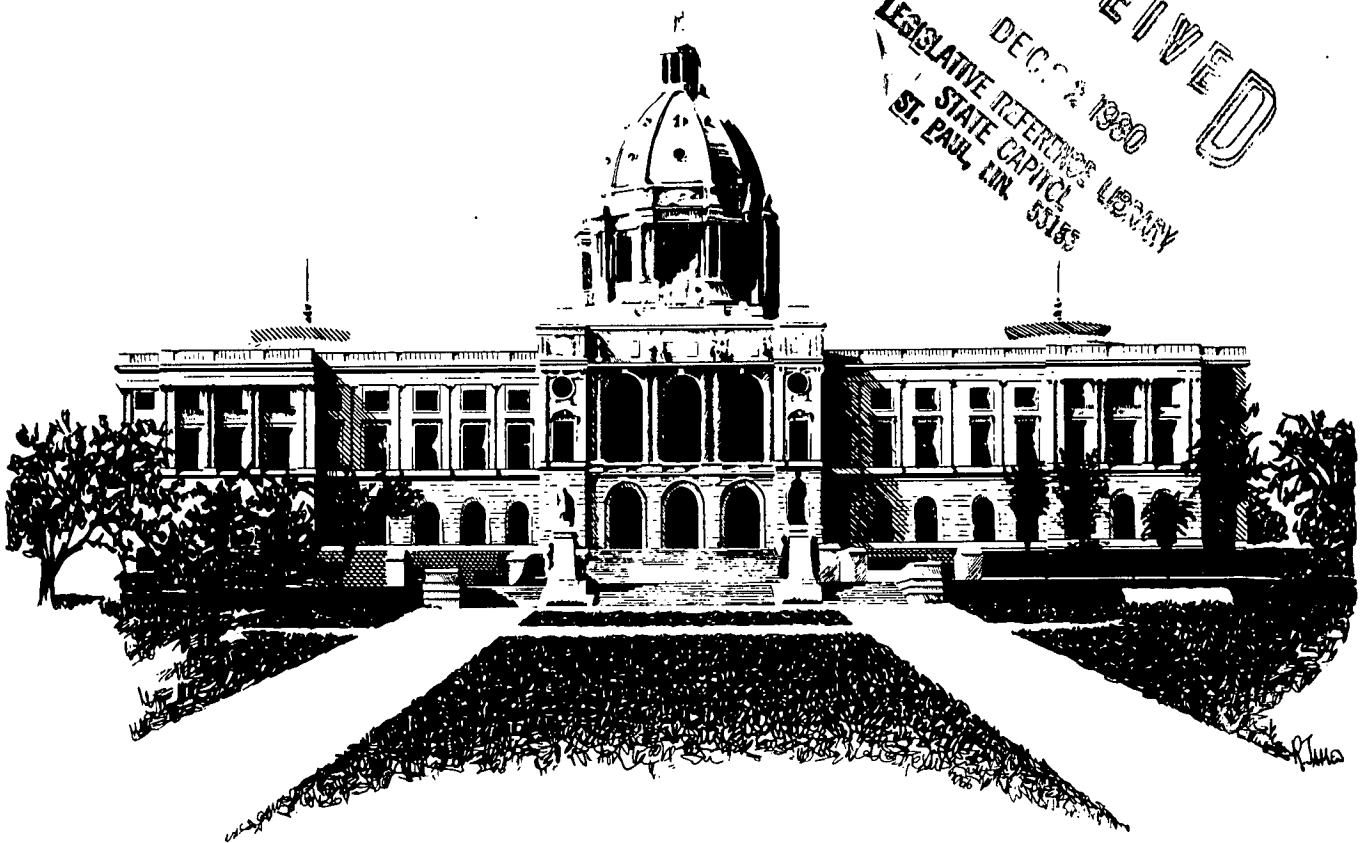


STATE REGISTER

STATE OF MINNESOTA

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VOLUME 5, NUMBER 25

December 22, 1980

Pages 999-1038



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			
26	Monday Dec 15	Monday Dec 22	Monday Dec 29
27	Monday Dec 22	Monday Dec 29	Monday Jan 5
28	Monday Dec 29	Monday Jan 5	Monday Jan 12
29	Monday Jan 5	Monday Jan 12	Monday Jan 19

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

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

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

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

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

The **PROPOSED RULES** section contains:

- Calendar of Public Hearings on Proposed Rules.
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

The **ADOPTED RULES** section contains:

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

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

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

Issues 1-13, inclusive	Issue 39, cumulative for 1-39
Issues 14-25, inclusive	Issues 40-51, inclusive
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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 Administration Building Codes and Standards Division

Proposed Rules for the Minnesota State Building Code (2 MCAR § 1.18601) Adopting the National Electrical Code 1981 Edition as Approved by the American National Standards Institute

Notice of Intent to Adopt A Rule without A Public Hearing

Notice is hereby given that the Minnesota Department of Administration (hereinafter "agency") intends to adopt the

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

above-entitled rule without a public hearing. The agency has determined that the proposed adoption of this rule is noncontroversial in nature and has elected to follow the procedures set forth in Laws of 1980, ch. 615, § 7, for adoption of noncontroversial rules.

The proposed rule provides for amending 2 MCAR § 1.18601 as follows:

Delete: "1978 Edition of the National Electrical Code (NEC)" and insert "1981 Edition of the National Electrical Code (NEC)."

Delete: "(ANSI -C1-1978)" and insert "(ANSI-C1-1981)."

The exceptions to NEC Table 220-2(b), NEC Section 300-22(b), NEC Section 700-6(b)(3), NEC Section 800-3; and the synopsis are retained as part of the State Building Code. This rule is authorized by Minn. Stat. § 16.86.

The agency has prepared a Statement of Need and Reasonableness that describes the agency's reason for the proposed rule and identifies the data and information relied upon by the Agency to support the proposed rule. Copies of the 1981 National Electrical Code are in general distribution and may be reviewed and obtained from the State Board of Electricity or the Building Codes & Standards Division. Copies of the Statement of Need and Reasonableness may be obtained from the agency by contacting:

Ms. Peggi Opalinski
Building Codes & Standards Division
408 Metro Square Building
7th and Robert Streets
St. Paul, Minnesota 55101

Interested persons have until January 14, 1981 to submit comments on the proposed rule. The proposed rule may be modified if the data and views submitted to the agency warrant modifications and the modification does not result in a substantial change in the proposed language.

If, during the comment period, seven or more persons submit to the agency a written request for a hearing on the proposed rule, the agency shall proceed to schedule a public hearing before adoption of the rule. The agency requests that if a person desires a public hearing, with the written request for a public hearing the person identify the particular provisions objected to, the suggested modifications to the proposed language, and the reasons and data relied on to support the suggested modifications.

Persons who wish to submit comments or a request for a public hearing should submit such comments or requests no later than January 14, 1980 to Ms. Peggi Opalinski at the address given above.

In the event a hearing is required, a new Notice of Hearing will be mailed out and published in the *State Register*. If no hearing is requested, the agency will adopt the proposed rule to be effective March 1, 1981. Persons who wish to receive a copy of the final rule as proposed for adoption should submit a written statement of such desire to Ms. Opalinski.

After adoption of the final rule by the agency, the proposed rule, this notice, the Statement of Need and Reasonableness, all written comments received by the agency, and the final rule as adopted will be sent to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General should submit a written statement of such desire to Ms. Opalinski.

Please be advised that Minn. Stat. ch. 10A (1978) requires each lobbyist to register with the Ethical Practices Board within five days after he/she commences lobbying. Lobbying includes attempting to influence rulemaking by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than \$250.00 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than \$250.00 per year or five hours per month lobbying. The statute in questions provides certain exceptions. Questions should be directed to the Minnesota Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155. Telephone (612) 296-5651.

December 3, 1980

James J. Hiniker, Jr.
Commissioner

Office of the Attorney General

Proposed Rules Governing Procedures for the Review of Rules and Petitions for Rulemaking and the Repeal of Rules Relating to Basic and Supervisory Training of Peace Officers in the State of Minnesota and the Reimbursement Program of the Minnesota Peace Officer Training Board (AttyGen 201-218), Rule Making Procedures (Non-Contested Cases) (AttyGen 301-325), and Model Rules for Contested Cases (AttyGen 401-425)

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Office of the Attorney General proposes to adopt the above-entitled rules without a public hearing. The Attorney General has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Laws 1980, Chapter 615, section 7, codified as Minnesota Statutes section 15.0412, subdivision 4h (1980).

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

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

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

Jerry S. Anderson
Special Assistant Attorney General
G-25 State Administration Building
50 Sherburne Avenue
Saint Paul, Minnesota 55155
(612) 296-1288

Authority for the adoption of these rules is contained in Minnesota Statutes sections 15.0412, subdivision 3 and 15.0415. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules, and that identifies the data and information relied upon to support the proposed rules, has been prepared and is available from Mr. Anderson upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to a designee of the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of these rules for approval, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Mr. Anderson.

A copy of the proposed rules is attached to this Notice. Additional copies may be obtained by contacting Mr. Anderson.

Please be advised that Minnesota Statutes Chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes section 10A.01, subdivision 11 (Supp. 1979) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250.00, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

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PROPOSED RULES

(b) Who spends more than \$250.00, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 40 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

Warren Spannaus
Attorney General

Rules as Proposed

Chapters 2-4, AttyGen 201-425 [Proposed for Repeal]

Chapter 2: Rule Review Procedures (all new material)

1 MCAR § 1.201. **Applicability.** These rules shall govern the submittal to and review by the Attorney General of rules adopted by agencies pursuant to Minn. Stat. § 15.0412.

1 MCAR § 1.202 **Review of rules adopted with a public hearing.** When an agency has adopted a rule after a public hearing pursuant to Minn. Stat. § 15.0412, subs. 4-4e, the agency shall submit to the Attorney General one copy of the following documents, except as otherwise provided herein.

A. **Rule as Adopted.** The original and three copies of the Rule as Adopted shall be submitted. At least one of the copies shall reflect changes made in the rule from that originally published in the *State Register* by the underlining of additions and striking of deletions.

B. **Order Adopting.** (For recommended format, see Exhibit H-1). The original and three copies of the Order Adopting the rule shall be submitted.

1. The Order Adopting shall indicate the time and place of the hearing and shall recite that proper notice was given, that all persons were given the opportunity to be heard, and that the rule adopted is needed and reasonable based on the record and applicable statutes. The Order Adopting shall be separate from the Findings of Fact and Conclusions.

2. The Order Adopting shall be signed by an authorized person. If the agency is a board, the rule shall be adopted only at a meeting duly called and attended by a quorum. The action shall be in the form of a Resolution and shall be documented by a certification by a member of the board. (For recommended format, see Exhibit I.)

3. If the rule is returned by the Attorney General for revision, a new Order Adopting shall be submitted with the revised rule. If the revision required by the Attorney General is not substantive or does not change the meaning of the rule, the Attorney General shall not require official board action adopting the revised rule and shall accept a new Order Adopting signed by the person initially authorized by the board to sign an Order Adopting.

C. Certificate of Board's Resolution Adopting a Rule, when applicable.

D. Notice of Intent to Solicit Outside Opinion and any written material received by the agency, as required by Minn. Stat. § 15.0412, subd. 6, when applicable. (For recommended format, see Exhibit A.)

E. Order for Hearing. (For recommended format, see Exhibit B-1.)

F. Certificate of Board's Authorizing Resolution (ordering hearing), when applicable. (For recommended format, see Exhibit C-1.)

G. Notice of Hearing. (For recommended format, see Exhibit D.)

H. Affidavit of Mailing Notice of Hearing. (For recommended format, see Exhibit F.) The Affidavit of Mailing shall establish that the person executing the Affidavit served a copy of the Notice of Hearing on all persons and associations listed on the mailing list maintained by the agency by depositing in the United States mail a copy of the Notice of Hearing, properly enveloped, with postage prepaid. The Affidavit of the person mailing the Notice of Hearing shall be Notarized.

I. Mailing list Certificate. (For recommended format, see Exhibit E.)

J. Rule as Proposed. Either a copy of the *State Register* in which the Rule as Proposed was published or a photocopy of the relevant pages of that *State Register*, to include the Notice of Hearing and the Rule as Proposed, shall be submitted.

K. Hearing Examiner's Report.

L. Chief Hearing Examiner's Reports (as required pursuant to Minn. Stat. § 15.0412, subs. 4d-4e).

M. Agency's Findings of Fact and Conclusions. (For recommended format, see Exhibit G.) This document shall contain a finding or findings, based on the record, that each rule adopted is needed and reasonable and is within the agency's statutory authority. The Findings of Fact and Conclusions shall set forth the reasons for changes between the rule as proposed and rule as adopted, including discussion of relevant testimony, data, and evidence. Findings of Fact and Conclusions may be simply an

adoption of the Hearing Examiner's Findings, or an adoption of such Findings with exceptions taken. When exceptions are taken, the Findings of Fact and Conclusions shall set forth independent findings of the agency regarding the need for and reasonableness of each exception taken by the agency with citations to relevant testimony, data, and evidence. The Findings of Fact and Conclusions shall be signed by the person authorized to sign the Order Adopting the rule.

N. If the agency has submitted its proposed rule to the Legislative Commission to Review Administrative Rules, pursuant to Minn. Stat. § 15.0412, subd. 4d, the agency also shall submit either a copy of the Commission's Report or an affidavit stating: the date on which the rule was submitted to the commission, that 30 days have passed, and that the commission has not issued a report.

O. Order of the Chief Hearing Examiner or, after July 1, 1981, the Revisor of Statutes permitting incorporation by reference, when applicable.

P. Statement of Need and Reasonableness. If the agency acts pursuant to a Petition for Adoption, Suspension, Amendment, or Repeal of a Rule (see Minn. Stat. § 15.0415) that sets forth the reasons that support a finding of need for and reasonableness of the rule, the Petition may be substituted for the Statement of Need and Reasonableness.

Q. Petition for Adoption, Suspension, Amendment, or Repeal of a Rule (if the agency has adopted, suspended, amended, or repealed the rule in response to a Petition filed pursuant to Minn. Stat. § 15.0415).

1. The Petition shall be submitted to the agency in the form of Exhibit M.
2. The Petition shall be served on the head of the affected agency or board personally or by United States mail at the business address of the agency or board.
3. The agency or board shall have 60 days from receipt of the Petition to make its reply. The reply shall:
 - a. be in writing;
 - b. respond specifically to all issues raised in the Petition;
 - c. state the intended agency action, if any; and
 - d. be signed by the head of the affected agency or board, or any lawfully authorized delegate thereof.

R. Record. A transcript shall be prepared of hearings on a proposed rule if requested by the Attorney General. A copy of the transcript, if requested, all exhibits, and other relevant materials shall accompany a rule submitted to the Attorney General for review. If a prepared transcript has not been requested by the Attorney General or the Hearing Examiner, any other official recordation of the hearing (for example, tape recordings prepared by the Office of Administrative Hearings) shall be submitted when available.

S. Certificate of Compliance With Rulemaking Procedures. (For recommended format, see Exhibit J.)

T. Affidavit of Mailing Notice of Submission to the Attorney General and accompanying Notice. (For recommended formats, see Exhibits K and L.)

1 MCAR § 1.203 Review of rules adopted without a public hearing. When an agency has adopted a rule without a public hearing pursuant to Minn. Stat. § 15.0412, subd. 4h, the agency shall submit to the Attorney General one copy of the following documents, except as otherwise provided herein.

A. Rule as Adopted. The original and three copies of the Rule as Adopted shall be submitted. At least one of the copies shall reflect any changes made in the rule from that as originally published in the *State Register* by the underlining of additions and striking of deletions.

B. Order Adopting. (For recommended format, see Exhibit H-2.) The original and three copies of the Order Adopting the rule shall be submitted.

1. The Order Adopting shall recite that proper Notice was given, that all persons were given the opportunity to submit comment on the proposed rule, that seven or more persons did not request a hearing, and that the rule adopted is needed and reasonable. The Order Adopting the rule shall be separate from the Findings of Fact and Conclusions.

2. The Order Adopting shall be signed by an authorized person. If the agency is a board, the rule shall be adopted only at

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PROPOSED RULES

a meeting duly called and attended by a quorum. The action shall be in the form of a Resolution and shall be documented by a certification by a member of the board. (For recommended format, see Exhibit I.)

3. If the rule is returned by the Attorney General for revision, a new Order Adopting shall be submitted with the revised rule. If the revision required by the Attorney General is not substantive or does not change the meaning of the rule, the Attorney General shall not require official board action adopting the revised rule and shall accept a new Order Adopting signed by the person initially authorized by the board to sign an Order Adopting.

C. Certificate of Board's Resolution Adopting a Rule, when applicable.

D. Notice of Intent to Solicit Outside Opinion and any written material received by the agency, as required by Minn. Stat. § 15.0412, subd. 6, when applicable. (For recommended format, see Exhibit A.)

E. Order for Notice of Intent to Adopt a Rule Without Public Hearing. (For recommended format, see Exhibit B-2.) The Order shall be signed by an authorized person. If the agency is a board, the person signing the Order must be so authorized and a document of authority must be attached to the Order.

F. Certificate of Board's Authorizing Resolution (ordering notice), when applicable. (For recommended format, see Exhibit C-2.)

G. Notice of Intent to Adopt a Rule Without Public Hearing. (For recommended format, see Exhibit D-2.) The Notice of Intent to adopt a Rule Without Public Hearing shall contain at a minimum the following:

1. A citation to the rule if the proposal is only to repeal or renumber the rule.
2. A statement that the agency has determined that adoption of the rule will not be controversial in nature.
3. A statement that persons wishing to comment on the proposed rule shall have 30 days in which to do so.
4. A statement that the rule may be modified as the result of comments received if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.
5. A statement that unless seven or more persons submit written requests for a public hearing on the proposed rule within the 30-day comment period, a public hearing will not be held.
6. A statement regarding the manner in which a hearing may be requested.
7. A statement that if a hearing is required, the agency shall proceed pursuant to Minn. Stat. § 15.0412, subds. 4-4f.
8. A statement that all persons wishing to be informed when the rule is submitted to the Attorney General may request such notice and a statement of the manner in which the request may be made.
9. A citation to the agency's statutory authority to promulgate the proposed rule.
10. If the proposed rule is not attached to the Notice, the Notice must clearly state the nature and effect of the proposed rule and include a statement announcing the availability and the means of obtaining upon request a copy of the proposed rule.
11. If required by Minn. Stat. § 15.0412, subd. 7, a statement relating to the expenditure of monies by local public bodies.

H. Affidavit of Mailing Notice of Intent to Adopt a Rule Without Public Hearing. (For recommended format, see Exhibit F.) The Affidavit of Mailing shall establish that the person executing the Affidavit served a copy of the Notice of Intent to Adopt a Rule Without Public Hearing on all persons and associations listed on the mailing list maintained by the agency pursuant to Minn. Stat. § 15.0412, subd. 4 by depositing in the United States mail a copy of the Notice properly enveloped, with postage prepaid. The Affidavit of the person mailing the Notice shall be notarized.

I. Mailing list Certificate. (For recommended format, see Exhibit E.) The Certificate shall certify that the mailing list required by Minn. Stat. § 15.0412, subd. 4 was accurate and complete.

J. Rule as Proposed. Either a copy of the *State Register* in which the Rule as Proposed was published or a photocopy of the relevant pages of that *State Register*, to include the Notice of Intent to Adopt a Rule Without Public Hearing and the Rule as Proposed, shall be submitted.

K. Findings of Fact and Conclusions setting forth the reasons for changes between the Rule as Proposed and the Rule as Adopted, when applicable. (For recommended format, see Exhibit G.) This document shall be signed by the person authorized to sign the Order Adopting the rule.

L. Statement of Need and Reasonableness. The Statement of Need and Reasonableness shall contain at a minimum a recitation of the reasons, arguments, and evidence that support a finding of need for and reasonableness of each rule. A general statement of statutory implementation will not suffice. If the agency acts pursuant to a Petition for Adoption, Suspension, Amendment, or Repeal of a Rule (see Minn. Stat. § 15.0415) that sets forth reasons that support a finding of need for and reasonableness of the rule, the Petition may be substituted for the Statement of Need and Reasonableness.

M. Petition for Adoption, Suspension, Amendment, or Repeal of a Rule (if the agency has adopted, suspended, amended, or repealed a rule in response to a Petition filed pursuant to Minn. Stat. § 15.0415). (See 1 MCAR § 1.202 Q.)

N. Written comments on the rule or requests for a public hearing received by the agency, if any.

O. Certificate of Compliance With Rulemaking Procedures. (See Exhibit J.)

P. Affidavit of Mailing Notice of Submission to the Attorney General and accompanying Notice. (For recommended formats, see Exhibits K and L.)

1 MCAR § 1.204 Review of temporary rules. When an agency has adopted a temporary rule pursuant to Minn. Stat. § 15.0412, subd. 5, the agency shall submit to the Attorney General one copy of the following documents, except as otherwise provided herein.

A. The original and three copies of the Temporary Rule as Adopted shall be submitted. At least one of the copies shall reflect any changes made in the rule from that as originally published in the *State Register* by the underlining of additions and striking of deletions.

B. Order Adopting. (For recommended format, see Exhibit H-3.) The original and three copies of the Order Adopting the rule shall be submitted.

1. The Order Adopting shall recite that proper notice was given and that all persons were given the opportunity to submit comment on the proposed rule. The Order Adopting the rule shall be separate from the Findings of Fact and Conclusions.

2. The Order shall be signed by an authorized person. If the agency is a board, the rule shall be adopted only at a meeting duly called and attended by a quorum. The action shall be in the form of a Resolution and shall be documented by a certification by a member of the board. (For recommended format, see Exhibit I.)

3. If the rule is returned by the Attorney General for revision, a new Order Adopting shall be submitted with the revised rule. If the revision required by the Attorney General is not substantive or does not change the meaning of the rule, the Attorney General shall not require official board action adopting the revised rule and shall accept a new Order Adopting signed by the person initially authorized by the board to sign an Order Adopting.

C. Certificate of Board's Resolution Adopting a Rule, when applicable.

D. Order for Publication. (For recommended format, see Exhibit B-3.) The Order for Publication must be signed by an authorized person. If the agency is a board, the person signing the Order must be so authorized and a document of authority must be attached to the Order for Publication.

E. Certificate of Board's Authorizing Resolution (ordering publication), when applicable. (For recommended format, see Exhibit C-3.)

F. Rule as Proposed. Either a copy of the *State Register* in which the Temporary Rule as Proposed was published or a photocopy of the relevant pages of that *State Register* shall be submitted.

G. Findings of Fact and Conclusions setting forth the reasons for changes between the Rule as Proposed and the Rule as Adopted, when applicable. (For recommended format, see Exhibit G.) This document shall be signed by the person authorized to sign the Order Adopting the rule.

H. Written comments on the rule received by the agency, if any.

I. Certificate of Compliance With Rulemaking Procedures. (See Exhibit J.)

1 MCAR § 1.205

A. Failure to submit the required documents shall cause a submission to be incomplete and shall terminate the Attorney General's review period. The Attorney General shall inform the agency of the missing documents; upon submission of the required documents, the period for review shall be that for an initial submission.

B. The documents required to be submitted to the Attorney General in 1 MCAR §§ 1.202-1.204 shall be retained in the Attorney General's file, except for the original and two copies of the Rule as Adopted and Order Adopting the rule, and the record, including comments submitted to the agency.

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

1 MCAR § 1.206 Duties of the Attorney General.

A. A rule shall be approved or disapproved within the time period prescribed by statute. The review period shall begin the first day after receipt of the rule by the Attorney General.

1. Upon approval of the rule other than a temporary rule, the Attorney General shall file the rule promptly in the Office of the Secretary of State. The agency shall be responsible for effecting publication in the *State Register*. Effective July 1, 1981, the Attorney General shall file a rule with the Secretary of State only after the rule has been endorsed by the Revisor of Statutes.

2. Upon approval of a temporary rule, the Attorney General shall notify the agency of the approval and the agency shall be responsible for filing the rule with the Secretary of State, if the agency desires, and effecting publication in the *State Register*. Effective July 1, 1981, the Attorney General shall file a temporary rule in the Office of the Secretary of State, but only after the rule has been endorsed by the Revisor of Statutes.

3. If a rule is disapproved and is returned for revision or additional argument, the reasons therefore shall be stated in writing and the rule shall not be filed in the Office of the Secretary of State or published in the *State Register*.

4. If a rule is disapproved and returned to an agency for revision or additional argument, the review period shall be terminated. Upon resubmission of a rule other than a temporary rule, the Attorney General shall approve or disapprove the rule within 10 calendar days after the date of resubmission. Upon resubmission of a temporary rule, the Attorney General shall approve or disapprove the rule within five working days after the date of resubmission.

B. To permit persons or associations time to comment on the legality of a rule other than a temporary rule, the Attorney General shall not approve a rule adopted pursuant to Minn. Stat. § 15.0412, subds. 4-4e for ten calendar days after receipt and shall not approve a rule adopted pursuant to Minn. Stat. § 15.0412, subd. 4h for eight calendar days after receipt. Comments must be received by the Attorney General within these time periods. The Attorney General shall permit an agency to respond to such comments within the limits of the statutory rule review period. Persons or associations submitting written comments to the Attorney General shall submit simultaneously a copy of their comments to the agency adopting the rule. If an agency submits a written response to the Attorney General, the agency shall submit simultaneously a copy of its response to the persons or associations who submitted the comments that the response addresses.

C. Approval as to form and legality. A rule shall be disapproved if:

1. The agency has failed to comply with the applicable provisions of the Minnesota Administrative Procedure Act or other requirements governing the promulgation of rules.

2. The rule exceeds the statutory authority conferred or the required conditions have not been met.

3. The rule conflicts with the governing statute or other relevant law.

4. The rule has no reasonable relationship to statutory purposes.

5. The rule is unconstitutional, arbitrary, or unreasonable.

1 MCAR § 1.207 Exhibits.

Exhibit A

Department of _____

_____ Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing _____

Notice is hereby given that the State _____ is seeking information or opinions from sources outside the agency in preparing to promulgate new rules governing _____. The promulgation of these rules is authorized by Minnesota Statutes section _____, which [permits/requires] the agency to _____.

The State _____ requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

[name and address]

Oral statements will be received during regular business hours over the telephone at _____ and in person at the above address.

All statements of information and comment shall be accepted until _____. Any written material received by the State _____ shall become part of the record in the event that the rules are promulgated.

PROPOSED RULES

Exhibit B-1

STATE OF MINNESOTA
DEPARTMENT OF _____

In the Matter of the Proposed Adoption of Rules of the
State _____
Governing _____

ORDER FOR HEARING

IT IS ORDERED this ____ day of _____, 19____, that a public hearing on the proposed rules captioned above be held in the (e.g., "State Office Building Auditorium, St. Paul, Minnesota") on _____, 19____, commencing at ____:00 ____M., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED, that notice of said hearing be given to all persons who have registered their names with the State _____ for that purpose and be published in the State Register.

STATE OF MINNESOTA

COMMISSIONER OF _____

Exhibit B-2

STATE OF MINNESOTA
DEPARTMENT OF _____

In the Matter of the Proposed Adoption of Rules of the
State _____
Governing _____

ORDER FOR NOTICE
OF INTENT TO ADOPT
RULES WITHOUT
PUBLIC HEARING

IT IS ORDERED this ____ day of _____, 19____ that Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the State _____ for that purpose and be published in the State Register.

STATE OF MINNESOTA

COMMISSIONER OF _____

Exhibit B-3

STATE OF MINNESOTA
DEPARTMENT OF _____

In the Matter of the Proposed Adoption of Temporary Rules
of The State _____
Governing _____

ORDER FOR PUBLICATION
OF TEMPORARY RULES

IT IS ORDERED this ____ day of _____, 19____ that the proposed temporary rules in the above-entitled matter be published in the State Register.

STATE OF MINNESOTA

COMMISSIONER OF _____

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

Exhibit C-1

**CERTIFICATE OF BOARD'S
AUTHORIZING RESOLUTION**

I, _____, do hereby certify that I am a member and the _____ (office) of the Board of _____, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board of _____ duly and properly called and held on the _____ day of _____, 19____, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

“RESOLVED, that _____, [a member/executive secretary] of the Board of _____, be and _____ he hereby is granted the authority and directed to call a hearing for the purpose of promulgating rules of the Board governing _____ (spell out nature of rules involved) as well as performed any and all acts incidental thereto, including but without being limited to signing an Order for Hearing and Notice of Hearing as well as acting as the Board’s representative at all hearings.”

IN WITNESS WHEREOF, I have hereunto subscribed my name this _____ day of _____, 19_____.

(Officer of the Board)

Attest by one other Board member

Exhibit C-2

**CERTIFICATE OF BOARD'S
AUTHORIZING RESOLUTION**

I, _____, do hereby certify that I am a member and the _____ (office) of the Board of _____, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board of _____ duly and properly called and held on the _____ day of _____, 19____, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

“RESOLVED, that _____, [a member/executive secretary] of the Board of _____, be and _____ he hereby is granted the authority and directed to sign an Order of the Board directing that Notice be given of the Board’s intent to adopt without a public hearing rules governing _____ (spell out nature of the rules) to sign the Notice thereof, and to perform any and all acts incidental thereto. In the event a public hearing becomes necessary, _____ he hereby is granted the authority and directed to call a hearing for the purpose of promulgating said rules as well as perform any and all acts incidental thereto, including but without being limited to signing an Order for Hearing and Notice of Hearing as well as acting as the Board’s representative at all hearings.”

IN WITNESS WHEREOF, I have hereunto subscribed my name this _____ day of _____, 19_____.

(Officer of the Board)

Attest by one other Board member

Exhibit C-3

**CERTIFICATE OF BOARD'S
AUTHORIZING RESOLUTION**

I, _____, do hereby certify that I am a member and the _____ (office) of the Board of _____, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board of _____ duly and properly called and held on the _____ day of _____, 19____, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

“RESOLVED, that _____, [a member/executive secretary] of the Board of _____, be and

PROPOSED RULES

_____he hereby is granted the authority and directed to sign an Order of the Board of _____ directing the publication in the State Register of proposed temporary rules governing _____ (spell out nature of the rules) as well as perform any and all acts incidental thereto.

IN WITNESS WHEREOF, I have hereunto subscribed my name this _____ day of _____, 19_____.

(Officer of the Board)

Attest by one other Board member

Exhibit D-1

Department of _____
_____ Division

In the Matter of the Proposed Adoption of Rules of the State _____ Governing _____

Notice of Hearing

Notice is hereby given that a public hearing will be held pursuant to Minnesota Statutes section 15.0412, subdivision 4, in the above-entitled matter in the (e.g. "State Office Building, St. Paul, Minnesota") on _____, 19_____, commencing at _____:00 _____.M. and continuing until all persons or representatives of associations or other interested groups have had an opportunity to be heard concerning adoption of the proposed rules captioned above by submitting either oral or written data, statements, or arguments. Statements or briefs may be submitted without appearing at the hearing.

[A copy of the proposed rules is attached to this Notice.]

or

[The Commissioner proposes to adopt rules relating to the following matters: (informative statement of nature and extent of proposed rules)]

One free copy of this Notice and the proposed rules may be obtained by contacting _____. Additional copies will be available at the door on the date of the hearing.

NOTE: Consult the rules of the Office of Administrative Hearings to determine additional information required by that office to be included in the Notice of Hearing.

State of Minnesota

Commissioner of _____

Exhibit D-2

Department of _____
_____ Division

In the Matter of the Proposed Adoption of Rules of the State _____ Governing _____

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the State _____ proposed to adopt the above-entitled rules without a public hearing. The Commissioner has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes section 15.0412, subdivision 4h (1980).

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

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment

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

properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the State _____ for the purpose of receiving notice of the proposed adoption of rules by this _____.

Subscribed and sworn to before me this ____ day of _____, 19____.

Exhibit G

STATE OF MINNESOTA
DEPARTMENT OF _____

In the Matter of the Proposed Adoption of Rules of the State _____
Governing _____

FINDINGS OF FACT
AND CONCLUSIONS

The above-entitled matter came on for hearing before Hearing Examiner _____ on the ____ day of _____, 19____, at ____:00 ____ M. in the (e.g. "State Office Building Auditorium, St. Paul, Minnesota"), after proper notice required by Minnesota Statutes § 15.0412 was served upon all persons, associations, and other interested groups registered with the State _____ for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced upon the records, files, and proceedings herein, I find the following:

STATE OF MINNESOTA

COMMISSIONER OF _____

Exhibit H-1

STATE OF MINNESOTA
DEPARTMENT OF _____

In the Matter of the Proposed Adoption of Rules of the State _____
Governing _____

ORDER ADOPTING
RULES

The above-entitled matter came on for hearing before Hearing Examiner _____ on the ____ day of _____, 19____, at ____:00 ____ M., in the (e.g., "State Office Building Auditorium, St. Paul, Minnesota"), after proper notice required by Minnesota Statutes section 15.0412 was served upon all persons, associations, and other interested groups registered with the State _____ for that purpose.

After affording interested persons an opportunity to present written and oral data, statements, and arguments, hearing all of the testimony, considering all of the evidence adduced and upon the records, files, and proceedings herein and applicable statutory standards or criteria, and confirming the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as _____ are adopted this ____ day of _____, 19____, pursuant to authority vested in me by Minnesota Statutes section _____.

STATE OF MINNESOTA

COMMISSIONER OF _____

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

Exhibit H-2

STATE OF MINNESOTA
DEPARTMENT _____

In the Matter of the Proposed Adoption of Rules of the
State _____
Governing _____

ORDER ADOPTING
RULES

Notice of the Commissioner's [Board's] intent to adopt the above-entitled rules without a public hearing was published in the State Register on _____, 19____ and was sent by the United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes section 15.0412, subdivision 4 on _____, 19____. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven written requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as _____ are adopted this _____ day of _____, 19____ pursuant to authority vested in me [the Board] by Minnesota Statutes section _____.

STATE OF MINNESOTA

COMMISSIONER OF _____

Exhibit H-3

STATE OF MINNESOTA
DEPARTMENT OF _____

In the Matter of the Proposed Adoption of Rules of the
State _____
Governing _____

ORDER ADOPTING
TEMPORARY RULES

The above-entitled matter was published in the State Register on _____, 19____, as a proposed temporary rule pursuant to Minnesota Statutes section 15.0412, subdivision 5. After affording interested and affected persons an opportunity to submit written data and views within 20 days of the publication date, reviewing and considering the data and views, and determining that the above-captioned rules are needed and reasonable,

NOW, THEREFORE, IT IS ORDERED that these rules identified as _____ are adopted this _____ day of _____, 19____, pursuant to authority vested in [the Board] by Minnesota Statutes section _____.

STATE OF MINNESOTA

COMMISSIONER OF _____

Exhibit I

CERTIFICATE OF BOARD'S
RESOLUTION ADOPTING RULES

I, _____, do hereby certify that I am a member and the _____ (office) of the Board of _____, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board of _____, duly and properly called and held on the _____ day of _____, 19____, that a quorum was present at said meeting, that a majority of those present voted for the resolution, and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

“RESOLVED, that the rules relating to _____ be and they hereby are approved and adopted, pursuant to authority vested in us by Minnesota Statutes _____ and that _____, the _____ of the Board of _____, be and hereby is authorized to sign an order adopting these rules and further is authorized to perform the necessary acts to provide that these rules shall have the force and effect of law.”

PROPOSED RULES

General will not approve the rules for at least _____ calendar days after receipt to allow any person or association time to comment on the legality of the rules, after which that Office will complete its review. If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Office of the Attorney General, G-25 State Administration Building, 50 Sherburne Avenue, Saint Paul, Minnesota 55155, telephone (612) 296-7030. Please note that the above-cited rule of the Attorney General also provides that a copy of any written comments submitted to the Attorney General must be submitted simultaneously to this agency.

If you are interested in determining what changes, if any, were made in the proposed rules after [the hearing/publication in the State Register] and before submission to the Attorney General, you may contact _____

Exhibit M

STATE OF MINNESOTA
DEPARTMENT OF _____

(OFFICIAL USE ONLY)

PROPOSED RULE
CHANGE

DATE RECEIVED _____
DATE RESPONDED TO _____
ACTION TAKEN _____
DATE _____

NAME _____
GROUP REPRESENTED OR TITLE _____
ADDRESS _____

I hereby request that the Department named above:
(Check one)

- _____ Adopt a new rule governing _____
- _____ Amend Rule _____
- _____ Suspend Rule _____
- _____ Repeal Rule _____

Insert here the new rule or rule change, with the exact wording proposed. Present wording of the rule is to be shown, with all wording that is to be deleted to be shown with a line drawn through the words. All proposed new wording is to be underscored.

(Use additional pages if necessary)

State here in as much detail and as completely as possible the reasons for your request, as the department will use the explanation or reasons given for your request as part of the basis for its decision.

(Use additional pages if necessary)

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.

Department of Natural Resources

Adopted Rules for Water Surface Use Management

The rules proposed and published at *State Register*, Volume 5, No. 2, pp. 21-26, July 14, 1980 (5 S.R. 21-26) are now adopted, with the following amendments:

Amendments as Adopted

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, and after the rule is approved by the majority of the counties affected. These rules, however, shall not apply to units of government other than counties, cities and towns, or to counties, cities or towns adopting ordinances identical to and on the same body of water as a lake conservation district ordinance.

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 a way that reflects the state's paramount concern for the protection of its natural 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 between users in a way that provides for maximum use, safety and enjoyment.
4. Conform to the standards set in 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.

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

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.~~ ordinances; and
- c. regulation is necessary to achieve the goals in 6 MCAR § 1.0220 C.

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~~ ordinances, any such city or town may petition the county in which they are located to adopt regulations an ordinance.

F. Existing ordinances and rules. All existing ordinances and rules adopted on or after January 1, 1975 affecting water surface use shall be brought into ~~essential~~ compliance with these ~~guidelines~~ rules within a reasonable time period after promulgation of ~~this rule.~~ these rules.

6 MCAR §§ 1.0221 Assessment of conditions.

A. Factors to consider. ~~Any~~ The commissioner or any governmental unit formulating, amending or deleting controls for surface waters shall acquire and consider as much of the following information, as it deems pertinent. noting factors that are not relevant:

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, 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, amending or deleting 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.~~ these rules.

6 MCAR § 1.0222 Water surface management standards. To promote uniformity of ~~regulations~~ ordinances or rules on the use of watercraft on surface waters of this state, to encourage compliance and to ease enforcement, the commissioner and any governmental unit formulating such ~~regulations~~ ordinances or rules shall follow these standards. When formulating an ordinance or rule, it is not required that all the standards listed below be incorporated into every ordinance or rule. Rather, the commissioner or governmental unit shall select from the standards listed below such standard(s) as are needed to regulate the surface use of waters.

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)~~ (ies) or portions thereof.

B. Motor type and size. Controls, if any, 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, if used, shall mandate watercraft to follow a counter-clockwise path of travel.

D. Speed limits. Controls, if any, 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.

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

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~~ standards 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 control(s) would enhance the recreational ~~experience~~ use and enjoyment 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 governmental 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~~ shall grant a variance if ~~justified there are circumstances peculiar to the body or bodies of water in question of such magnitude as to overshadow the goal of uniformity.~~

6 MCAR § 1.0223 Administrative provisions.

A. Enforcement and penalties.

1. Any governmental unit adopting ~~controls ordinances~~ pursuant to Minn. Stat. §§ 378.32 and 459.20 shall provide for their enforcement and prescribe penalties for non-compliance. ~~Controls Rules~~ 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 Rules or ordinances 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 ordinances~~ or desiring amendments and deletions to existing ~~controls ordinances~~ shall submit the written statement required by these rules with the proposed ~~controls ordinance~~ 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 the proposed controls are ordinance is disapproved by the commissioner and a satisfactory compromise cannot be established,~~ the governmental unit may initiate a contested case hearing to settle the matter.

2. The commissioner shall notify the governmental unit in writing of his approval or disapproval of proposed ~~controls ordinances~~ 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 ordinances~~ 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 ordinances~~,

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~~ NR § 204-207.

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

Department of Public Welfare Support Services Bureau

Adopted Rules Governing Welfare Per Diem Rates for Intermediate Care Facilities/Mentally Retarded Providers (12 MCAR § 2.052) and Welfare Per Diem Rates for Nursing Home Providers (12 MCAR § 2.049)

The rules proposed and published at *State Register*, Volume 4, Number 27, pp. 1097-1103, January 7, 1980 (4 S.R. 1097), and Volume 4, Number 38, pp. 1531-1533, March 24, 1980, (4 S.R. 1531) are now adopted with the following amendments:

Amendments as Adopted

12 MCAR § 2.049 B.1.c.(1)(i) Raw food cost increase computed annually by multiplying the average food cost per day by the percentage change in the consumer price index for raw food costs in Minneapolis-St. Paul as published by the Bureau of Labor and Statistics for the period October through September. The initial average food cost is \$1.82 per day and the initial increase is ~~\$.27~~ \$.19 \$.22 per day, ~~effective July 1, 1980~~. Subsequent annual cost changes will be made on a calendar basis.

12 MCAR § 2.049 C.4.c. Hospital attached facilities. Hospital attached facilities will include those facilities which are under common ownership and operation with a licensed hospital and are required to adhere to uniform cost reporting for governmental reimbursement programs. Common operation shall be defined as the sharing of services, such as, nursing services, dietary, housekeeping, laundry, plant operations, and/or administrative. The nursing care limitation under D.2.a. and the investment per bed limitation under D.4.b.(1) will be waived when the Medicare cost allocation factors result in these limitations being exceeded. Costs between hospitals and attached facilities must be allocated by the "Medicare Worksheet B" using Medicare allocation factors for the following three cost groups:

- (1) All expense classifications without depreciation, administrative and general.
- (2) Depreciation.
- (3) Administration and general.

12 MCAR § 2.049 D.2.c. Limitation Exception. The nursing and attendant care limits established in D.2.a. and b. may be exceeded as described below:

(1) The Department of Public Welfare shall establish the 1980 per diem in accordance with ~~the provisions of this rule~~ Section D.2.

(2) Increased nursing and attendant care hour costs may only be funded through expenditure reductions in the following cost categories as defined in C.3. and as subject to the limitations prescribed elsewhere in this rule:

Dietary

Laundry & linen

Housekeeping

Plant operation & maintenance

Other care related services

General & Administration

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ADOPTED RULES

Amounts for which a known cost increase has been granted shall not be included in these calculations. Reductions from historical costs in these categories will be recognized.

(3) Subsequent years rates will be determined based on actual nursing and attendant care limits to the extent that they equal reported actual cost reductions in the categories identified in D.2.c.(2). ~~This provision of the rule is effective for rates determined July 1, 1980 and thereafter.~~

12 MCAR § 2.049 D.6.b.(1) Determination of allowance. Effective July 1, 1980 proprietary homes ~~where cost reports are received after January 1, 1977,~~ shall receive an investment allowance of ~~11.1~~ 11.1 percent of the original value of the facility for depreciation purposes. For each year after the year in which the nursing home was originally purchased in which there is no transfer of ownership of a nursing home, the investment allowance shall be increased by one percent of the original investment allowance, but the increases shall be limited to a maximum of 25 percent of the original investment allowance effective for rates paid on August 1, 1977.

12 MCAR § 2.052 B.1.a. Historical rate. The method of calculating the per diem rate will be to determine reasonable costs for the most current fiscal year, except for the property and related costs, general and administrative costs, and the earnings allowance or minimum cost of capital allowance, and divide by actual resident days according to the reasonable cost provisions of D. and cost reporting regulations contained in C. Such rate shall be based on occupancy factor of no less than 80%. The 80% occupancy factor shall apply only to facilities of more than ten beds. The property and related costs, general and administrative costs, and the earnings allowance or minimum cost of capital allowance will be divided by 93 percent of total capacity resident days for licensed beds. For facilities of ten beds or less the facility may use actual resident days. This provision shall not be in conflict with B.3.a.(3).

12 MCAR § 2.052 B.1.c.(1)(h) The cost effect of reductions and expansions to program services approved by the Department of Public Welfare.

(i) Rental payments pursuant to a written lease.

(j) A food cost change computed initially by multiplying the average of food services costs per day for available 1979 cost reports less the lower and upper 10% times the percentage change in the consumer price index for raw food costs in Minneapolis-St. Paul as published by the Bureau of Labor and Statistics, for the period October through September. Subsequent annual cost changes will be made on a calendar year basis.

(k) The cost effect of changes in occupancy levels based on average occupancy for the last three months of the fiscal period covered by the historical cost portion of the welfare per diem rate. This provision is applicable only to the first two fiscal years of newly-constructed or newly established facilities. Welfare rates in subsequent fiscal periods will be based on the occupancy from the most recently completed fiscal year.

(l) An unidentified cost change computed by multiplying the allowable historical costs from the most recently completed fiscal year less those costs relating to line-item costs for which there has been a cost projection times the percentage change in the consumer price index in Minneapolis-St. Paul as published by the Bureau of Labor and Statistics for the period October through September. In no case may the cost change be applied against the historical cost of salaries, changes in facilities or equipment, payroll-related costs, property taxes, interest, depreciation expense, rental payments or raw food costs.

12 MCAR § 2.052 B.1.c.(2) Cost changes determined under this provision must be based upon facts and commitments in existence as of the filing date of the report. If the provider cannot substantiate the fact that such facts and written commitments did exist as of the filing date, the welfare rate will be subject to adjustment according to the provisions of B.2.c. and C.1.i. If the sum of known cost changes calculated under (a) through (i) above do not in fact occur, the welfare rate will similarly be subject to adjustment under B.2.c. If the sum of actual cost increases exceeds the known cost changes determined under (a) through (l) above, no adjustment in welfare rate will be made.

12 MCAR § 2.052 B.3.a.(3) Interim-rate establishment. The commissioner will establish an interim rate in accordance with Regulation B.1. retroactive to the first day on which a Medical Assistant recipient is placed in the home. Such rate shall be subject to retroactive upward or downward adjustment in accordance with all provisions of 12 MCAR § 2.052 except B.1.b. on the basis of first cost report covering actual results for the period to which the rate has been applied. Adjustments to the interim rate will be in accordance with B.1.a. and C.1.j. Such rate shall be subject to retroactive upward or downward adjustment based on occupancy of no less than 80%. The 80% occupancy factor shall apply only to facilities of more than ten beds. Adjustments to the interim rate may be made at the option of the provider either at the end of the provider's first fiscal year or after six months of historical cost experience. The settlement must be at least six months of historical cost and statistical experience. Occupancy for the immediate fiscal year must be based on an annualization of the last three months of the interim fiscal year but not less than 90% occupancy. Rate settlement requests which are in excess of the interim rates ~~may~~ shall be subject to cost category ceilings according to D.1.

12 MCAR § 2.052 B.4.b.(2) Salary cost changes which exceed 15% of the historical salaries if the salary cost changes are

ADOPTED RULES

reasonable and are required to bring facility salaries to the salary range of comparable facilities. The salary cost changes for top management compensation, the administrator, and additional personnel are excluded from this exception.

(4) The rate limitation will not apply to providers whose welfare rate request does not exceed 80% of the state-wide weighted average rate determined annually on a calendar year basis utilizing the most recently completed fiscal year cost reports submitted on or before December 31.

(5) The overall rate limitation will be computed by dividing total allowable cost ~~plus exceptions~~ by the actual resident days.

12 MCAR § 2.052 D.1.i. Top-Management compensation limitation. Top management compensation includes that of administrators, board of directors and all other individuals receiving compensation as executives. The compensation must also be justified under the provisions of Section D.1.c. of the rule. The annual compensation will be determined according to the total number of licensed beds per facility as follows:

Number of Beds	Cumulative Annual Bed Compensation
1-30	\$435
31-60	240
Over 60	180

For facilities of 30 beds or less the administrator's salary may be allocated between varied functions performed by the administrator if justified through review of personnel complement by licensing personnel. A top management individual who is compensated in more than two facilities with a total bed complement of more than 50 beds ~~may~~ shall be subject to the compensation limitation on a cumulative basis of all facilities ~~if the sum of the annual bed compensation formulae as applied to individual facilities is unreasonable~~ served by the individual. The maximum compensation limitation shall be \$35,000 per facility.

12 MCAR § 2.052 D.3.b.(1) The total basis of depreciable facility assets shall not exceed an average of ~~\$22,054~~ \$25,194 per bed for Class A beds and ~~\$26,548~~ \$29,452 per bed for Class B bed built or purchased after December 31, 1979. This limitation will be adjusted annually beginning January 1, 1981 according to a construction index as determined by the commissioner.

12 MCAR § 2.052 D.3.b.(4) Regardless of the applicability of the limitation stated in D.3.b.(1) above, depreciation on investments in facility modifications and new equipment will be allowed if they were required by local, state or federal requirements. After the facility's first three complete fiscal years and every three years thereafter, the facility's investment per bed limitation will be adjusted to reflect the average annual increase for equipment additions and/or facility modification. The investment per bed revision does not apply to original construction and/or investment costs. The investment per bed revision will not be an exception to the overall maximum of Section B.4.b. The change in the investment per bed limitation will be based on the consumer price index for housing in Minneapolis-St. Paul as published by the Bureau of Labor and Statistics for the period October through September.

12 MCAR § 2.052 D.5.c. Notwithstanding the provision of D.5.a.(5) and D.5.b., the cost of capital allowance shall be no less than the combination of:

(1) Actual interest on capital indebtedness.

(2) An earnings amount determined by multiplying resident days for a fiscal year, or part thereof if a short period report is being filed, by 35 cents.

The minimum cost of capital allowance will be adjusted annually on a calendar year basis according to the consumer price index for all items in Minneapolis-St. Paul as published by the Bureau of Labor and Statistics for the period October through September. The initial revised minimum cost of capital allowance will be \$.58 ~~January 1, 1980~~.

12 MCAR § 2.052 E. Effective date of 12 MCAR § 2.052 revisions.

1. All revisions of this revised rule 12 MCAR § 2.052 shall be effective January 1, 1981 for cost reports submitted for fiscal years ended after December 31, 1979.

12 MCAR § 2.052 F. Severable provisions.

1. If any provisions of the rule as adopted by the Commissioner of Public Welfare are found through judicial procedures to be ~~unreasonable or not supported by the evidence~~, invalid, the remaining provisions shall remain valid.

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TAX COURT

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

State of Minnesota

Tax Court

Docket No. 3095

LeRoy Nyhus,

Appellant,

v.

The Commissioner of Revenue

Appellee.

In the Matter of the Appeal from the Commissioner's Order Dated 3/3/80, Relating to Income Tax of LeRoy Nyhus for the Taxable Years 1977 and 1978.

Order Dated December 1, 1980.

This is an appeal from an Order of the Commissioner of Revenue assessing income tax in the amount of \$4,885.84, including interest, for the taxable years ending December 31, 1977 and December 31, 1978. The appellant claims the assessment is incorrect and that the commissioner has not complied with the statutory requirements of Minn. St. § 290.47 in making his assessment. The issue is whether the commissioner's order correctly and validly assessed taxes for 1977 and 1978.

LeRoy Nyhus, appeared pro se,

Jean Stepan, Special Assistant Attorney General, appeared for the appellee.

Decision

The Order of the Commissioner of Revenue is hereby affirmed.

Findings of Fact

Earl B. Gustafson

1. Appellant timely filed Minnesota Individual Income Tax Returns for the taxable years ending December 31, 1977 and December 31, 1978.

2. The returns were signed by Appellant but contained only the words "Object Self Incrimination" on every line of the returns.

3. Based upon W-2 statements from Appellant's employers the Commissioner of Revenue computed the Appellant's tax for the taxable years 1977 and 1978.

4. An order dated March 3, 1980 assessing Appellant income tax in the amount of \$4,885.84, including interest, for the taxable years 1977 and 1978 was issued by the Commissioner of Revenue and is the subject of this appeal.

5. At the trial of this matter the Appellant offered no evidence as to his income or deductions for the taxable years 1977 and 1978.

Conclusions of Law

1. The Appellant has failed to overcome the presumption that the Commissioner's Order dated March 3, 1980 is correct and valid.

2. The Order of the Commissioner of Revenue dated March 3, 1980 relating to income tax for the taxable years ending December 31, 1977 and December 31, 1978 should be affirmed.

Memorandum

The Commissioner of Revenue received Minnesota income tax returns for 1977 and 1978 which were signed by appellant, but which contained only the words "Object Self Incrimination" on every line of the returns. The commissioner sent appellant a demand letter under the authority of Minn. Stat. § 290.47 for the years 1977 and 1978. Appellant claims that the subsequent assessment of additional taxes for those years is invalid because the commissioner did not first make a "return" for him. Minn. Stat. § 290.47 provides as follows:

§ 290.47 ASSESSMENT: Failure to File Return, False or Fraudulent Return Filed. If any person or corporation required by this chapter to file any return shall fail to do so within the time prescribed by this chapter or by regulations under the authority thereof, or shall make, willfully or otherwise, an incorrect, false, or fraudulent return, he shall, on the written demand of the commissioner, file such return, or corrected return, within 30 days after the mailing of such written demand and at the same time

pay the whole tax, or additional tax, due on the basis thereof. If such taxpayer shall fail within that time to file such return, or corrected return, the commissioner shall make for him a return, or corrected return, from his own knowledge and from such information as he can obtain through testimony, or otherwise, and assess a tax on the basis thereof, which tax (less any payments theretofore made on account of the tax for the taxable year covered by such return) shall be paid within 60 days after the commissioner has mailed to such taxpayer a written notice of the amount thereof and demand for its payment. Any such return or assessment made by the commissioner on account of the failure of the taxpayer to make a return, or a corrected return, shall be prima facie correct and valid, and the taxpayer shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto. (Emphasis added.)

Based on the evidence presented, the Court concludes that the commissioner has complied with the requirements of § 290.47. All items of appellant's gross income and other data necessary for the computation of appellant's 1977 and 1978 income tax liability was provided by the commissioner in his audit reports. The actual format the information takes is within the control of the commissioner. Minn. Stat. § 290.39. It must be remembered that, insofar as the commissioner was concerned, the taxpayer had already filed M-1's, albeit incomplete. The tax examiner's testimony pointed out that the reason for not putting the same information on another M-1 form was to give the taxpayer the benefit of having timely filed a return. She also explained that because of internal accounting procedures, creating a duplicate M-1 form would cause accounting problems. Those reasons are sufficient to permit the commissioner to enter the items of gross income, deductions, etc. in an alternate fashion and still be in compliance with the requirements of making a return under § 290.47.

Section 290.47 further states that the return or assessment so made by the commissioner is prima facie correct and valid. This language leads to a conclusion that an assessment alone is sufficient under this statute and that no additional return need be filed by the commissioner.

We also find that there is nothing in § 290.47 which makes this procedure an exclusive one. The commissioner is therefore not precluded from basing his assessment of taxes on Minn. Stat. § 290.46 even though he has sent a letter demanding that a correct and complete return be filed.

Under either statute, the commissioner's assessment is prima facie correct and the taxpayer has the burden of proving it to be incorrect. Minn. Stat. § 290.48, subd. 8; Minn. Stat. § 271.06. The taxpayer has not met that burden in this instance.

No substantive evidence regarding appellant's income in 1977 and 1978 was offered by him other than copies of W-2 statements, the originals of which are also in evidence. Those W-2 statements show that the commissioner's assessment used as income the amount reported as income to him by the employers for whom appellant admittedly worked in 1977 and 1978. No other substantive proof was offered regarding Mr. Nyhus' income in 1977 and 1978. Therefore there is no alternative but to conclude that the presumption of correctness of the commissioner's assessment has not been overcome.

The appellant's argument regarding not having received "dollars" and his reliance on the case of *Edwards v. Keith*, 231 F.110 (2nd Cir. 1916) are discussed in our opinion in the case of *LeRoy and Martha Nyhus v. The Commissioner of Revenue*, Docket No. 3095. We find those arguments no more persuasive here. Similarly, the fifth amendment has no application to this case since this is not a criminal proceeding and the assessment was not based on any information obtained involuntarily from the appellant.

Earl B. Gustafson
Tax Court Judge

SUPREME COURT**Decisions Filed Friday, December 12, 1980****Compiled by John McCarthy, Clerk**

50374/198 Martin A. Thompson, Appellant, vs. The City of Minneapolis, et al. Hennepin County.

Mpls. Civ. Serv. Comm'n R. 12.02(j), prohibiting a public employee from engaging in the conduct or language wantonly offensive towards the public or city officers or employees is neither unconstitutional as applied to a public employee who publicly expressed racist sentiments during the course of his employment, nor unconstitutionally vague and overbroad on its face.

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

STATE CONTRACTS

50513, 51103, 50500/336 Hibbing Taconite Co., a joint venture, Appellant, 50513, 51103 vs. Minnesota Public Service Commission, and Minnesota Power & Light Company, 50500 vs. Minnesota Public Service Commission, Appellant. Ramsey County.

The trial court did not err in reversing and remanding Minnesota Power & Light Company's rate case to the Minnesota Public Service Commission since establishing the rate of return on common equity involves a factual determination which must be supported by substantial evidence.

The trial court did not err in affirming the PSC's rate allocation for MPL since the allocation of rates is a legislative function which must be upheld unless the PSC's decision exceeds its statutory authority or results in unjust, unreasonable, or discriminatory rates by clear and convincing evidence.

The trial court did not err in affirming the PSC's order to exclude certain construction expenses from the rate base.

Affirmed with modification. Todd, J.

50874/345 Roger Wallace, Individually and Roger Wallace, as Special Administrator of the Estate of Donald M. Wallace, Deceased, vs. Tri-State Insurance Company of Minnesota, Luverne, Minnesota, Appellant. Chippewa County.

The right of a health insurance carrier to coordinate its benefits with no-fault coverages is unrelated to the right of the insured to stacked no-fault benefits.

An excess coverage insurance clause providing medical expense coverage that is in addition to the mandatory no-fault coverages is not contrary to the no-fault act and is enforceable in accordance with its terms.

Amounts awarded by the trial court for property damage and stacked funeral expenses that were conceded by counsel at oral argument to be error should be corrected.

Affirmed with modification and remanded with instructions to enter judgment in accordance with this opinion. Todd, J.

50134/499 (1979) Crookston Cattle Company, et al., Appellants, vs. Minnesota Department of Natural Resources, City of Crookston. Ramsey County.

The Department of Natural Resources Commissioner's order granting a water-pumping permit to defendant City of Crookston and denying such a permit to plaintiff was not an unconstitutional taking without compensation of plaintiff's property rights in the underground water source. Until it is clear that the City's water was permitted by the Department of Natural Resources deprives the Company of water it needs, such a claim against the City is premature.

The Commissioner's order does not violate Minnesota Water Appropriation Law, Minn. Stat. § 105.41 (1978), or Minnesota Environmental Policy Law, Minn. Stat. §§ 116D.04 and 105.405, subd. 1 (1978).

The Commissioner's order is supported by substantial evidence and is not arbitrary or capricious.

Affirmed. Wahl, J. Concurring in part, and dissenting in part, Yetka, J. Took no part, Peterson, J.

STATE CONTRACTS

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 Corrections Minnesota Correctional Facility — OPH, Stillwater, Minnesota Notice of Request for Proposals to Conduct Management Seminars

Notice is hereby given that the Minnesota Correctional Facility, Oak Park Heights, requests proposals to conduct a series of Management Seminars, to include the Warden's staff, with appropriate follow-up provided. In addition to management development the seminars must develop skills in the managers to be used in staff selection process for a maximum security prison. Annual cost is not to exceed \$3,220.00. Bidder must be familiar with the organization, operation, and mission of the

Department of Corrections and the Maximum Security Prison. Approximately 30 sessions are estimated to effect desired results. These proposals must be submitted by 4:30 p.m., January 12, 1981, to Fred Holbeck, Associate Warden, at 612-439-1910, ext. 335, if interested.

Department of Economic Security Training & Community Services Division

Notice of Request for Proposals for Small Business Financial Resources Directory

The Minnesota Balance of State Private Industry Council wishes to announce the solicitation of proposals to produce a prototype financial resource directory for small businesses in rural Minnesota.

The contact person is:

Patrick J. Cruit
PIC Coordinator
Minnesota Department of Economic Security
690 American Center Bldg.
150 E. Kellogg Blvd.
St. Paul, MN 55101

The last date that proposals will be accepted is January 13, 1981.

The estimated cost for the prototype directory is \$40,000.00.

Energy Agency Alternative Energy Development Division District Heating Activity

Notice of Request for Proposals for Engineering Services

The Minnesota Energy Agency, Alternative Energy Division, District Heating Activity, is seeking engineering firms to provide technical assistance and reference design of the district heating system in Moorhead, Minnesota. These services, which will be provided under contract, are outlined in detail in the Request for Proposal (RFP) Statement of Work. The formal RFP may be requested and inquiries should be directed to:

David R. Givers
Alternative Energy Division
Minnesota Energy Agency
980 American Center Bldg.
150 E. Kellogg Blvd.
St. Paul, MN 55101

It is anticipated that the activity to accomplish these services will not exceed a total cost to the state of \$150,000. The deadline for the submission of completed proposals will be 4:30 p.m., January 12, 1981.

Contractors with the Minnesota Energy Agency must apply for a Certificate of Compliance from the Minnesota Department of Human Rights. All bidders must submit, along with their proposal to the Minnesota Energy Agency, a statement indicating that they have applied. Applications can be obtained by written request from the Minnesota Department of Human Rights, 240 Bremer Bldg., St. Paul, MN 55101.

Energy Agency Alternative Energy Development Division District Heating Activity

Notice of Request for Proposals for Economic and Management Consultants

The Minnesota Energy Agency, Alternative Energy Division, District Heating Activity, is seeking economic and management consultants to provide assistance in developing a state implementation plan for district heating. These services,

OFFICIAL NOTICES

which will be provided under contract, are outlined in detail in the Request for Proposal (RFP) Statement of Work. The formal RFP may be requested and inquiries should be directed to:

Ronald E. Sundberg
Minnesota Energy Agency
Alternative Energy Division
980 American Center Bldg.
150 E. Kellogg Blvd.
St. Paul, MN 55101

It is anticipated that the activity to accomplish these services will not exceed a total cost to the state of \$50,000. The deadline for the submission of completed proposals will be 4:30 p.m., January 12, 1981.

Contractors with the Minnesota Energy Agency must apply for a Certificate of Compliance from the Minnesota Department of Human Rights. All bidders must submit, along with their proposal to the Minnesota Energy Agency, a statement indicating that they have applied. Applications can be obtained by written request from the Minnesota Department of Human Rights, 240 Bremer Bldg., St. Paul, MN 55101.

Department of Public Safety Office of Public Information

Notice of Availability of A Television PSA Production Contract

The Department of Public Safety is seeking proposals for a television PSA production contract not to exceed \$10,000. The term of the contract runs from January 15, 1981 through September 30, 1981. The contract is for the production of 30-second PSAs on occupant restraints, the 55 miles per hour speed limit, drunk driving and other traffic safety factors.

Contractor will be responsible for directing production; filming or videotaping; editing; providing talent, music and voice-overs as necessary; and site selections. Contractor will be required to provide storyboards before filming/videotaping, and actual photographs from final productions for use as pictorial aids to be sent to station public service directors. Contractor may also be called upon to revise PSAs obtained by the department from other sources (re-record sound tracks, change ID tags, etc.) Contractor will be expected to assist the department in developing effective PSA concepts, rewriting scripts provided by the department, and all other matters relating to producing broadcast quality PSAs.

Prospective bidders must be prepared to pick up and deliver materials to the department as needed; illustrate their professional broadcast quality capability with demonstration tapes or films; and accomplish all the tasks required by the contract in a timely manner to meet department deadlines.

A detailed Request for Proposals is available. Contact Larry A. Etkin (296-8238) or Paul J. Kokesch (296-8383), Information Officers, Department of Public Safety, 318 Transportation Building, St. Paul, MN 55155. Final submission date for proposals is January 9, 1981.

OFFICIAL NOTICES

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

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

Department of Commerce Insurance Division

Notice of Intent to Solicit Outside Information on Proposed Rules Governing Group Coverage Replacement

Notice is hereby given that the Department of Commerce, Insurance Division, has begun consideration of proposed permanent rules governing group coverage replacement pursuant to Minn. Stat. § 60A.082 (Laws of 1980, ch. 459). In order to

adequately determine the utility and nature of such rules, the Commerce Department, Insurance Division, 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 of information and comment may be made orally or in writing to:

Mr. John T. Ingrassia
Supervisor, Life and Health Section
Insurance Division
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101
(612) 296-2202

Energy Agency Alternative Energy Division

Notice of Intent to Solicit Outside Opinions Regarding Rules Concerning the Certification of Solar Collectors

The Alternative Energy Development Division of the Energy Agency is drafting rules concerning the certification of solar collectors for the residential energy tax credit authorized by Laws of 1980, Chapter 607, § 7, amending Minnesota Statutes § 290.06, subd. 14 (Supp. 1979). An earlier notice of intent to solicit outside opinion cited the law incorrectly. The agency again invites interested persons and organizations to provide information, comments and advice on the subject. Comments should be submitted in writing or orally within ten (10) days to:

John R. Dunlop
Manager, Minnesota Solar Office
Minnesota Energy Agency
980 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
612/296-4737

Recommendations submitted will be made part of the public hearing record of the rulemaking process.

Ethical Practices Board

1981 Campaign Expenditure Limits

In accordance with Minn. Stat. § 10A.25, subd. 7, the following campaign expenditures will be applicable in calendar year 1981 which is a non-election year for all candidates.

Office	Non-election Year
Governor/Lt. Governor	\$120,000
Attorney General	\$ 20,300*
Secretary of State, State Treasurer, State Auditor	\$ 10,200*
State Senate	\$ 3,000
State House of Representatives	\$ 1,500

*Note that an increase in the state population has had an impact on these limits *only*.

OFFICIAL NOTICES

Department of Health Manpower Division

Notice Concerning Rules Relating to the Regulation of Environmental Health Specialists/Sanitaricians

On July 1, 1979, rules were promulgated that established a regulatory program for the registration of Environmental Health Specialists/Sanitaricians. The essence of this program is not to mandate a license that is required in order to practice as an Environmental Health Specialist/Sanitarician, but to establish a registration procedure which will protect the use of the professional titles such as R.S., R.E.H.S., Sanitarician, Environmental Health Specialist, and Environmental Health Specialist/Sanitarician. Those individuals who do not meet the criteria for registration will not be prevented from continuing in their present job but just cannot use any of the above occupational titles, or derivatives of those titles in the process of their work.

If there are any questions, these should be directed to Muriel King, Division of Manpower, Minnesota Department of Health, 717 Delaware Street S.E., Minneapolis, Minnesota 55440. Telephone (612) 296-5393.

Board of Private Detective and Protective Agent Services

Notice of Meetings

During Calendar Year 1981, the Board of Private Detective and Protective Agent Services will meet monthly, on the second Monday of the month, at 9 a.m. at 1246 University Avenue, St. Paul, Minnesota.

Joyce Ann Walker
Chairperson

Office of the Secretary of State

Notice of Error in Annual Compilation of State Agencies/Notice of Vacancies

Please note that the Annual Compilation of State Agencies, published at *State Register*, Volume 5, Number 20, p. 801, on November 17, 1980 contained an error. Under the listing for Ethical Practices Board, please note the following change:

The party affiliation for Vernon Jensen was listed as "IR." It should have been listed as "DFL."

Waste Management Board

Notice of Intent to Solicit Outside Opinions and Information Concerning Rules on Accepting, Evaluating, and Selecting Applications for Permits for Certain Hazardous Waste Facilities

Notice is hereby given that the Waste Management Board is seeking opinions and information from sources outside the agency for the purpose of preparing rules on accepting, evaluating, and selecting applications for permits for certain hazardous waste facilities. Such rules are authorized by 1980 Minn. Laws, ch. 564, art. II, § 7.

Under 1980 Minn. Laws, ch. 564, arts. II and III, the Waste Management Board is required to select at least one hazardous waste disposal facility for the state and to prepare an inventory of sites for the chemical processing, incineration, and transfer and storage of hazardous waste. The rules referred to in this notice will establish a basis for accepting, evaluating, and selecting applications for permits for facilities to be located at these sites. The rules must address at least the following subjects: (1) standards and procedures for making determinations on minimum qualifications, including technical competence and financial capability, of permit applicants; and (2) standards and procedures for soliciting and accepting bids or permit applications and for selecting developers and operators of hazardous waste disposal facilities at sites chosen by the board, including a preference for qualified permit applicants who control a site chosen by the board.

Any person desiring to submit information or comment on the subject of the proposed rules may do so either orally or in writing. All statements of information or comment must be received by January 31, 1981. Any written material received by this

date will become part of the record of any rules hearing on this subject. Written or oral information or comment should be addressed to:

Waste Management Board
Attn: Mark Norgaard
123 Thorson Building
7323-58th Avenue North
Crystal, Minnesota 55428
612/536-0816

December 12, 1980

Robert G. Dunn, Chairman
Waste Management Board

Water Resources Board

Notice of Hearing on the Proposed "Carnelian-Marine Lakes Watershed District"

A hearing on a Petition for the establishment of the "Carnelian-Marine Lakes Watershed District" will begin at 1:30 p.m. on Tuesday, January 6, 1981, in the Auditorium of Stillwater High School, 523 West Marsh Street, Stillwater, Minnesota.

A complete Notice of and Order for Hearing will be published in the December 18 and 25, 1980, editions of the *Stillwater Gazette*. Copies of the complete notice are also available from the Minnesota Water Resources Board's office at 555 Wabasha Street, St. Paul, Minnesota, 55102 (612) 296-2840.

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OFFICE OF THE STATE REGISTER

506 Rice Street
St. Paul, Minnesota 55103
(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.

Legislative Reference Library

Room 111 Capitol

Interoffice