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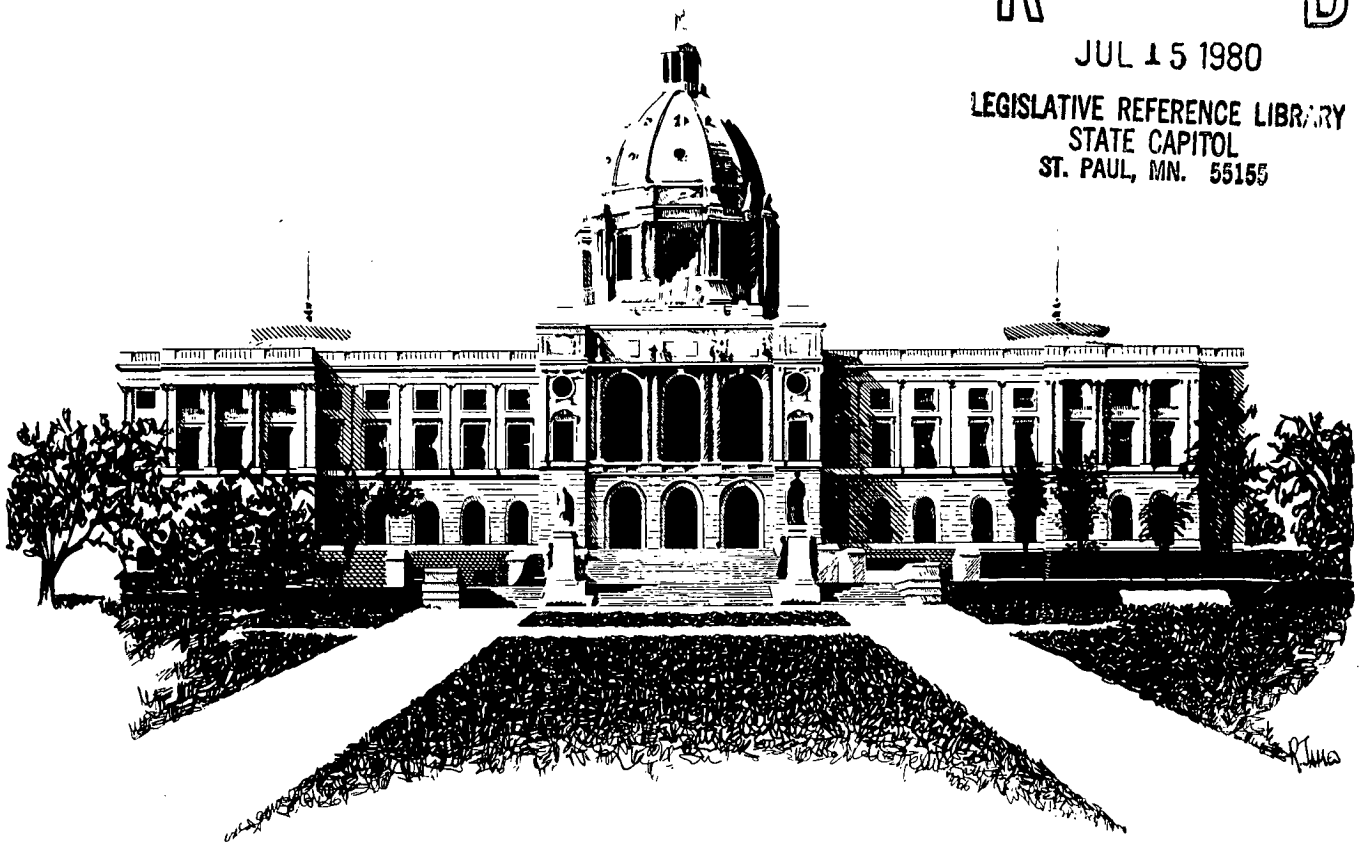
# STATE REGISTER

STATE OF MINNESOTA

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VOLUME 5, NUMBER 2

July 14, 1980

Pages 17-36



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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			
3	Monday July 7	Monday July 14	Monday July 21
4	Monday July 14	Monday July 21	Monday July 28
5	Monday July 21	Monday July 28	Monday Aug 4
6	Monday July 28	Monday Aug 4	Monday Aug 11

\*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 published by the State of Minnesota, Office of the State Register, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102, pursuant to Minn. Stat. § 15.0411. Publication is weekly, on Mondays, with an index issue in August. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at \$118 per year, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota, Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at \$2.25 per copy.

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

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.

# MCAR AMENDMENTS AND ADDITIONS

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# 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 rule or amendment. 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.

Public Hearings on Agency Rules July 21-27, 1980		
Date	Agency and Rule Matter	Time & Place
July 24	Peace Officers Standards and Training Board Licensing of Peace Officers, Part-time Officers and Constables Hearing Examiner: Jon Lunde	9:00 a.m., State Office Bldg., 435 Park St., Rm. 83, St. Paul, MN

## Department of Natural Resources

### Proposed Rules for Water Surface Use Management

#### Notice of Hearing

Public hearings concerning the proposed new rules will be held at Brainerd on August 19, 1980, at the Crow Wing County Service Building, meeting room #1, lower level, and in St. Paul on August 26, 1980 at the Minnesota Historical Society Building, 640 Cedar Street, in the Weyerhaeuser Room. Each hearing will begin at 10:00 a.m., and again at 7:30 p.m. for those who prefer to come in the evening.

The proposed rules may be modified as a result of the hearing process. Therefore, if you are concerned about the content of the rules, you are urged to participate.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Kent Roberts, hearing examiner, room 300, 1745 University Avenue, St. Paul, MN. 55104, telephone (612) 296-8112 either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Twenty-five days prior to the hearing, a Statement of Need and Reasonableness will be available for review at Hearing Examiner Roberts' office and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule amendments. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Minn. Stat. § 361.26, subd. 2, provides that the Commissioner of Natural Resources, when requested by a county, city, or town, may adopt a rule governing the use of a lake or river by watercraft. The rule must be approved by the county. Minn. Stat. §§ 378.32 and 459.20 allow counties, cities, and townships to adopt ordinances for the same purpose. Such an ordinance must be approved by the Commissioner of Natural Resources. The rules now being proposed establish certain requirements that any DNR rule or local ordinance for the use of a body of water by watercraft, must conform with. The rules provide

—that the goal of a water surface use ordinance or rule is to accommodate all compatible recreational uses while minimizing adverse impact on natural resources and minimizing conflicts in a way that provides for maximum use, safety and enjoyment.

—the identification of the limited situations in which the commissioner will entertain a request to adopt a rule for a water body.

—ways to resolve conflicts between governing bodies on water bodies in more than one jurisdiction.

**KEY: RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike-outs~~ indicate deletions from proposed rule language. **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."

## PROPOSED RULES

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—a list of information that the Commissioner of Natural Resources can require from a county, city or town requesting a rule or adopting an ordinance.

—that horsepower limits, if used, must be set at 25 h.p., 10 h.p., electric motors, or no motors.

—that speed limits, if used, must be set at 40 mph, 15 mph, or slow-no wake, and under what conditions slow-no wake can be used.

—that directional controls, if used, must be counter-clockwise.

—that time periods, if used, must be sunrise-sunset or sunset-sunrise, 9:00 a.m.-6:00 p.m. or 6:00 p.m.-9:00 a.m., or noon-6:00 p.m. or 6:00 p.m.-noon.

—that controls can be in effect all year, or Memorial Day weekend through Labor Day weekend, or on all weekends and legal holidays from Memorial Day weekend through Labor Day weekend.

—that the controls used can apply to all or parts of a water body.

—that other activities, such as swimming, water skiing, and scuba diving can be regulated.

—that the commissioner can grant variances from the requirements of these rules.

—for various enforcement, administrative, and notification matters.

The authority for and subject-matter of the rules are found in Minn. Stat. §§ 361.25, 361.26, and 378.32.

The agency estimates that there will be no cost to local public bodies in the state to implement the amendments for the two years immediately following its adoption, within the meaning of Minn. Stat. § 15.0412, subd. 7 (1978).

Copies of the proposed rule amendments are now available and at least one free copy may be obtained by writing to Duane R. Harves, Chief Hearing Examiner, Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104, telephone (612) 296-8100. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rule amendments, contact Chief Hearing Examiner Harves.

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

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

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

(b) Who spends more than \$250, not including *his own* traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

June 30, 1980

Joseph N. Alexander  
Commissioner

### Rules As Proposed (all new material)

#### 6 MCAR § 1.0220 General.

A. Policy. It is the policy of this state to promote full use and enjoyment of waters of the state, to promote safety for persons and property in connection with such use, and to promote uniformity of laws relating to such use.

B. Scope. As part of implementing that policy, Minn. Stat. §§ 378.32 and 459.20 authorize counties, cities, and towns to regulate by ordinance the use of surface waters by watercraft, upon approval of any such ordinance by the commissioner. Minn. Stat. § 361.26, subd. 2a authorizes the commissioner to regulate such use by rule, upon request of and after the rule is approved by, a county, city, or town.

C. Goal. The goal of water surface use management shall be to enhance the recreational use, safety, and enjoyment of the water surface of Minnesota and to preserve and protect these water resources. In pursuit of that goal, an ordinance or rule shall:

1. Where practical and feasible accommodate all compatible recreational uses.
2. Minimize adverse impact on natural resources.
3. Minimize conflicts in a way that provides for maximum use, safety and enjoyment.
4. Conform to the standards set 6 MCAR § 1.0222.

D. Authority. These rules are required by Minn. Stat. §§ 361.25 and 361.26. They provide procedures for the development and approval of rules and ordinances for resolving water surface use conflict by regulating:

1. Type and size of watercraft.
2. Type and horsepower of motors.
3. Speed of watercraft.
4. Time of use.
5. Area of use.
6. The conduct of other activities on the water body where necessary to secure the safety of the public and the most general public use.

E. Jurisdiction.

1. The commissioner shall exercise his discretion under Minn. Stat. § 361.26, subd. 2 to regulate a water body when so requested by a county, city, or town only when the water body either

- a. is traversed by a state or international boundary; or
- b. is within the jurisdiction of two or more counties which cannot agree on the content of regulations, and regulations are, in the commissioner's estimation, needed.

2. In all other cases, water surface use regulation shall be by county, city, or town ordinance as specified in Minn. Stat. §§ 378.32 and 459.20. If a body of water is located within the jurisdiction of two or more cities or towns which cannot agree on the content of regulations, they may petition the county in which they are located to adopt regulations.

F. Existing ordinances and rules. All existing ordinances and rules affecting water surface use shall be brought into essential compliance with these guidelines within a reasonable time period after promulgation of this rule.

**6 MCAR §§ 1.0221 Assessment of conditions.**

A. Factors to consider. Any governmental unit formulating controls for surface waters shall acquire and consider as much of the following information as it deems pertinent.

1. Physical characteristics.
  - a. Size—normal surface acreage, if available, or the basin acreage listed in the Division of Waters Bulletin No. 25, "An Inventory of Minnesota Lakes."
  - b. Crowding potential—expressed as a ratio of water surface area to length of shoreline.
  - c. Bottom topography and water depth.
  - d. Shore soils and bottom sediments.
  - e. Aquatic flora and fauna.
  - f. Water circulation—for lakes, the existence and locations of strong currents, inlets, and large water level fluctuations; for rivers and streams, velocity and water level fluctuations; for rivers and streams, velocity and water level fluctuations.
  - g. Natural and artificial obstructions or hazards to navigation, including but not limited to points, bars, rocks, stumps, weed beds, docks, piers, dams, diving platforms, and buoys.
  - h. Regional relationship—the locations and the level of recreational use of other water bodies in the area.
2. Existing development.
  - a. Private—to include number, location, and occupancy characteristics of permanent homes, seasonal homes, apartments,

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## PROPOSED RULES

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planned unit developments, resorts, marinas, campgrounds, and other residential, commercial, and industrial uses.

b. Public—to include type, location, size, facilities, and parking capacity of parks, beaches, and watercraft launching facilities.

3. Ownership of shoreland—to include the location and managing governmental unit of shoreline in federal, state, county, or city ownership as well as private, semi-public, or corporate lands.

4. Public regulations and management—to include federal, state, or local regulations and management plans and activities having direct effects on watercraft use of surface waters.

5. History of accidents which have occurred on the surface waters.

6. Watercraft use—to include information obtained in the morning, afternoon, and evening on at least one weekday and one weekend day, concerning the number and types of watercraft in each of the following categories.

a. Kept or used by riparians.

b. Rented by or gaining access through resorts or marinas.

c. Using each public watercraft launching facility.

d. In use on the waterbody.

7. Conflict perception and control preferences—to include opinions gained by surveys or through public meetings or hearings of riparians, transients, local residents, and the public at large.

B. Written statement. Any governmental unit formulating controls for surface waters, or requesting the commissioner to do so, shall submit to the commissioner the following:

1. The information requested in 6 MCAR § 1.0221 A., portrayed on a map to the extent reasonable.

2. A statement evaluating whether the information reveals significant conflicts and explaining why the particular controls proposed were selected.

3. The proposed ordinance.

4. A description of public hearings held concerning the proposed controls, including an account of the statement of each person testifying. All riparian landowners must be properly notified in the same manner required for the adoption of other local zoning controls.

C. Commissioner review and approval.

1. The commissioner shall require the ordinance proposer to provide additional information of the kind described in 6 MCAR § 1.0221 A., when needed in order to make an informed decision. The commissioner shall approve the ordinance if it conforms with 6 MCAR § 1.0220 C. and 1.0222.

**6 MCAR § 1.0222 Water surface management standards.** To promote uniformity of regulations on the use of watercraft on surface waters of this state, to encourage compliance and to ease enforcement, the commissioner and any government unit formulating such regulations shall follow these standards.

A. Watercraft type and size. Controls may be formulated concerning the type and/or size of watercraft permissible for use on surface water body(s) or portions thereof.

B. Motor type and size. Controls concerning the maximum total horsepower of motor(s) powering watercraft on surface waters shall utilize one or more of the following horsepower cutoffs or motor types.

1. 25 H.P.

2. 10 H.P.

3. Electric motors

4. No motors

C. Direction of travel. Directional controls shall mandate watercraft to follow a counter-clockwise path of travel.

D. Speed limits. Controls concerning the maximum speeds allowable for watercraft on surface waters shall utilize one or more of the following miles-per-hour cutoffs:

1. Slow-No Wake. "Slow-No Wake" means operation of a watercraft at the slowest possible speed necessary to maintain steerage and in no case greater than 5 mph.

2. 15 mph.

3. 40 mph.



**E. Effective time.**

1. Controls must use one or more of the following time periods.
  - a. Sunrise-sunset or sunset-sunrise the following day.
  - b. 9:00 a.m.-6:00 p.m. or 6:00 p.m.-9:00 a.m. the following day.
  - c. Noon-6:00 p.m. or 6:00 p.m.-noon the following day.
  - d. All 24 hrs. of the day.
2. Controls must be in effect during one of the following calendar divisions:
  - a. All year.
  - b. Memorial Day weekend through Labor Day weekend.
  - c. On all weekends and legal holidays occurring within period b.
3. Controls governing the use of watercraft may be adopted which are placed into effect based upon specific water elevations.

**F. Area zoning.**

1. Controls shall clearly specify which portion of the water body is affected by such controls.
2. Area controls may be formulated concerning any of the subject matter covered in the water surface management guidelines

**A-H.**

3. Controls concerning a "Slow-No Wake"—maximum of 5 mph if utilized, shall be established for the entire water body or portion thereof according to the following criteria:
  - a. Within 100 ft. or 150 ft. from the shore; or
  - b. Where watercraft speed or wake constitutes a hazard to persons, property or the natural resources; or
  - c. Where it has been determined that such controls(s) would enhance the recreational experience of the majority of users.

**G. Conduct of other activities on a body of water.** Controls formulated by a governmental unit which restricts other activities (such as swimming, or SCUBA diving) shall conform to 6 MCAR § 1.0220 C.

**H. Emergencies.** In situations of local emergency, temporary special controls may be enacted by a county, city or town for a period of not more than five days without the commissioner's approval. The commissioner shall be notified, however, as soon as practicable during this five day period.

**I.** A government unit may submit additional evidence if it feels that variance from the afore stated standards is necessary to best address a particular problem. The commissioner will review such evidence and may grant a variance if justified.

**6 MCAR § 1.0223 Administrative provisions.****A. Enforcement and penalties.**

1. Any government unit adopting controls pursuant to Minn. Stat. §§ 378.32 and 459.20 shall provide for their enforcement and prescribe penalties for non-compliance. Controls established pursuant to Minn. Stat. § 361.26 shall be enforced by conservation officers of the Department of Natural Resources and the sheriff of each county.
2. Controls adopted by any governmental unit shall contain a provision exempting authorized resource management, emergency and enforcement personnel when acting in the performance of their assigned duties. They may also provide for temporary exemptions from controls through the use of permits issued by the unit of government adopting the ordinance or rule.

**B. Commissioner's approval.**

1. Any governmental unit formulating controls or desiring amendments and deletions to existing controls shall submit the written statement required by these rules with the proposed controls to the commissioner pursuant to Minn. Stat. § 378.32 for his approval or disapproval. Determination of approval or disapproval shall be based upon the written statement and the compatibility of the ordinance with these rules. If proposed controls are disapproved by the commissioner and a satisfactory compromise cannot be established, the governmental unit may initiate a contested case hearing to settle the matter.

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## PROPOSED RULES

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2. The commissioner shall notify the governmental unit in writing of his approval or disapproval of proposed controls within 120 days after receiving them pursuant to Minn. Stat. § 378.32. Failure to so notify shall be considered approval.

### C. Notification.

1. Any governmental unit adopting controls shall provide for adequate notification of the public, which shall include placement of a sign at each public watercraft launching facility outlining essential elements of such controls, as well as the placement of necessary buoys and signs. All such signs and buoys shall meet requirements specified in Minn. Stat. § 361 and 6 MCAR §§ 1.0205, 1.0206, and 1.0207.

2. The commissioner shall publish and update at his discretion a listing of watercraft use controls on surface waters of the state for distribution to the public.

## ADOPTED RULES

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

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

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

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

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## Board of Teaching

### Adopted Rules Governing Elementary School Counselors, Secondary School Counselors, Counselors in Middle Schools

The Minnesota Board of Teaching proposed and published the following rules at *State Register*, Volume 4, Number 14, pp. 543-552, October 8, 1979, (4 S.R. 543).

Of these rules:

**5 MCAR § 3.114 Counselors in middle schools.** is now adopted as proposed.

**5 MCAR § 3.102 School counselors, secondary.** is now adopted, with the following amendments:

**5 MCAR § 3.102 A.1.d.** Have completed ~~two years~~ one year of secondary classroom teaching experience. Candidates holding a valid Minnesota secondary classroom teaching license but who have not completed ~~two years~~ one year of teaching experience shall complete the equivalent of a full-time, one school year internship in school guidance and counseling at the secondary school level. The internship shall be under the supervision of a practicing, resident, licensed secondary school counselor who has at least two years of counseling experience at the secondary school level. Supervision shall also be provided by counselor educators from an approved college guidance and counseling program. The internship shall be based on a written agreement among the intern, the approved school counselor preparation institution, and the school district in which the internship is completed.

**5 MCAR § 3.102 A.2.e.** Have at least ~~200~~ 2000 hours of accumulated work experience outside of the field of education.

**5 MCAR § 3.103 School counselors, elementary.** is now adopted, with the following amendments:

**5 MCAR § 3.103 A.1.d.** Have completed ~~two years~~ one year of elementary classroom teaching experience. Candidates holding a valid Minnesota elementary classroom teaching license but who have not completed ~~two years~~ one year of teaching experience shall complete the equivalent of a full-time, one school year internship in school guidance and counseling at the elementary school level. The internship shall be under the supervision of a practicing, resident, licensed elementary school counselor who has at least two years of counseling experience at the elementary school level. Supervision shall also be provided by counselor educators from an approved college guidance and counseling program. The internship shall be based on a written agreement among the intern, the approved school counselor preparation institution, and the school district in which the internship is completed.

# SUPREME COURT

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## Decisions Filed Thursday, July 3, 1980

Compiled by John McCarthy, Clerk

**49975/82 State of Minnesota v. Michael Ray Garner, Appellant. St. Louis County.**

Because defendant's confession was extracted by a police officer who used deceit and stress-inducing interrogation techniques, it was not, as required by the 14th amendment, a voluntary product of free and unconstrained will, was inadmissible, and should have been suppressed.

Where a defendant's involuntary or coerced confession is improperly admitted into evidence, the harmless error rule cannot justifiably be applied to uphold a conviction, despite arguably overwhelming independent evidence of defendant's guilt.

Reversed and new trial granted. Rogosheske, J.

**50670/215 Donald Wayne Martin, petitioner, Appellant, v. State of Minnesota. Hennepin County.**

Trial court did not abuse its discretion by denying petition for postconviction relief where newly discovered evidence upon which petition was based was doubtful in character and not so material as to make probable a different result on new trial.

Affirmed. Rogosheske, J.

**49647/10 State of Minnesota, on behalf of Judith Hastings v. Dale Denny, Appellant. Anoka County.**

Under the facts of this paternity case, the trial court's interrogation of a key defense witness was improper and prejudicial.

Reversed and remanded. Kelly, J.

**50169/134 City of Minneapolis, Appellant v. F and R, Inc., et al. Hennepin County.**

Repeated prosecutions and the imposition of jail terms or fines constitute an inadequate remedy as a matter of law in enforcing Minneapolis Code of Ordinances § 540.410; thus the continuing violation should be enjoined in this case.

Reversed and remanded. Kelly, J.

**50586/SP Steven S. Orman, Beneficiary under the insurance policy of Carmen L. Orman v. The Prudential Insurance Company of America, etc., Appellant. Hennepin County.**

In light of the medical expert's testimony that aneurysms are classified as diseases by the medical profession, the district court erred in holding that aneurysms are not bodily diseases or infirmities.

Where the evidence showed that decedent lost consciousness due to the bursting of a cerebral aneurysm and fell into a bathtub and drowned, beneficiary was entitled to accidental death benefits because expert testimony established that aneurysm alone would not have caused death. Thus, accidental death coverage was afforded by the policy where the aneurysm caused or contributed to the accident but did not cause or contribute to death.

Affirmed. Kelly, J.

**50542/210 State of Minnesota v. Robert Young, Appellant. Clay County.**

Defendant's claim that Minn. Stat. § 340.941 (1978), a vicarious criminal liability statute, is violative of due process because imprisonment is a possible form of punishment does not present a justiciable issue since no prison term was imposed in this case.

Affirmed. Scott, J.

**50018/116 Richard O. Nichols, et al v. Shelard National Bank, defendant and counterclaimant, Appellant v. Richard O. Nichols, et al, Defendants on Counterclaim and The Farmers and Mechanics Savings Bank of Minneapolis, defendant on counterclaim. Hennepin County.**

The trial court erred in reforming a mortgage instrument where there was no evidence of mutual mistake, fraud, or inequitable conduct.

Reversed. Wahl, J.

**45762, 48668/293 (1976) State of Minnesota v. Edward R. Clark, Appellant. Blue Earth County.**

Assuming that trial court erred by admitting in prosecution's case in chief defendant's statements obtained in violation of his *Miranda* rights and his statements that he wished to exercise those rights, such error was harmless. It was proper, however, to permit impeachment of defendant with statements obtained in violation of *Miranda* rights since the statements were voluntary and trustworthy.

Impeachment on cross-examination by inquiry into criminal conduct opened up on direct and relating to veracity was permissible; introduction of extrinsic evidence to prove such collateral conduct was error but could not have substantially prejudiced the jury.

Evidence, including photographs, of the murder of the second victim was admissible under the same-criminal-episode exception to the rule excluding evidence of other crimes.

## SUPREME COURT

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Under these circumstances defendant's arrest was based on probable cause and the search incident thereto was proper.

Affidavits in support of warrants to search defendant's storage shelter and vehicle were sufficient to show probable cause to search.

Arguably exculpatory evidence not disclosed by the prosecution does not raise a reasonable doubt as to defendant's guilt.

Improper remarks in prosecution's closing argument did not deprive defendant of due process of law where defense counsel did not object and the evidence of guilt was strong.

Evidence, although circumstantial, was sufficient to justify the verdict, and inherently incredible alibi was not reasonable hypothesis inconsistent with guilt.

Affirmed. Rogosheske, J.

**49974/456 (1979) State of Minnesota v. Edward R. Clark, Appellant. LeSueur County.**

Defendant's prior testimony in the trial for the murder of the victim's husband was properly admitted in this case.

Defendant waived the privilege against disclosure of confidential marital communications by failing to object to the same testimony by his spouse in a previous case.

The prosecution's unknowing and good faith use of inaccurate information to impeach a defense witness was harmless error beyond a reasonable doubt.

Improper final argument by the prosecution to which no objection was made did not likely play a substantial part in influencing the jury to convict.

The facts most favorable to the jury verdict are inconsistent with any rational hypothesis other than the guilt of the defendant.

Affirmed. Kelly, 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.

### Department of Health Environmental Health Division

#### Notice of Extension of Deadline for Submission of Proposals for Fluoridation of Water Supplies Training Contract

Notice is hereby given that the deadline for submission of proposals relating to the training of water supply personnel in the fluoridation of public water supplies, which was announced in the *State Register*, June 16, 1980, p. 1946, has been extended through Thursday, July 31, 1980. Direct inquiries and proposals to:

Gunilla A. Montgomery  
Minnesota Department of Health  
Division of Environmental Health  
717 S.E. Delaware Street  
Minneapolis, Minnesota 55440

### Housing Finance Agency

#### Notice of Request for Proposals for Public Relations Services

Proposals are requested from professional public relations firms to provide publicity in connection with the Minnesota Housing Demonstration Program to:

- (1) Prepare at least 3 statewide press releases including narratives and up to 6 sketches of house designs and distribute them to all Minnesota newspapers, radio stations and television stations; and
- (2) Develop in camera ready form a consumer brochure of approximately 4 pages (including narrative and house designs); and
- (3) Liaison to Media-Variety of newspapers and other publications, radio stations and television networks. Prepare public service spots, arrange interviews on talk shows, and organize a press conference.
- (4) Develop and handle paid advertisements, if any.

Proposals must be received in writing by 4:30 p.m. July 24, 1980. Please mail or deliver to:

Minnesota Housing Finance Agency  
Suite 200  
333 Sibley Street  
Saint Paul, Minnesota 55101

With your submission include references, samples of previous work and (1) cost for job, itemized according to the four categories listed above, (2) an estimate of the number of hours per item, and (3) cost per hour.

We anticipate three press releases to occur over a period of time beginning late July through the end of August 1980, and will cover events such as the selection of proposed house designs, public display of designs, and a lottery drawing for the purchase of houses to be constructed under this program.

You may contact Ms. May Hutchinson, (612) 296-8840 with questions regarding this request for proposals.

## **Pollution Control Agency Air Quality Division**

### **Notice of Request for Proposals for Construction Dust Control Study**

The Air Quality Division of the Minnesota Pollution Control Agency (MPCA) is seeking individuals or organizations to perform a study of construction dust control. Services requested are detailed in a request for proposals, which may be obtained from:

Jayne M. Stilwell  
Air Quality Division, MPCA  
1935 West County Road B-2  
Roseville, Minnesota 55113  
(phone: 612-296-7280)

Funds for this study shall not exceed \$100,000, and final contract agreement is subject to the availability of funding from the U.S. Environmental Protection Agency.

The deadline for submission of completed proposals is 4:30 p.m., Monday, Aug. 4, 1980.

## **Department of Transportation Office of Transit Administration**

### **Notice of Request for Proposals for Professional Services**

The Office of Transit Administration, Department of Transportation, is seeking qualified organizations to provide vehicles and service throughout the state to designated van pool groups by furnishing leased or owned insured and licensed vans, orienting volunteer drivers and alternates, developing a fare structure for each van pool, organizing a vehicle maintenance program, handling all administrative matters, selecting fares, and recording activities for a monthly and final evaluation report. These work tasks are outlined in detail in the Request for Proposals (RFP) Project Task Section. Proposals for alternate methods of providing requested services will be considered. The formal RFP may be requested and inquiries should be directed to:

Robert M. Works, Director  
Office of Transit Administration  
419 Transportation Building  
St. Paul, Minnesota 55155  
(612) 296-2533

It is anticipated that the activities for a twelve month period starting September 1, 1980 will not exceed a total cost of \$150,000. The deadline for submission of completed proposals is August 4, 1980.

July 2, 1980

Richard P. Braun  
Commissioner of Transportation

# OFFICIAL NOTICES

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

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

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## Office of the Attorney General

### Notice of Abolishment of Secretary of State's Rulemaking Notice List and Creation of State Agency Rulemaking Notice Lists in Lieu Thereof

Notice is hereby given that, pursuant to Laws 1980, Chapter 615, §§ 6 and 61, the Secretary of State will no longer maintain a list of persons who have registered with the Secretary of State for the purpose of obtaining written notice of state agency rulemaking hearings. Effective August 1, 1980, the Secretary of State's responsibilities in this area are abolished and, thereafter, each state agency shall maintain a list of persons who have registered with the agency for the purpose of receiving written notice of that agency's rulemaking hearings.

Under the new law, state agencies will maintain and update rulemaking notice lists for their hearings in essentially the same manner as the Secretary of State. In this regard, Laws 1980, Chapter 615, § 6 provides in relevant part:

Each agency shall maintain a list of all persons who have registered with the agency for the purpose of receiving notice of rule hearings. The agency may inquire as to whether those persons on the list wish to maintain their names thereon and may remove names for which there is a negative reply or no reply within 60 days. The agency shall, at least 30 days prior to the date set for the hearing, give notice of its intention to hold a hearing by United States mail to all persons on its list, and by publication in the *State Register*. Each agency may, at its own discretion, also contact persons not on its list and may give notice of its intention to hold a hearing in newsletters, newspapers or other publications or through other means of communication.

Therefore, any person wishing to obtain written notices issued on or after August 1, 1980 regarding state agency rules hearings must register with the individual state agencies from which he or she desires to receive written notice. There is no limit as to the number of state agencies with which a person may register, but an individual must register with *each* agency from which notice is desired.

The following suggestions are intended to assist you in registering with appropriate state agencies for written notice of rulemaking hearings:

1. Determine which state agencies conduct rulemaking hearings for which you desire notice.
  - a. Please remember that more than one state agency may promulgate rules on subject matter in which you are interested (i.e. several agencies promulgate rules on the environment, energy, etc.).
  - b. The *Minnesota Guidebook to State Agency Services 1980-81* may assist you in making this determination as it contains a comprehensive listing of state agencies by name, address, telephone number and summary of functions.
  - c. You may also contact individual state agencies or the Minnesota Attorney General's Office at (612) 296-7030 for guidance in this area.
2. Submit a written request to the head of each agency indicating your desire to be placed on its rulemaking notice list.
  - a. A number of state agencies will also be accepting telephone requests for placement on their notice lists, but submission of a written request is your surest method of being placed on appropriate lists.
3. Your registration request should contain your:
  - a. Name,
  - b. Address, and
  - c. A statement that, pursuant to the provisions of Laws 1980, Chapter 615, § 6, you wish to be placed on the agency's list of persons who will receive written notice of its rulemaking hearings.

A copy of this notice as well as suggestions for the creation and maintenance of rulemaking notice lists is being sent to each state agency by the Minnesota Attorney General's Office.

This notice is published pursuant to Laws 1980, Chapter 615, § 8.

## **Department of Commerce Insurance Division**

### **Notice of Intent to Solicit Outside Information on Proposed Rules Governing Insurance Claims Settlement Practices**

Notice is hereby given that the Department of Commerce, Insurance Division, is considering pursuant to Minn. Stat. ch. 72A (as amended by Minnesota Laws 1980, ch. 436) the promulgation of proposed rules governing the settlement of insurance claims in the State of Minnesota. In order to determine the nature and utility of such rules, the Insurance Division of the Department of Commerce hereby requests information and comments from all interested individuals or groups concerning the subject matter of the proposed rules.

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

Mr. Matthew F. Glover  
Regulatory Policy Analyst  
Insurance Division  
Department of Commerce  
Fifth Floor, 500 Metro Square Building  
St. Paul, MN 55101

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 297-2854, or in person at the above-referenced address.

Therefore, pursuant to Minn. Stat. § 15.0412, subd. 6, the Insurance Division is publishing notice of its intent to solicit outside information and comment prior to promulgation of these rules. These rules will specify certain requirements that must be followed when settling insurance claims.

## **Department of Health Environmental Health Division**

### **Notice of Intent to Solicit Outside Opinion on Proposed Rules Governing Mineral Exploration Borings and Licensing of Explorers**

Notice is hereby given pursuant to Minn. Stat. § 15.0412 (1978) that the Commissioner of Health will propose amendments to the water well construction code (7 MCAR §§ 1.210-1.224) and the adoption of new rules relating to mineral exploration borings and the licensing of explorers, as authorized by Laws of 1980, ch. 535.

All interested persons desiring to submit data or views relating to the proposed amendments or new rules should address their comments, either written or oral, to:

Mr. Edwin Ross, Supervisor,  
Ground Water Quality Unit  
Minnesota Department of Health  
717 Delaware Street S.E.  
Minneapolis, Minn. 55440  
(612) 296-5338.

## **Pollution Control Agency Solid Waste Division**

### **Notice of Intent to Solicit Interest of Applicants to Serve on An Advisory Committee to Assist in Establishing the Packaging Program**

Notice is hereby given that the Minnesota Pollution Control Agency (MPCA) is establishing an Advisory Committee to assist it in developing the package review program authorized by Minn. Stat. § 116F.06. The legislation enacted in 1973 was under litigation until September, 1979 when it was upheld by the Minnesota Supreme Court. The court ruled the statute was valid but further found that the rules were only guidelines for industry to consider when developing new packages. Since passage of the package law, opinions as to the

## OFFICIAL NOTICES

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operation of the packaging program have differed widely. The debate has been focused on the MPCA's authority to ban certain packages which "constitute a solid waste disposal problem" or are "inconsistent with state environmental policies" under the statute. Because of concern over the use of this authority, little attention has been given to other parts of the statute which allow the MPCA to develop waste reduction methodologies by:

- a) conducting public education programs;
- b) encouraging the development of markets for recyclable materials;
- c) making recommendations to industry to facilitate material reuse, lengthening of useful product lives and the reduction of solid waste generation.

These other powers granted by the statute present the agency with a unique opportunity to work with industry, environmentalists, consumers and communities to begin serious waste reduction efforts in the State of Minnesota. Given the current outlook on energy conservation at both the state and national level, this opportunity could not be more timely.

In order to ensure that the implementation of all aspects of the packaging program are carried forward in a manner which is most satisfactory to all concerned, the MPCA intends to form an advisory committee composed of packaging industry representatives, environmentalists, consumer representatives, resource recovery industry representatives and other interested parties. The advisory committee will assist the MPCA in developing the scope of the packaging program and assure input from all concerned individuals and groups.

All interested or affected persons or groups that desire to participate on the Advisory Committee are requested to respond. Statements of application and comment may be made orally or in writing. Written statements of application and comment may be addressed to:

Curtis J. Sparks, P.E.  
Chief, Resource Planning Section  
Division of Solid Waste  
Minnesota Pollution Control Agency  
1935 W. County Road B2  
Roseville, Minnesota 55113  
Phone: (612) 297-2701

All statements of application and comment should be received by August 14, 1980.

July 7, 1980

Dale L. Wikre, Director  
Division of Solid Waste

## Department of Transportation

### **Notice of Intent to Solicit Outside Opinion Regarding Recodification and Amendments to Rules on the Operations of Regular Route Common Carriers of Freight and Passengers; Permit, Charter Carriers and Petroleum Carriers; and Proposed New Rules Regarding Building Movers**

Notice is hereby given that the Commissioner of Transportation desires information and opinions from those interested in the recodification and editing of amendments to rules governing operations of regular route common carriers of freight and passengers; permit, charter carriers, and petroleum carriers.

The authority of the commissioner to adopt rules is found in Minn. Stat. § 221.31. Existing rules are in the form as adopted by the Minnesota Public Service Commission and are numbered PSC 1 through 48. The rules have remained in force and effect since 1976 by virtue of language contained in Minn. Stat. § 174.06, subd. 6. The commissioner now proposes to amend and recodify these rules to reflect the transfer of responsibility made by the legislature (Laws of 1976, ch. 166, § 71).

Further, the Commissioner of Transportation is required to promulgate rules establishing bonding and insurance requirements for building movers pursuant to Minn. Stat. § 221.81, subd. 5 (1979 Supp.). The commissioner desires information and comment that will aid in their preparation.

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

Donald F. Berg, Acting Director  
Office of Rates and Regulation  
404 Transportation Building  
St. Paul, Minnesota 55155



Oral statements will be received during regular business hours over the telephone at (612) 296-0331.

All statements and comments must be received by August 15, 1980. Any written material received by this date will become a part of the record of any rules hearing held on this subject.

July 7, 1980

Richard P. Bruan  
Commissioner of Transportation

## **Department of Transportation**

### **Petition of Chicago and North Western Transportation Company for Authority to Retire and Remove ICC Track Nos. 47, 48, 49, 50 and 99, All Located at Minneapolis, MN**

#### **Notice of Application and of Opportunity for Hearing**

Notice is hereby given that the Chicago and North Western Transportation Company, with Attorneys at 4200 IDS Center—80 South 8th Street, Minneapolis, Minnesota 55402 has filed a petition with the Commissioner of Transportation pursuant to Minn. Stat. §§ 219.741 and 218.041, subd. 3 (10) to retire and remove ICC track Nos. 47, 48, 49, 50 and 99, all located at Minneapolis, Minnesota.

Any person may file a written objection to the action proposed by the petitioner by means of a letter addressed to the Commissioner of Transportation, Transportation Building, Saint Paul, Minnesota 55155, not later than the date specified below. An objection must be received on or before August 4, 1980. The objection should state specifically how the objector's interest will be adversely affected by the proposed action.

The petition recites among other matters that:

“The subject track is no longer needed for rail transportation service, constitutes a continuing burdensome maintenance expense, and is an unnecessary safety hazard. The track is not used at the present time, and there is no present prospect that the subject track will be needed in the future. The only shippers, patrons or members of the public who might have any interest in the retention of the tracks or facilities, or who have used the same to any substantial degree within the past several years are for the Cargill Corporation, Nutrena Feed Division. This company has donated these facilities to the University of Minnesota on Dec. 31, 1979 and the University of Minnesota has indicated they have no interest in retention of the tracks on this facility . . . .”

Upon receipt of a written objection, the commissioner will, with respect to the named petitioner, set the matter down for hearing. If no objections are received, the commissioner may grant the relief sought by the petitioner.

If this matter is set for hearing, any person who desires to become a party to this matter must submit a timely petition to Intervene to the hearing examiner pursuant to 9 MCAR § 2.210, showing how the person's legal rights, duties and privileges may be determined or affected by the decision in this case. The petition must also set forth the grounds and purposes for which intervention is sought. All parties have the right to be represented by legal counsel or any other representative of their choice. In the event the objecting party does not do so, or otherwise does not participate in the hearing, the statements contained in the application filed may be taken as true.

July 7, 1980

Richard P. Braun  
Commissioner of Transportation

STATE OF MINNESOTA  
OFFICE OF THE STATE REGISTER

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

## ORDER FORM

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## FOR LEGISLATIVE NEWS

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

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

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

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

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

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