Executive Director  
Ethical Practices Board  
41 State Office Building  
St. Paul, Minnesota 55155

Dear Mr. Clutter:

I am writing to you at the request of Dan Lundstrom, to whom we were referred by the Secretary of State.

Our question is simple. Is it permissible, under the laws of Minnesota, for the political candidate who uses radio or television commercials to invite listeners or viewers to phone in a contribution and charge that contribution to his Bank Americard, VISA or Master Charge credit card?

We have received inquiries from all over the country from candidates who wish to avail themselves of this aspect of our service. In each case we are attempting to check first with the Secretary of State or the individuals or board to which he refers us, to learn whether this procedure is permissible in that state.

At this time we have no clients in the state of Minnesota, nor have we received any specific inquiries from Minnesota. On the contrary, we are interested in approaching various candidates to appraise them of our service, but first wish, before taking this action, to verify that this method of raising funds is permissible. If your regulations state that we must secure not just the name and address and amount of each contribution, but also the caller's place of employment, we can certainly ask for that information. We will naturally be bound by any existing regulations.

We simply want to know what those regulations are, so that we can be aware of them and abide by them in any dealings that we may have with political candidates in the state of Minnesota.

I am enclosing literature about our company, and will be happy to answer further questions if you will call me.

## OFFICIAL NOTICES

I would appreciate hearing from you at your earliest convenience.

Sincerely,

Larry Schwartz  
President  
National Order Systems, Inc.

### **Outside Opinion Solicited on Request for an Advisory Opinion Regarding Filing of Statements of Economic Interest by Workers' Compensation Division Judges**

The State Ethical Practices Board solicits opinions of any individual or association regarding the following request for an advisory opinion prior to review for approval of an advisory opinion.

April 10, 1978

M. B. Allen Clutter, III  
Executive Director  
State Ethical Practices Board  
41 State Office Building  
St. Paul, Minnesota 55155

Subject: Request for Advisory Opinion

Dear Mr. Clutter:

It is my understanding that Jim Otto, Chief Attorney for the Workers' Compensation Division, had a conversation with you pertaining to the question as to whether compensation judges employed by the Workers' Compensation Division will be required to file a Statement of Economic Interest with the Ethical Practices Board on April 15, 1978.

The following facts are furnished to you for purposes of obtaining your advisory opinion with regards to this question:

1. Minn. Stat. § 175.006 provides in part as follows:

“There is created as a separate appellate tribunal for workers' compensation, the Workers' Compensation Court of Appeals. The Workers' Compensation Court of Appeals shall be composed of three judges learned in the law, each serving in the unclassified service of the State Civil Service. Each judge of the Workers' Compensation Court of Appeals shall be appointed by the Governor, by and with the advice and consent of the Senate, for a term of six years. The

judges of the Workers' Compensation Court of Appeals as now created and shall be the judges of the Workers' Compensation Court of Appeals until the expiration of the terms for which they have been appointed and qualified.”

2. Minn. Stat. § 175.092 provides in part as follows:

“In case of disqualification or illness of a Workers' Compensation Court of Appeals judge, the Commissioner of the Department of Labor & Industry may temporarily assign a compensation judge to take the place of the disqualified or ill judge of the Workers' Compensation Court of Appeals during the period of such disqualification or illness. The compensation judge so temporarily assigned shall have the same powers and duties as other judges of the Workers' Compensation Court of Appeals during the period of such assignment.”

3. Minn. Stat. § 176.305 provides in part as follows:

“Where any petition has been filed with the Workers' Compensation Division, the Commissioner of the Department of Labor & Industry shall, pursuant to his general rules or those of the Workers' Compensation Court of Appeals or special order, direct that the matter presented by the petition be heard by a compensation judge or presented to the Workers' Compensation Court of Appeals if it is a matter within its jurisdiction.

4. Minn. Stat. § 176.371 provides in part as follows:

“The Workers' Compensation Court of Appeals, or a judge of the Workers' Compensation Court of Appeals, or a compensation judge to whom a petition has been assigned for hearing, shall hear all competent evidence produced at the hearing, and, as soon after the hearing as possible, make such findings of fact, conclusions of law, and award or disallowance of compensation or other order as the pleadings, evidence and this chapter require.”

5. Minn. Stat. § 176.391 provides as follows:

“Before, during, or after any hearing, the Commissioner of the Department of Labor & Industry, compensation judge or Workers' Compensation Court of Appeals, if the matter is before it, may make an independent investigation of the facts alleged in the petition or answer.”

6. Compensation judges, employed by the Workers' Compensation Division, serve in the classified service in accordance with the established pay plan for classified employees.

7. Judges of the Workers' Compensation Court of Appeals serve in the unclassified service.

8. Compensation judges are frequently temporarily

## OFFICIAL NOTICES

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assigned to take the place of judges of the Workers' Compensation Court of Appeals.

I would appreciate your advisory opinion as soon as possible as to whether compensation judges employed by the Workers' Compensation Division and who are in the classified service are required to file a Statement of Economic Interest with the Ethical Practices Board pursuant to Minn. Stat. ch. 10A.

Yours truly,

E. I. "Bud" Malone  
Commissioner of Labor and Industry

### ERRATA

At 2 S.R. 1825: Temporary Rule as Proposed, DPW 49, should read as follows:

B.1.b. Incentive Factor.

(1) In no case will the historical rate so deter-

mined under B.1.a. be less than the historical rate calculated for the previous year minus one-half of the difference. This provision shall not apply for rates for newly established providers under B.3.a. rates set by applying exceptions provided by D.8.d. and flat rates established under B.3.a. rates set by applying exceptions provided by D.8.d. and flat rates established under B.3.e. For multi-level providers this provision will be applied to the facilities' average historical rate.

(2) Per-diem rates for non-proprietary facilities may include an efficiency allowance. If the facility's allowable historical cost per patient per day for the most recently completed fiscal year is less than the allowable welfare rate exclusive of Sections B.4.a. & b. and as adjusted for the lack of implementation of known cost changes, an efficiency allowance will be granted equal to the difference between the allowable historical cost and the allowable welfare rate subject to a maximum efficiency allowance of 60 cents per patient per day. For each year after the year in which the non-proprietary facility was originally purchased and there is no transfer of ownership of the facility, the efficiency allowance maximum will be increased one cent per patient per day subject to a maximum of an additional 25 cents per patient per day after 25 years.

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