

# STATE REGISTER

STATE OF MINNESOTA

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**Printing Schedule for Agencies**

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
SCHEDULE FOR VOLUME 5			
18	Monday Oct 20	Monday Oct 27	Monday Nov 3
19	Monday Oct 27	Monday Nov 3	Monday Nov 10
20	Monday Nov 3	Friday Nov 7	Monday Nov 17
21	Monday Nov 10	Monday Nov 17	Monday Nov 24

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

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

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

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

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## NOTICE

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

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

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

- Proposed new rules (including Notice of Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

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

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

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

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

Issues 1-13, inclusive	Issue 39, cumulative for 1-39
Issues 14-25, inclusive	Issues 40-51, inclusive
Issue 26, cumulative for 1-26	Issue 52, cumulative for 1-52
Issue 27-38, inclusive	

The listings are arranged in the same order as the table of contents of the MCAR.

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# PROPOSED RULES

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

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

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

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

## Department of Employee Relations

### Proposed Amendment of Rule Relating to Restoration of Seniority and the Travel Rule Regarding Reimbursement for Special Expenses

#### Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held pursuant to Minn. Stat. § 15.0412, subd. 4 (1978) as amended by Laws of 1980, ch. 615, § 6, in the Offices of the Department of Employee Relations, Training Room 1, 3rd Floor, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101 on Thursday, December 11, 1980 commencing at 9:30 a.m.

All interested or affected persons will have an opportunity to participate concerning the amendments to the rules captioned above. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Jon Lunde, Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, either before the hearing or within five (5) working days after the close of the hearing. The hearing examiner may order at the hearing that the record will remain open for a longer period, not to exceed 20 calendar days. All such statements will be entered into and become part of the record. Testimony or other evidence to be submitted for consideration should be pertinent to the matter at hand. For those wishing to submit written statements or exhibits, it is requested that at least three (3) copies be furnished. In addition, in order to save time and avoid duplication, it is suggested that those persons, organizations or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests. The conduct of the hearing shall be governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052 (1978) as amended by Laws of 1980, ch. 615 and by the rules of the Office of Administrative Hearings, 9 MCAR §§ 2.101-2.113 (Minnesota Code of Agency Rules). Questions relating to procedures may be directed to Hearing Examiner Jon Lunde.

Notice: The proposed rules may be modified as the result of the hearing process. The department therefore strongly urges those who are potentially affected in any manner by the proposed rules to participate in the hearing process.

If adopted, the amendments proposed by the Commissioner of Employee Relations would (1) clarify the portion of the seniority rule which addresses the seniority and continuous service rights of employees who move between state agencies but never terminate from state service, (2) restore seniority and continuous service for purposes of lay-off and vacation accrual to employees required to resign due to pregnancy, and (3) list those items which are reimbursable as special expenses which would not otherwise be reimbursable under existing travel expense rules. The authority of the commissioner to promulgate the

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## PROPOSED RULES

proposed rules on restoration of seniority is contained in Minn. Stat. § 43.05, subd. 2 (1) as amended by Laws of 1980, ch. 614, § 61. The authority of the commissioner to promulgate special expense rules is contained in Minn. Stat. § 43.327.

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

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all of the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule/rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five (5) working days. Any person may also request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1979 Supplement) as an individual:

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

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

Questions concerning lobbyists or their required registration should be directed to the State Ethical Practices Board, Room 41, State Office Building, Wabasha Street, St. Paul, Minnesota 55155, at telephone number (612) 296-5616.

Promulgation of the proposed rules will not result in the expenditures of public monies by local public bodies.

September 26, 1980

Barbara L. Sundquist  
Commissioner of Employee Relations

**2 MCAR § 2.119 Restoration of seniority and continuous service credit.** An appointing authority, who reemploys an employee who has voluntarily left employment of the agency to enter employment in another agency and who has been employed continuously by the state ~~and who left the employment of the agency~~, shall reinstate the seniority and continuous service credit that existed at the time the employee left the agency.

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

An employee who was required to resign due to pregnancy shall have all seniority and continuous service existing at the time of resignation restored upon written application to her appointing authority, if:

A. The employee returned to the agency from which she resigned within one year of resignation and notifies her appointing authority within 180 days from the effective date of this rule that she wishes to have seniority and continuous service restored under this provision, or

B. The employee returned to state service in another agency within one year of resignation and subsequently returned to the agency from which she resigned, and the employee notifies her appointing authority within 180 days from the effective date of this rule that she wishes to have seniority and continuous service restored under this provision.

All changes in continuous service for vacation accrual purposes resulting from the application of this rule shall be effective retroactively to July 4, 1979. If the application of this provision causes an employee's vacation leave balance to exceed the established maximum, the employee shall not lose the excess vacation and shall be given one year in which to reduce her vacation balance to the maximum allowed.

## PROPOSED RULES

All changes in seniority for purposes of lay off shall be effective 15 calendar days after the employee gives written notice to the appointing authority.

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

~~2 MCAR § 2.181 D. Special expenses. Special expenses shall require prior approval of the appointing authority and the approval of the Commissioner of Personnel, who shall issue guidelines regarding eligible special expenses. This section also applies to any state board, council, or commission member.~~

### 1. Definitions.

a. For the purpose of this section, the term "employee" means all employees in the executive branch of state government; individuals serving on statutory and non-statutory boards, councils, task forces and commissions; and persons requested to attend state sponsored workshops, meetings, or conferences where the benefit of their attendance accrues primarily to the state excluding consultants on contract to the state.

b. For the purposes of this section, "work area" means: (1) the seven county metropolitan area for employees regularly stationed in that area or (2) the area within 35 road miles of the employee's work station for employees regularly stationed outside the seven county metro area.

### 2. Reimbursements covered by this section are limited to:

a. The actual cost of a meal, notwithstanding the limits contained in B. and without regard to the employee's assigned work area, provided the meal is on the agenda of a conference, workshop, seminar, or meeting and the employee's attendance has been approved by the appointing authority;

b. Registration fees for conferences, seminars or workshops where the employee's attendance has been approved by the appointing authority;

c. Breakfast or dinner within the employee's work area where the employee is assigned to actively participate in state business two hours before or four hours after the assigned shift;

d. Lodging within the employee's work area when the employee is actively participating in an event directly related to the employee's position requiring his/her presence overnight or weather conditions or other unforeseen occurrences prevent the employee from returning home;

e. Necessary expense allowances, subject to the provisions of this rule, incurred by a handicapped employee for one attendant when the employee requires daily assistance in performing various personal tasks or who has special mobility needs;

f. In addition to the expenses allowed by 2 MCAR § 2.181 A.2. and C.1., the following expenses for employees regularly stationed in the seven county metropolitan area who are assigned to work at the State Fair;

(1) fees for admission to the fairgrounds;

(2) one meal during each shift of fewer than ten hours or two meals during each shift of ten hours or more, subject to the limit set forth for in-state travel;

(3) taxi fare for handicapped employees unable to drive or use other means of public transportation between the employee's normal work station and the state fairgrounds or between the employee's residence and the state fairgrounds, whichever distance is less.

3. For the purposes of this section, the appointing authority shall determine (a) when the benefit of a person's attendance at a work shop, conference, meeting or seminar accrues primarily to the state; (b) when an event is directly related to the employee's position; and (c) the number of employees that may attend the same reimbursable event.

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**Energy Agency  
Data and Analysis Division**

**Proposed Temporary Rules Governing Procedures and Measures to  
Reduce Demand and Increase Supply of Fuel Oil during A Fuel Oil Supply  
Shortage**

The Minnesota Energy Agency proposes to adopt temporary rules for use during a fuel oil supply shortage, pursuant to Minnesota Statutes, § 116H.09, subdivision 4. The proposed temporary rules are as follows. Written comment will be accepted through November 17, 1980 and should be directed to A. McKenzie, Emergency Rules Coordinator, 980 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101.

**Temporary Rules as Proposed**

**6 MCAR § 2.3101 Authority and purpose of rules.** These rules are authorized by Minn. Stat. § 116H.09, especially subdivision 4. The purpose of these rules is to specify procedures to be used during a fuel oil supply emergency and to specify measures that may be employed to reduce demand for and increase supply of fuel oil and the method of implementing the measures.

**6 MCAR § 2.3102 Applicability of rules.** The rules shall apply:

- A. during a declared fuel oil supply emergency (see 6 MCAR § 2.3105);
- B. during a declared fuel oil supply alert (see 6 MCAR § 2.3104); and
- C. to the Minnesota Energy Agency when the agency is preparing to recommend that a fuel oil supply alert or fuel oil supply emergency be declared.

**6 MCAR § 2.3103 Definitions.**

- A. "Agency" means the Minnesota Energy Agency.
- B. "Agriculture" means all the activities classified under the industry code numbers specified in paragraph 1 below as set forth in the Standard Industrial Classification Manual, 1972 edition, except those industry code numbers listed in paragraph 2 which are excluded:

1. Activities included. (a) All industry code numbers included in Division A, Agriculture, Forestry and Fishing, except as specified in paragraph 2 of this section. (b) All industry code numbers included in Major Group 20, Food and Kindred Products, of Division D, Manufacturing, including grain and seed drying, except as specified in paragraph 2 below; and (c) All the following other industry code numbers:

- 1474 Potash, Soda and Borate Mineral (Potash mining only);
- 1475 Phosphate Rock;
- 2141 Tobacco Stemming and Redrying;
- 2411 Logging Camps and Logging Contractors;
- 2421 Sawmills and Planing Mills;
- 2819 Industrial Inorganic Chemicals, Not Elsewhere Classified (dicalcium phosphate only);
- 2873 Nitrogenous Fertilizers;
- 2874 Phosphatic Fertilizers;
- 2875 Fertilizers, Mixing Only;
- 2879 Pesticides and Agricultural Chemicals Not Elsewhere Classified;
- 4212 Local Trucking Without Storage (Farm to market hauling and log trucking only);
- 4971 Irrigation Systems (for farm use); and
- 5462 Retail Bakeries, Baking and Selling.

2. Activities excluded. (a) All the following industry code numbers, otherwise listed under Division A, Agriculture, Forestry and Fishing, are excluded from the definition:

- 0271 Fur-Bearing Animals and Rabbits (except rabbit farms which are included in the definition);
- 0279 Animal Specialties, Not Elsewhere Classified, (except apiaries, honey production and bee, catfish, fish, frog and trout farms which are included in the definition);
- 0742 Veterinary Services for Animal Specialties;
- 0752 Animal Specialty Services;
- 0781 Landscape Counseling and Planning;



0782 Lawn and Garden Services; and  
0849 Gathering of Forest Products, Not Elsewhere Classified.

C. "Btu" means British thermal unit, a common unit of energy measurement which is used in these rules for comparative purposes.

D. "Commercial building" means a building all of whose occupants are engaged in commerce, unless residential occupants have separate heating controls.

E. "Communications" means telecommunications including the repair, operation and maintenance of voice, data, telegraph, video and similar communication services for the public by a communications common carrier or by a firm providing the same service in direct competition with a communication common carrier, newspaper production and distribution, excluding sales and routine administrative activities.

F. "Consumer" means a person that consumes natural gas, electricity, middle distillate, residual, or propane.

G. "County and/or Municipal Fuel Coordinator" means any person who has been appointed by his county board or city council to perform certain actions with regard to the Federal Fuel Allocation Program.

H. "Demand" means that quantity of products or services for which there are willing and able purchasers.

I. "Division" means the Division of Emergency Services.

J. "Electric utility" means any entity engaged in the generation, transmission, or distribution of electric energy for sale.

K. "Emergency services" means law enforcement, fire fighting, snow removal, emergency medical services, search and rescue activities, telecommunications, services and utility services.

L. "Energy production" means the refining, processing, production and distribution of coal, natural gas, petroleum or petroleum products, shale oil, nuclear fuels and electrical energy. It also includes the construction of facilities and equipment used in energy production, such as pipelines, power plants, transmission lines and similar capital goods. Excluded from this definition is electrical generation whose power source is petroleum-based.

M. "Environmental standards" means those laws and regulations, both federal and state, intended to protect the environment.

N. "Essential transportation" means emergency vehicles, public transportation including bus, rail, taxi, and van pool services, energy distribution such as heating oil delivery, transportation of perishable food items, and postal delivery and mail hauling, and transportation of medicine and medical materials.

O. "Forecast" means a projection of future demand or supply for some specified time period.

P. "Fuel oil" means any liquid or liquefiable petroleum product with a flashpoint above 100°F which is used to generate heat or power.

Q. "Health and residential care facilities" means hospitals, nursing homes, penal institutions, and all types of residential treatment centers including but not limited to drug/alcoholism treatment centers, residential mental health centers, and residential care centers for the retarded or handicapped.

R. "Home owner" means a person who has a vested legal or beneficial interest, jointly or severally, in a dwelling which is occupied by that person.

S. "Middle distillate" means any derivative of petroleum, including kerosene, home heating oil, range oil, stove oil, and diesel fuel, which have a fifty percent boiling point in the ASTM D86 standard distillation test falling between 370° and 700°F. Products specifically excluded from this definition are kerosene-base and naphtha-base jet fuel, heavy fuel oils as defined in VV-F-815C of ASTM D-396, grades #4, 5, and 6, intermediate fuel oils (which are blends containing #6 oil), and all specialty items such as solvents, lubricants, waxes, and process oil.

T. "Person" means any individual, firm, estate, trust, sole proprietorship, partnership, association, company, corporation, governmental unit or subdivision thereof, or a charitable, educational or other institution.

U. "Plant protection" means minimum plant maintenance necessary to secure buildings and prevent damage from inclement weather.

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## PROPOSED RULES

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V. "Residence" means the place where a natural person or persons actually live, including buildings being used as emergency housing facilities.

W. "Residual fuel oil" means the fuel oil commonly known as: 1. No. 4, No. 5 and No. 6 fuel oils; 2. Bunker C; 3. Navy Special Fuel Oil; and 4. all other fuel oils which have a fifty percent boiling point over 700°F in the ASTM D-86 standard distillation test.

Y. "Sanitation services" means the collection and disposal for the public of solid wastes, whether by public or private entities, and the maintenance, operation and repair of liquid purification and waste facilities. Sanitation services includes the provision of water supply services by public utilities, whether privately or publically owned and operated.

Z. "Shortage" means a situation in which demand exceeds supply and normal market forces will not act to equalize supply and demand within a reasonable period of time.

AA. "State Set-aside" means the amount of an allocated product from the total supply of a supplier made available to the state for use to meet emergencies and hardship needs, pursuant to 10 Code of Federal Regulations § 211.17;

BB. "Supplier" means any firm or any part of a subsidiary which presently supplies, sells, transfers, or otherwise furnishes (as by consignment) any petroleum product to wholesale purchasers or end users, including but not limited to refiners, natural gas processing plants or fractioning plants, importers, resellers, jobbers and retailers.

CC. "Tenant" means any person who occupies but does not own a dwelling under any agreement, lease, or contract, whether oral or written, and for whatever period of time, which requires the payment of moneys as rent for the use of the dwelling unit, and all other regular occupants of such dwelling unit.

**6 MCAR § 2.3104 Fuel oil supply alert.** A fuel oil supply alert will be declared to inform the citizens of a potential fuel oil shortage, encourage conservation, and initiate a state of readiness for such a shortage.

A. A fuel oil supply alert may be declared when agency forecasts indicate a reasonable likelihood that fuel oil supply will not be adequate to meet fuel oil demand, within a period of 6 months from the date of declaration.

B. The director of the agency shall have sole responsibility for declaring a fuel oil supply alert.

**6 MCAR § 2.3105 Fuel oil supply emergency.** A fuel oil supply emergency is a state of declared emergency resulting from a shortage of fuel oil.

A. Declaration of an energy emergency. Responsibilities of each organization are as follows:

1. Minnesota Energy Agency. When agency forecasts of short-term demand for fuel oil exceed forecasts of short-term supply of fuel oil within a three month period of time, the director of the agency may recommend that an energy supply emergency be declared.

2. The Executive Council or Legislature. The Executive Council, consisting of the Governor, the Lieutenant Governor, the Attorney General, the Auditor, the Treasurer, and the Secretary of State, or the Legislature has responsibility for declaring an energy supply emergency.

a. An energy supply emergency automatically expires in 30 days, unless renewed by the Legislature. Declaration of an energy supply emergency must be renewed every 30 days.

b. The declaration shall be promptly disseminated and brought to the attention of the general public by the Executive Council or Legislature, whichever body declares the emergency. The Energy Supply Emergency Resolution shall be promptly filed with the division, the agency, and the Secretary of State.

B. Priority ranking of users.

1. In an energy supply emergency resulting from a fuel oil shortage, suppliers shall deliver fuel oil according to the system of priorities set out below. Higher priority users shall have necessary requirements satisfied before lower priority users.

a. First priority users are fuel oil users with no available alternative fuel whose continued operation is essential for the health and safety of the citizens of the state. These include:

1. Health and residential care facilities;
2. Residences;
3. Essential transportation;
4. Plant protection;
5. Emergency services;
6. Communications;

7. Energy production;
8. Agriculture; and
9. Sanitation services.

b. Second priority users are those users whose continued operation is necessary for the health and safety of the citizens of the state but who have an available alternative source of fuel, such as residual oil or coal, the use of which would violate environmental standards.

c. Third priority users are those users whose continued operation is not essential for the immediate health and safety of the citizens of the State. These include:

1. Schools;
2. Government;
3. Commerce;
4. Industry; and

5. Cargo and freight hauling. Within this category preference will be given to users who have no available alternative source of fuel and users who have demonstrated that they have engaged in energy saving measures.

d. Users who have an available alternative source of fuel the use of which would not violate environmental standards will not receive fuel oil during a fuel oil supply emergency.

2. Major refineries and supplier representatives will be notified of the state of emergency by Agency staff and supplied with a written description of the priority system for distribution, within two (2) days of a declared emergency.

3. The emergency operating center shall provide services necessary to answer questions and resolve conflicts regarding the priority ranking of individual firms or entities.

4. Appeals of priority status shall be made by following the Fuel Allocation Rules of Procedure, 6 MCAR §§ 2.0101-2.0107.

#### C. Measures.

1. Upon declaration of a fuel oil energy supply emergency, the Governor shall select from the following measures to reduce the shortage.

a. Commercial buildings may be ordered to comply with the Emergency Building Temperature Restrictions (EBTR), pursuant to the Energy Policy and Conservation Act of 1975, 201 (A) and (B), (42 USC 6201). (Buildings which are exempted under EBTR will be exempted from this rule.)

b. Home owners and renters may be requested to voluntarily turn their thermostats back to between 62°F and 66°F during the day and 52°F and 58°F during the night and during unoccupied hours, and may be requested to set back water heater thermostats to between 105°F and 115°F (or the lowest setting).

c. Citizens may be requested to refrain from driving diesel-powered automobiles.

d. Voluntary industrial, commercial, government, and residential conservation targets may be established to reduce energy usage, including electricity and natural gas, especially during periods of peak usage.

e. Mandatory industrial, commercial, and government targets may be established to reduce energy usage, including electricity and natural gas, especially during peak usage periods.

f. Fuel oil suppliers may be ordered to stop deliveries to large users (1000 gallon or larger storage tanks) until those users have less than one week's fuel oil supply on hand.

g. Commercial and industrial establishments may be requested to voluntarily reduce their hours of operations where this action saves energy.

h. Smoking within buildings may be prohibited and reduction of the amount of outside air entering building ventilation systems may be ordered.

**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

i. All electric utilities with oil-fired generating facilities may be ordered to use oil of a quality not suitable for home heating or to shut down these plants and purchase power from the Mid-Continent Area Power Pool when power from nuclear or coal-fired generating facilities is available from the Pool.

j. Weight limits on trucks may be raised to a uniform level of 80,000 lbs. for all roads.

k. Business, industrial and government institutions which now burn middle distillate, natural gas, or propane and which have the capacity to burn residual oil may be ordered to convert to the residual oil during the crisis period, unless such action is specifically prohibited by other law or rule of the Pollution Control Agency or other agency.

l. Commercial and industrial users may be requested to voluntarily release fuel oil from inventory supplies. The agency will use Fuel Allocation Rules of Procedure (See 6 MCAR §§ 2.0101-2.0107) to allocate voluntarily released inventory.

(1) Under this system suppliers shall be directed to deliver fuel oil supplies according to the system of priorities described in § 2.3105 B.

(2) First priority users shall receive set-aside and voluntary inventory releases necessary to maintain health and safety for as long as such supplies last.

m. Business, industrial and government institutions may be requested to close nonessential buildings.

2. When the agency determines that actions listed in 6 MCAR § 2.3105 C.1. have not been or will not be sufficient to approximately equalize supply and demand the following options may be selected by the Governor:

a. Owners/operators of commercial, industrial, and government buildings may be ordered to reduce heating thermostats to 62°F during the day and 50°F at night or during unoccupied periods.

b. Temporary rules may be ordered adopted or rules may be ordered suspended to relax environmental standards, where such action would yield significant fuel oil savings.

c. Delivery of fuel oil supplies to specific industries, including commerce and government, may be ordered to be curtailed according to the following criteria. A curtailment order shall be in writing and shall be delivered by registered mail to firms in the industry and area suppliers.

(1) Order of curtailment will be based on an industry's energy-labor ratio, defined as the sum of natural gas and fuel oil consumption in Btu's per employee. The industry with the highest energy-labor ratio will be the first to be curtailed, and so on. Such action will be rescinded in reverse order according to the industry's energy-labor ratio.

(2) Users who have First Priority Status under 6 MCAR § 2.3105 B. will be the last to be curtailed.

(3) A firm may be exempted from curtailment of delivery of fuel oil supplies if it can demonstrate it has reached the 1980 energy conservation targets established by the Department of Energy in 1977, under the Energy Policy and Conservation Act of 1975, if applicable, and that its energy-labor ratio is below the industry average. If no energy conservation targets exist, the firm must prove that its energy-labor ratio is significantly below the industry average. Exemption may be granted by appeal pursuant to 6 MCAR § 2.3108.

(4) The order of curtailment and estimated energy-labor ratio will be published annually in the *State Register* during the month of October.

d. Homeowners and renters may be requested to close homes and move in with friends or relatives or move into emergency shelters. The Emergency Operating Center shall assist in this effort by designating shelters, aiding in securing homes, and providing emergency transportation.

3. Actions available for implementation under 6 MCAR § 2.3105 C.1. will remain available under 6 MCAR § 2.3105 C.2.

D. Operating organization during an emergency.

1. Energy Emergency Operating Center. During a declared energy emergency, the division and the agency will set up an Energy Emergency Operating Center.

a. The director of the Emergency Operating Center will be the director of the division. She/He shall direct the implementation of the emergency plan.

b. The Emergency Operating Center shall be located at a site designated by the director of the center and staffed by personnel from the division, the agency and other state agencies as deemed necessary by the director of the center. While on detail at the center, these personnel shall be primarily responsible to the director of the center.

2. Energy Agency.

a. The agency shall assist the division by analyzing the fuel oil situation, evaluating alternatives courses of action included in the emergency plan, and advising as to the proper time and sequence of the implementation of emergency measures.

b. The agency shall determine and recommend to the Governor the least restrictive measures specified under 6 MCAR § 2.3105 C. 1.-2. capable of eliminating the shortage of fuel oil.

3. Emergency services.

a. The division shall have the responsibility for implementing the energy emergency plan and coordinating the emergency operations of the governmental organizations involved in the energy emergency program.

b. The division shall use a network of regional and local coordinators who are responsible for coordinating the emergency operations with the different geographic areas of the state.

c. By January 1, 1982, the division shall develop procedures to monitor compliance with the mandatory measures listed in 6 MCAR § 2.3105 C. 1.-2.

4. Pollution Control Agency. By January 1, 1982, the Pollution Control Agency, with the cooperation of the agency, shall develop standby plans and procedures for the administration and possible modification of pollution control standards during an energy emergency.

5. Other organizations with important responsibilities. The division shall have the authority to call on any state agency or cooperating organization, such as the Red Cross, if its services are deemed to be necessary.

**6 MCAR § 2.3106 Penalties.**

A. Penalties for the violation of any provision of the plan are set out in Minn. Stat. § 116H.15 (1978).

B. Any person who violates the plan or knowingly submits false information in any report required by the plan shall be guilty of a misdemeanor. Maximum penalty is \$500 or 90 days or both. Each day of violation shall constitute a separate offense.

C. The plan may be enforced by injunction, action to compel performance or other appropriate action in the district court of the county where the violation takes place. The existence of an adequate remedy at law shall not be a defense to such an action.

D. A court which finds that a person has violated a requirement of the plan or has knowingly submitted false information in any report required by the plan, or has violated a court order issued pursuant to the plan may impose a civil penalty of not more than \$10,000 for each such violation. These funds are payable to the general fund in the state treasury.

**6 MCAR § 2.3107 Local Energy Conservation Board.**

A. A Local Energy Conservation Board will be created to hear requests for exemption from mandatory measures listed in 6 MCAR § 2.3105 C.1.- C.2. except 2.c., in each county, in each city of the first class and in each city of more than one thousand population in St. Louis county.

B. Members.

1. The chairman of the County Board of Commissioners, shall appoint a five member county Local Energy Conservation Board to include, if available, an elected county official, the county fuel coordinator, a health professional, the county director of emergency services (if different from the county fuel coordinator), and a member of the public. If the county fuel coordinator and county director of emergency services are the same person, the fifth member shall be selected from the public. The county attorney shall act as an advisor to the Local Energy Conservation Board.

2. Where appropriate under 6 MCAR § 2.3107 A., the chairman of the City Council shall appoint a five member municipal Local Energy Conservation Board to include an elected city official, the city fuel coordinator, a health professional, the city director of emergency services (if different from the city fuel coordinator), and a member of the public. If the city fuel coordinator and the city director of emergency services are the same person, the fifth member shall be selected from the public. The city attorney shall act as an advisor to the Local Energy Conservation Board.

C. The appointed members shall not be named until after the declaration of an emergency. In making the appointments, the chairman of the County Board of Commissioners and chairman of the City Council shall make every reasonable effort to avoid any conflicts of interest.

D. Three members shall constitute a quorum.

**6 MCAR § 2.3108 Appeals.**

A. Appeals shall be delivered by mail or in person to the following locations:

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

## PROPOSED RULES

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1. Appeals of mandatory measures described in 6 MCAR § 2.3105 C., except 2.c., shall be decided by the Local Energy Conservation Board and directed to the county courthouse, or the mayor's office, whichever is appropriate. Persons residing in a municipality where a Local Energy Conservation Board exists shall direct appeals to the municipal Local Energy Conservation Board.

2. Appeals of orders to curtail delivery of supplies described in 6 MCAR § 2.3105 C.2.c. shall be decided by a hearing examiner appointed by the chief hearing examiner and shall be directed to the Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota 55101.

3. Appeals of priority status shall be decided by the Fuel Allocation Appeals Board described in 6 MCAR §§ 2.0101-2.0107 and shall be directed to the Minnesota Energy Agency, 980 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101. Procedures for appeals are fully set out in 6 MCAR §§ 2.0101-2.0107 and the procedural requirements set out in this rule are not applicable.

### B. Content of appeals.

1. Each appeal from an action taken pursuant to a declared energy supply emergency shall be in writing and shall be signed by the appellant. Each appeal shall state:

- a. the action from which the appeal is made, including the individual or unit of government taking the action, and the date and nature of the appeal;
- b. the reason for the appeal, including the reasons the appellant believes the action to be unjust or unwise;
- c. the names and addresses of any persons known to the appellant who might be adversely or beneficially affected by the outcome of the appeal; and
- d. the nature of the relief sought, whether reversal, modification or some other relief.

2. Each appeal of an order to curtail delivery of fuel oil supplies based on conservation effort, shall also include:

- a. a detailed description of energy savings resulting from conservation efforts since 1977; and
- b. calculation of the firm's energy-labor ratio.

### C. Timing and procedures.

1. Within two (2) calendar days after receipt of an appeal, the hearing examiner or Local Energy Conservation Board, whichever is applicable, or a designate shall set a hearing date. The date of hearing shall not be more than five (5) calendar days after the receipt of an appeal. The chairman or hearing examiner or his/her designate shall notify all affected persons, either verbally or in writing, of the appeal and the time and place for the hearing, not less than two (2) calendar days before the hearing.

2. The parties to an appeal shall be the appellant and the Emergency Operating Center. Any party may be represented by counsel, but need not be.

3. The order to curtail delivery of fuel oil supplies shall remain in effect during an appeal of such an order.

4. Informal disposition may be made of an appeal or any issue therein by stipulation, agreed settlement, or consent order at any point in the proceedings. The hearing examiner or Local Energy Conservation Board may dispose of an appeal adversely to a party which defaults. Disposition by default shall occur only after the party against whom default is proposed, having received timely notice, fails to appear. The hearing examiner or Local Energy Conservation Board may order a prehearing conference to be held at any time prior to hearing, if it determines that such conference may simplify the issues or provide an opportunity for settlement. If a prehearing conference is ordered, notice of the time and place of the conference shall be served on all parties to the appeal not less than two (2) working days before the date of the conference.

5. Appeals from an action taken pursuant to an energy supply emergency shall not be heard if received more than ten (10) working days after the termination or expiration of an energy supply emergency.

### D. Hearings.

1. Anyone submitting an appeal shall have the right to a hearing before the hearing examiner or Local Energy Conservation Board, at which hearing the parties may present and cross-examine witnesses and present evidence, rebuttal testimony and argument with respect to the issue or issues raised in the appeal. Evidence must be offered to be considered.

2. The hearing examiner or Local Energy Conservation Board shall prepare an official record of each hearing. Any party requesting a verbatim transcript of the hearing must bear the expense of preparing the transcript.

3. The chairman of the Local Energy Conservation Board or the hearing examiner shall use the procedures set by the Office of Administrative Hearings at the hearing. The hearing examiner or Local Energy Conservation Board may prohibit devices which interfere with the hearing and may evict persons who disrupt the hearing.

**E. Decision.**

1. No factual information or evidence which is not part of the record shall be considered by the board or the hearing examiner in making a decision on an appeal.

2. Within two (2) calendar days after the hearing is closed, the hearing examiner or Local Energy Conservation Board shall issue a decision in writing, including the findings and conclusions on which the decision is based, a copy of which shall be given to all parties to the appeal.

3. The hearing examiner shall issue a final decision. The Local Energy Conservation Board shall issue a recommended decision to the division director. The division director may accept or overrule the board's decision, or he/she may remand the appeal for further hearing on specified parts. His/Her decision shall be in writing and served on all parties.

4. The appellant may seek judicial review of a final decision of the division director or the hearing examiner, in accordance with the Minnesota Administrative Procedure Act.

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**ADOPTED RULES**

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

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

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

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

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**State Board of Education  
Department of Education  
School Management Services Division****Adopted Temporary Rules Governing Educational Aids to Nonpublic Schools**

The proposed temporary rules published at *State Register*, Volume 5, Number 5, pp. 153-159, August 4, 1980, (5 S.R. 153) were adopted on September 9, 1980, approved by the Office of the Attorney General on October 7, 1980, and filed with the Office of the Secretary of State on October 9, 1980.

Howard B. Casmeay  
Secretary

**Department of Public Safety  
Driver & Vehicle Services Division****Adopted Rules Governing Certification of Insurance for Registration or  
Transfer of a Motor Vehicle**

The rules cited above, published at *State Register*, Volume 4, Number 19, pp. 757-758 (4 S.R. 757), November 12, 1979, are now adopted with the following amendments:

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

# ADOPTED RULES

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## Amendments as Adopted

### 11 MCAR § 1.4053 Definitions.

B. Owner. A person other than a lienholder or secured party who owns or holds legal title to a motor vehicle or motorcycle, or in the event that a motor vehicle or motorcycle is the subject of a security agreement or lease having an initial term of six months or longer with option to purchase and the debtor or lessee is entitled to the immediate use or possession of the motor vehicle or motorcycle, then the debtor or lessee shall be deemed the owner.

# SUPREME COURT

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## Decisions Filed Friday, October 17, 1980

### Compiled by John McCarthy, Clerk

47391/216 Town Board of Marshan, Appellant v. City Council of the City of Hastings. Dakota County.

The sixty day notice of objection requirement of Minn. Stat. § 414.033 (1976) clearly and unambiguously states the consequences of noncompliance and must therefore be strictly construed.

The jurisdictional prerequisites that entitle one to a hearing to contest an annexation petition before the Minnesota Municipal Board are fixed by law and may not be the subject of a waiver or estoppel.

Assuming an estoppel could be established, appellant neither demonstrated the existence of an act or omission of respondent that could induce reliance nor did it show actual reliance upon an act or omission of respondent.

Affirmed. Sheran, C. J. Took no part, Amdahl and Simonett, JJ.

50153/SP State of Minnesota v. Ronald Edward Harris, Appellant. Hennepin County.

Trial court properly denied motion to suppress statements defendant gave to police at scene of shooting and at police station.

Trial court properly permitted prosecutor to question state's witness, who had witnessed crime, about extrajudicial statements she made to police.

Trial court properly denied requested instruction on accident and on permissible inferences to be drawn from evidence of victim's prior aggressive acts.

Evidence of defendant's guilt of second-degree manslaughter was legally sufficient.

Affirmed. Sheran, C. J.

50281/262 Space Center, Inc., Appellant v. 451 Corporation, et al. Hennepin County.

A contract clause making a purchase agreement null and void, in the event there is a title defect, does not render the agreement null and void where the defect in marketable title is the legal responsibility of the vendor. Where the defect arose because of the vendor's financial inability to preserve its ability to convey marketable title, the title defect is the legal responsibility of the vendor.

An anticipatory breach by repudiation occurs where a vendor cannot possibly perform and where by its conduct it demonstrates an unequivocal intent not to perform.

Although initiating a lawsuit is a sufficient action to be an election to sue immediately on the anticipatory breach rather than waiting for the time of performance, the exercise of the option waived the anticipatory breach claim on the option. However, the anticipatory breach of the purchase agreement itself was not waived by the exercise of the option.

The repudiating party to a contract cannot set up the other party's subsequent breach to excuse its own liability for damages.

A landlord has an obligation to its tenant to pay real estate taxes for the purposes of Minn. Stat. § 272.45 (1978) where the tenant pays additional rent measured by the taxes and where the tenant holds an option to purchase the leased property under which the landlord has agreed to convey marketable title to the tenant-optionee if the tenant exercises the option.

Malicious interference with contractual relations is not an independent tort where the alleged interferers are the sole shareholders of the corporation that breached its contract. Thus, punitive damages are not recoverable because such damages are not allowed for breach of contract claims, even if the breach is in bad faith.

Reversed. Otis, J. Took no part, Amdahl and Simonett, JJ.



**50814/SP State of Minnesota v. Raymond H. Bourbeau, Appellant. Hennepin County.**

Trial court properly denied suppression motion which was based both on Fourth Amendment grounds and on the Rules of Evidence.

Defendant, by failing to object to alleged errors by the prosecutor and the trial court, is deemed to have forfeited his right to have these issues considered on appeal.

Affirmed. Peterson, J.

**49727/467 Joyce Wellsley Lillehei, petitioner, Appellant v. James Perry Lillehei. Hennepin County.**

Trial court abused its discretion in terminating alimony payments upon expiration of two-year period.

Reversed in part and remanded. Todd, J. Concurring Specially, Otis, J.

Took no part, Amdahl and Simonett, JJ.

**50554/SP State of Minnesota v. Donald Herme, Appellant. Rice County.**

Prosecutor's decision whom to prosecute and what charges to file is a discretionary matter which is not subject to judicial review absent proof by defendant of deliberate discrimination based on an unjustifiable standard such as race, sex, or religion.

Defendant, by failing to object to instruction, is deemed to have forfeited his right to have issue considered on appeal.

Affirmed. Todd, J.

**51381/328 Minneapolis Cablesystems, etc., Appellant v. City of Minneapolis, et al., and Northern Cablevision of Minneapolis, Inc., intervenor. Hennepin County.**

The language of a city's resolution awarding a franchise subject to final approval by either party was not sufficient to create a valid contract.

Affirmed. Yetka, J.

**49594/414, 50017/414 1/2 Davies & Davies Agency, Inc., Appellant v. Richard H. Davies and Everett W. Davies, Defendant. Davies & Davies Agency, Inc., et al., Appellant v. Robert J. Buckingham, et al. Hennepin County.**

The adequacy of consideration for a noncompetition contract or clause in an ongoing employment relationship depends upon the facts of each case.

Minnesota's "blue pencil doctrine" allows a court to modify an unreasonable noncompetition agreement and enforce it only to the extent it is reasonable. There is ample support in the record here for findings that a five-year restriction on an employee engaging in the insurance business within a 50-mile radius of Minneapolis, St. Paul or Duluth was overbroad and subject to modification.

There is sufficient support in the record that the plaintiff is not entitled to damages.

The noncompetition agreement is revised; the trial court's findings are modified; and denial of damages is affirmed. The trial court's conclusion in the Buckingham case is confirmed.

Affirmed. Wahl, J. Took no part, Peterson, Todd, Amdahl, and Simonett, JJ.

## **Opinion Filed October 6, 1980**

**51733/361, 51820 George E. Nelson, Randall D. B. Tigue, Willard B. Crowley, Jr., Gary Phleger, Earle Anderson, David Knutson, Michael De Moss, and Donald Hillstrom v. Albert H. Quie, Governor of the State of Minnesota, Appellant (51733) and The County of Hennepin, by George Hickey, Supervisor of Elections for the County of Hennepin, Appellant (51733, 51820). Hennepin County.**

The retirement of a trial judge effective October 31, 1980, created a "vacancy in the office of judge" within the meaning of Minn. Const. art. VI, § 8, and the person then appointed to fill the vacancy by the Governor pursuant to his constitutional duty will serve until a successor is elected and qualified following the general election in 1982.

Affirmed in part, reversed in part; judgment vacated with directions that judgment be entered in accordance with this opinion. Sheran, C. J.

## SUPREME COURT

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### Opinion Filed September 5, 1980

50428, 50446, 50469/154, 49488/76, 50122/155 In the Matter of the Petitions of Malcolm A. McCannel, to Review Objections to Real Estate Taxes Payable in 1973, 1974, 1975, 1976 and 1977. Malcolm A. McCannel, et al, Relators, (50446), Respondents, (50428 and 50469) v. County of Hennepin, Relator (50428) and State of Minnesota, Relator (50469). Tax Court. In re Objections and Defenses to Real Property Taxes for 1972-1975 Assessments, Northwest Airlines, Inc., petitioning taxpayer, Appellant v. State of Minnesota and County of Hennepin. Hennepin County. In re: Objections and Defenses to Real Property Taxes for the 1973, 1974 and 1975 Assessments, Taxes Payable in 1974, 1975 and 1976, Respectively R. E. Short Company (Calhoun Towers), petitioning taxpayer, Appellant v. State of Minnesota and County of Hennepin. Hennepin County.

Where there is at least a rational basis to support a distinction drawn by the legislature in taxation classifications, a constitutional challenge to such enactments will fail.

The tax court, although essentially an administrative agency, has jurisdiction to determine the constitutionality of tax statutes in any case transferred there by the district court.

Where a property owner has demonstrated that his property was valued on a different basis than other comparable property in the same taxing district and that the other property was systematically and arbitrarily undervalued, he has established unconstitutional discrimination in fact. The appropriate remedy is to reduce the estimated market value of the taxpayer's property by the average percentage by which other property in the same class is underassessed.

Where an assessor correctly considered the various approaches to valuation and, under the income approach, the income figures and capitalization rate he derived were reasonable and well-supported by the evidence, the prima facie presumption that the assessor's valuation is proper applies.

Special purpose property is most reliably valued by calculating its reproduction costs less depreciation, including functional and economic obsolescence where and to what extent applicable, since there is no actual market upon which base "market value" for tax purposes.

The trial court was not free to adopt valuation figures higher than those placed on the property by the assessor.

Affirmed in part and remanded with instructions. Scott, J.

Took no part, Amdahl, J.

## STATE CONTRACTS

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

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

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### Department of Agriculture Shade Tree Program

#### Notice of Request for Proposal Regarding Graphic Design of Arbor Month Promotional Materials

The Shade Tree Program of the Minnesota Department of Agriculture is seeking individuals or agencies to conceptualize and produce a graphic theme design for the 1981 Arbor Month promotional publications and collateral graphic and photographic

materials. The design services are outlined in detail in the formal Request for Proposal (RFP) Statement of Work. The formal RFP may be requested and inquiries should be directed to:

Michele Gran  
Shade Tree Program  
Minnesota Department of Agriculture  
90 West Plato Boulevard  
St. Paul, MN 55107  
(612) 296-8580

It is anticipated that the graphic design services will not exceed a total cost of \$6,000.00. The actual contract payment will be based upon actual services performed. Proposals should include a cost estimate for total graphic design services as well as for each individual project listed in the RFP.

Proposal submissions will be accepted until 4:30 p.m. November 17, 1980. No proposals received after that deadline will be accepted.

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

## **Department of Economic Security Training and Community Services Division Office of Weatherization**

### **Notice of Request for Proposal for Professional and Technical Services Relating to An Informational/Promotional Slide Presentation on the Subject of Weatherization of Homes for Low-income Persons**

1. Agency name and address: MN Department of Economic Security, Training and Community Services Division, Office of Weatherization, 690 American Center Building, 160 E. Kellogg Boulevard, St. Paul, MN 55101.

2. Contact person: Persons or firms wishing to receive this request for proposal, or who would like additional information may call the contracting officer, Donald Foley (612) 296-4658, or write him at the above agency name and address.

3. Description: An RFP will be issued on or about October 27, 1980, calling for a contractor to produce an informational/promotional slide presentation on the subject of Weatherization of homes for low-income persons.

4. One contract award will be made at an estimated maximum of \$8,500, in total costs.

5. Final proposal submission date: Proposals must be received by 4 p.m., Friday, November 14, 1980. Contract will be awarded no later than Friday, November 28, 1980.

6. Ending date for completion of contract work: The slide presentation resulting from the contract award should be completed by Friday, January 9, 1981.

## **Energy Agency**

### **Notice of Request for Proposals for an Energy Efficient Buildings Education Needs Assessment**

The MEA is issuing a request for proposal (RFP) for performing a needs assessment to provide guidelines for a state-wide energy efficient buildings education program for persons involved in all aspects of the building development, design, and construction industry.

The RFP may be obtained between October 27 and November 27 from:

Bruce D. Nelson  
Minnesota Energy Agency  
980 American Center Building  
St. Paul, Minnesota 55101  
Telephone: (612) 296-8894

The deadline for receipt of proposals is November 26, 4:30 p.m. The amount of funds available for this effort is \$15,000 to \$20,000.

## STATE CONTRACTS

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### Energy Agency Conservation Division

#### Notice of Availability of Contract for Site Visit Inspections to Determine Compliance with Conservation Laws and Offer Energy Conservation Assistance

The Conservation Division, Minnesota Energy Agency, solicits bidders to visit sites, inspect, offer assistance, and report information to the Energy Agency that will be used for planning future programs.

Qualified bidders shall be firms, partnerships or individuals incorporated in the State of Minnesota to operate a consulting engineer business or an architect-engineer corporation also licensed under state requirements. The work requires a strong background in the H.V.A.C. field with a thorough knowledge of the State Energy Code, and total building design concepts. Prior to any actual inspections, the successful bidders must demonstrate to the Energy Agency staff their understanding of the various laws requiring inspections. They must also be able to suggest approaches to be used for determining compliance.

The method for bidding shall be by dividing the state into four (4) geographical areas such that travel distances and subsistence can be held to a minimum. These areas are approximate with no fixed requirement for bidders other than to bid on one or more or all areas. Each zone must be bid individually so that the agency can select the lowest combinations.

Bidders shall carry the full complement of standard AIA, P.E. insurance requirements plus errors and omissions policies.

Following is a brief summary of the programs requiring action:

#### I. Emergency Building Temperature Restrictions (EBTR)

##### A. Objectives of program.

1. This program is similar in many aspects to the EBTR program announced on page 396 of the Monday, September 10, 1979, *State Register* (4 S.R. 396). There are four elements to every EBTR site visit:

- a. Complete a Department of Energy (DOE) EBTR form.
- b. Perform a brief walk through to identify potential "energy conservation measures" and "operating and maintenance" procedures similar to the Mini Audit program.
- c. Provide information and material to the operator.
- d. Collect basic energy conservation data for the agency.

2. Site visits are not intended to be Mini Audits but to serve as a "first step" information and education program for building owner/operators that would precede a Mini Audit. An example of the intent would be to use or distribute one of the July, 1980, series of DOE audit manuals to aid the owner/operator in developing a general plan of additional steps to take.

3. Data, conclusions, and recommendations should be presented in a final, comprehensive report to the agency.

4. Minimum number of site visits is 150 for the entire state.

#### II. Residential Rental Retrofit Program (RRRP)

A. Inspect residential rental buildings for caulking and weatherstripping and determine if it is adequate, inadequate, or non-existent. If inadequate or non-existent, calculate heat loss/pay back using equations and forms provided by the Energy Agency.

B. Notify and explain to the owner/landlord the additional standards that are required (if payback is less than 10 years) by July 1, 1983. This portion generally won't require calculations, only a visual inspection to show the owner/landlord where and what corrective measures may be required. The agency requires quantitative data to show what the current degree of compliance is, so a checklist should be used.

C. The agency will provide a list of names and addresses by geographical location, where possible, to minimize travel.

D. A majority of inspections may originate from complaints.

#### III. Other Programs

A. These programs will require occasional inspections but are considered to play a minor role. Random inspections in the area of an EBTR or rental retrofit inspection may be the most common practice. Infrequent, after working hours inspections may be necessary.

##### I. Air Conditioner Efficiency Law.

- a. Check retail and wholesale outlets to insure that air conditioner efficiency ratings are posted and in compliance.

**2. Gas Pilot Light Law**

a. Check retail and wholesale outlets to insure residential forced air furnaces, cooking appliances, and clothes dryers are not sold with continuously burning pilot lights.

**3. Decorative Gas Lamp Prohibition Law**

a. Check residences for operating decorative gas lamps.

**4. Heated Commercial Parking Facility Law.**

a. Check commercial parking facilities to determine if facility is heated or incidentally heated.

**5. Outdoor Display Lighting Law**

a. Inspect businesses for compliance.

**IV. Terms of the Contract**

a. This contract will be in effect from the time the bid is awarded to June 30, 1981.

b. All proposals must be received by 4:30 p.m. Monday, November 10, 1980.

c. The amount of the contract will not exceed \$36,000.

For more information and a copy of the proposal, contact:

Jean Dick  
Manager of Information and Education  
Energy Agency  
980 American Center Building  
150 East Kellogg Boulevard  
St. Paul, Minnesota 55101  
Telephone (612) 296-9082

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**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.

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**Department of Commerce  
Insurance Division****Notice of Intent to Solicit Outside Information on Proposed Amendments to Rules  
Governing Self-insurance for Workers' Compensation**

Notice is hereby given that the Department of Commerce, Insurance Division, is considering amending the rules governing self-insurance for workers' compensation, 4 MCAR §§ 1.9285-1.9294. More specifically the Insurance Division is considering amending the rules as they relate to the deposit of securities, filing requirements, and financial requirements for group self-insurers. In order to determine the nature and utility of such amendments, the Insurance Division of the Department of Commerce hereby requests information and comments from all interested individuals or groups concerning this subject matter.

Written statements should be addressed to:

Dale L. McDonnell  
Insurance Division  
Department of Commerce  
500 Metro Square Building  
St. Paul, MN 55101

# OFFICIAL NOTICES

Oral statements will be received during regular business hours over the telephone at (612) 296-8591 and in person at the above address.

All statements of information and comment will be accepted until the rulemaking record is closed. Any written material received by the Insurance Division shall become part of the record in the event that the amendments are promulgated.

## Department of Natural Resources

### Petition(s) Concerning the Designation of Certain Public Waters and Wetlands in Kandiyohi County

#### Notice of and Order for Hearing

It is hereby ordered and notice is hereby given that a public hearing in the above-entitled matter pursuant to Minnesota Statutes, Section 105.391, Subdivision 1 (1979) will be held in County Office Building, Meeting Room, 905 W. Litchfield Avenue, Willmar, Minnesota on November 20, 1980, commencing at 9:00 a.m. and continuing until all persons have had an opportunity to be heard. The hearing will be conducted by a three-person hearings unit consisting of County representative Charles Fladeboe, 309 W. 9th St., Willmar, MN 56201, Department of Natural Resources representative Maynard Nelson, and Kandiyohi Soil and Water Conservation District representative Franklin Berg, Route 2, Sunburg, MN 56289.

Each of the waters listed in this notice is the subject of a petition for a hearing. The issue to be determined at the hearing is whether the following waters shall be designated public waters or wetlands pursuant to Minnesota Statutes, Section 105.391 (1979) and the criteria contained in Minnesota Statutes, Section 105.37, Subdivisions 14 and 15 (1979):

#### A. Public Waters

##### I. Basins

<u>Number and Name</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>
34-5 : Unnamed	1; 36	117; 118	33
34-13 : Otter Lake	10, 15	118	33
34-43 : Swenson Lake	15	120	33
34-46 : Tait's Lake	18, 19	120	33
34-54 : Hubbard Lake	27, 28, 33, 34	120	33
34-56 : Unnamed	29, 32	120	33
34-62 : Calhoun Lake	16, 20-22, 27-29, 32, 33	121	33
34-88 : Fanny Lake	9, 16, 17	118	34
34-173: Unnamed	7, 18; 13	121	34; 35
34-199: Unnamed	28, 33	120	35
34-205: Unnamed	5; 32, 33	120; 121	35
34-240: Timber Lake	21, 22	122	35
34-247: Unnamed	30, 31; 25, 36	120	35; 36
34-265: Unnamed	22, 27	118	36
34-293: Unnamed	22, 27	120	36
34-294: Lindgren Lake	25, 26	120	36
34-304: Unnamed	5; 32	120; 121	36
34-331: Unnamed	31, 32	121	36
34-336: East Sunburg Lake	5, 6; 31, 32	121; 122	36
34-353: Unnamed	22, 27, 28	122	36
34-359: Sunburg Lake	6; 30, 31; 1; 36	121; 122	36; 37
34-396: Unnamed	8, 9	118	35
34-422: Unnamed	13, 18	121	35; 36
34-439: Two Island Lake	3; 34	117; 118	34
34-441: Unnamed	NE 30	118	34
34-446: Ella Ave Slough	10, 15	119	35
34-453: Unnamed	10, 15	119	36
34-463: Unnamed	35	117	35
34-519: Unnamed	NE 33, 34	121	33
34-534: Unnamed	3; 35	120; 121	35
34-549: Unnamed	21	118	34

<u>Number and Name</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>
34-562: Unnamed	31; 36	121	34; 35
34-565: Unnamed	34, 35	121	35

2. Watercourses

<u>Name</u>	<u>Section</u>	<u>Township</u>	<u>Range-to-Section</u>	<u>Township</u>	<u>Range</u>
W. Fk. Beaver Creek	36 (Basin 369)	117	35 36	117	35

B. Wetlands

<u>Number and Name</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>
34-11 : Unnamed	10	118	33
34-14 : Unnamed	12	118	33
34-25 : Unnamed	7	119	33
34-101: Unnamed	6	119	34
34-107: Unnamed	1, 2	119	34
34-128: Unnamed	16	120	34
34-189: Unnamed	4	120	35
34-190: Unnamed	4	120	35
34-282: Unnamed	34, 35	119	36
34-301: Unnamed	35, 36	120	36
34-332: Unnamed	32	121	36
34-333: Unnamed	35	121	36
34-335: Unnamed	4; 33	121; 122	36
34-349: Unnamed	20	122	36
34-351: Unnamed	20, 29	122	36
34-364: Unnamed	8	120	33
34-369: Unnamed	35, 36	117	35
34-406: Unnamed	11	120	35
34-407: Unnamed	SW 11	120	35
34-420: Unnamed	29	122	35
34-423: Unnamed	26	122	36
34-431: Unnamed	35, 36	121	33
34-433: Unnamed	8	122	34
34-458: Unnamed	22	122	33
34-467: Unnamed	35	117	34
34-488: Unnamed	29	120	33
34-503: Unnamed	5, 6	120	35
34-511: Unnamed	9, 10	122	34
34-516: Unnamed	28	120	34
34-520: Unnamed	SE 26	122	33
34-524: Unnamed	24	118	34
34-526: Unnamed	NE 6	120	34
34-531: Unnamed	SW NW 22	119	35
34-538: Unnamed	29, 32	120	35
34-544: Unnamed	NW 28	120	34
34-547: Unnamed	11	118	34
34-548: Unnamed	13	118	34
34-551: Unnamed	36	118	34
34-567: Unnamed	7; 12	122	33; 34
34-571: Unnamed	23	121	33
34-572: Unnamed	13	122	34
34-575: Unnamed	15	122	34
34-593: Unnamed	SW 32	120	33
34-594: Unnamed	NW 7	119	33
34-596: Unnamed	NW 26	117	35
*34-606: Unnamed	3	121	33

# OFFICIAL NOTICES

<u>Number and Name</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>
*34-607: Unnamed	5, 7, 8	122	34
*34-608: Unnamed	8, 9, 16, 17, 21, 22, 28	122	34
*34-609: Unnamed	22, 23	122	34
*34-610: Unnamed	27, 34	122	34

\*These wetlands were petitioned to be added.

Within 60 days following completion of the hearing, the hearings unit shall issue its findings of fact, conclusions and an order, which shall be considered the decision of an agency in a contested case for purposes of judicial review pursuant to Minnesota Statutes, Sections 15.0424 and 15.0425.

Any activity that would change the course, current or cross-section of public waters or wetlands requires a permit from the Commissioner of Natural Resources. Minnesota Statutes, Section 105.42, subd. 1 (1979). Designation as public waters or wetlands does not transfer ownership of the bed or shore, does not grant the public any greater right of access to those waters than was available prior to designation and does not prevent a landowner from utilizing the bed of those waters for pasture or cropland during periods of drought. Minnesota Statutes, Section 105.391, Subdivisions 10 and 12 (1979).

All petitioners may be represented by counsel or anyone else of their choosing and shall be given an opportunity to be heard orally, to present and cross-examine witnesses and to submit written data, statements or arguments. Petitioners should bring all evidence bearing on these matters including maps, records or other documents.

Failure to attend may result in the challenged waters being designated public waters or wetlands and may prejudice your rights in this and subsequent proceedings.

Questions concerning this Notice and Order may be directed to any member of the hearing unit or to

David B. Milles  
DNR—Division of Waters  
Third Floor, Space Center Building  
444 Lafayette Road  
Saint Paul, MN 55101  
Telephone: 612/297-2835

October 20, 1980

Joseph N. Alexander, Commissioner  
Department of Natural Resources

## Department of Natural Resources

### Petition(s) Concerning the Designation of Certain Public Waters and Wetlands in Meeker County

#### Notice of and Order for Hearing

It is hereby ordered and notice is hereby given that a public hearing in the above-entitled matter pursuant to Minnesota Statutes, Section 105.391, Subdivision 1 (1979) will be held in the Community Room, Court House, Litchfield, Minnesota, on November 17, 1980, commencing at 10:00 a.m. and continuing until all persons have had an opportunity to be heard. The hearing will be conducted by a three-person hearings unit consisting of County representative Gary Gabrielson, Route 1, Darwin, MN 55324, Department of Natural Resources representative, Maynard Nelson, and Meeker County Soil and Water Conservation District representative Arthur Adams, Route 1, Cosmos, MN 56228.

Each of the waters listed in this notice is the subject of a petition for a hearing. The issue to be determined at the hearing is whether the following waters shall be designated as public waters or wetlands pursuant to Minnesota Statutes, Section 105.391 (1979) and the criteria contained in Minnesota Statutes, Section 105.37, Subdivisions 14 and 15 (1979):

#### A. Public Waters

##### 1. Basins

<u>Number and Name</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>
47-69 : Rush Lake (N. Buckley)	1	119	30
47-70 : Smiley Lake (S. Buckley)	1,12	119	30



47-97 : Unnamed	27,34	121	30
47-143: Mary Lake	16,21	120	31
47-162: Unnamed	4	118	32
47-245: Unnamed	27	120	31

2. Watercourses

<u>Name</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>
None						

B. Wetlands

<u>Number and Name</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>
47-305: Unnamed	8	121	31
*47-349: Unnamed	14	119	31
*47-350: Unnamed	28, 29	119	31
*47-351: Unnamed	2	117	31
86-294: Unnamed	19, 30; 24, 25	118	28; 29

\*These wetlands were petitioned to be added.

Within 60 days following completion of the hearing, the hearings unit shall issue its findings of fact, conclusions and an order, which shall be considered the decision of an agency in a contested case for purposes of judicial review pursuant to Minnesota Statutes, Sections 15.0424 and 15.0425.

Any activity that would change the course, current or cross-section of public waters or wetlands requires a permit from the Commissioner of Natural Resources. Minnesota Statutes, Section 105.42, subd. 1 (1979). Designation as public waters or wetlands does not transfer ownership of the bed or shore, does not grant the public any greater right of access to those waters than was available prior to designation and does not prevent a landowner from utilizing the bed of those waters for pasture or cropland during periods of drought. Minnesota Statutes, Section 105.391, Subdivisions 10 and 12 (1979).

All petitioners may be represented by counsel or anyone else of their choosing and shall be given an opportunity to be heard orally, to present and cross-examine witnesses and to submit written data, statements or arguments. Petitioners should bring all evidence bearing on these matters including maps, records or other documents.

Failure to attend may result in the challenged waters being designated public waters or wetlands and may prejudice your rights in this and subsequent proceedings.

Questions concerning this Notice and Order may be directed to any member of the hearings unit or to

David B. Milles  
 DNR—Division of Waters  
 Third Floor, Space Center Building  
 444 Lafayette Road  
 Saint Paul, MN 55101  
 Telephone: 612/297-2835

October 17, 1980

Joseph N. Alexander, Commissioner  
 Department of Natural Resources

**Department of Public Welfare  
 Income Maintenance Bureau**

**Notice of Intent to Solicit Outside Opinion Concerning Surveillance and Utilization Review**

Notice is hereby given that the Minnesota Department of Public Welfare is considering a draft rule 12 MCAR § 2.064 (DPW Rule 64), Surveillance and Utilization Review. This rule governs procedures to be used by the Surveillance and Utilization Review Section, Minnesota Department of Public Welfare, in the identification and investigation of exceptional utilization, suspected fraud, or abuse by participants in the Minnesota Medical Assistance program, the General Assistance Medical Care

## OFFICIAL NOTICES

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program, and/or the Catastrophic Health Expense Protection Program. The statutory authority for the rule is Minn. Stat. § 62 E.54, subd. 1 as amended by Minn. Laws of 1980, ch. 349, § 256B.04, subd. 10 as amended by Minn Law of 1980, ch. 349, § 256D.03, subd. 3 as amended by Minn. Law of 1980, ch. 349.

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

Larry Woods  
Department of Public Welfare  
Surveillance and Utilization Review Section  
P.O. Box 43208  
St. Paul, Minnesota 55164

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-9943.

All statements of information and comment must be received by November 21, 1980. Any written material received by the department shall become part of the hearing record.

### **Department of Public Welfare Mental Health Bureau**

#### **Notice of Intent to Solicit Outside Opinion Concerning Approval of Mental Health Centers and Clinics for Insurance Reimbursement**

Notice is hereby given that the Minnesota Department of Public Welfare is considering temporary rule 12 MCAR § 2.029 and, subsequently, permanent rule 12 MCAR § 2.029, governing conditions or approval of mental health centers and clinics insurance reimbursement.

These rules authorized by Minn. Stat. § 245.69 (amended 1980) govern the conditions under which the commissioner will approve mental health centers and clinics for insurance reimbursement.

The proposed rules will set forth the minimum requirements to qualify for approval such as staffing, peer review of clinical work, and continuing education standards.

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

Trudy Dunham, Insurance Reimbursement Specialist  
Mental Illness Program Division  
Fourth Floor, Centennial Building  
St. Paul, MN 55155

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-4503.

All statements of information and comment must be received by November 14, 1980. Any written material received by the Department shall become part of the hearing record.

### **Department of Public Welfare Mental Health Bureau**

#### **Notice of Intent To Solicit Outside Opinion Concerning Chemical Abuse and Dependency (C.D.) Services**

Notice is hereby given that the Minnesota Department of Public Welfare is considering a draft rule, 12 MCAR § 2.033, Standards for Provision of Comprehensive C.D. Services. This rule will govern and set standards for the planning and providing of comprehensive chemical abuse and dependency services by the county boards.

Authority for this rule is contained in Minn. Stat. § 254.07, subd. 2; Minn. Stat. § 256E.06; and Minn. Stat. § 254A.10.

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

Lee Gartner  
Chemical Dependency Programs Division  
4th Floor, Centennial Office Building  
St. Paul, MN 55155

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-8574.

All statements of information and comment must be received by December 15, 1980. Any written material received by the department shall become part of the hearing record.

## **Water Planning Board**

### **Notice of Meeting of the Water Planning Board**

Notice is hereby given that the Water Planning Board will hold a meeting on Thursday, October 30, 1980, in Room 22 of the State Office Building, beginning at 10:00 a.m. An agenda for the meeting may be obtained one week prior to the meeting by contacting the undersigned at 600 American Center Building, 150 E. Kellogg Boulevard, St. Paul, Minnesota 55101.

Thomas Kalitowski, Chairman  
Water Planning Board

STATE OF MINNESOTA  
OFFICE OF THE STATE REGISTER

Suite 415, Hamm Building  
408 St. Peter Street  
St. Paul, Minnesota 55102  
(612) 296-8239

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**FOR LEGISLATIVE NEWS**

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

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

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

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

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

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