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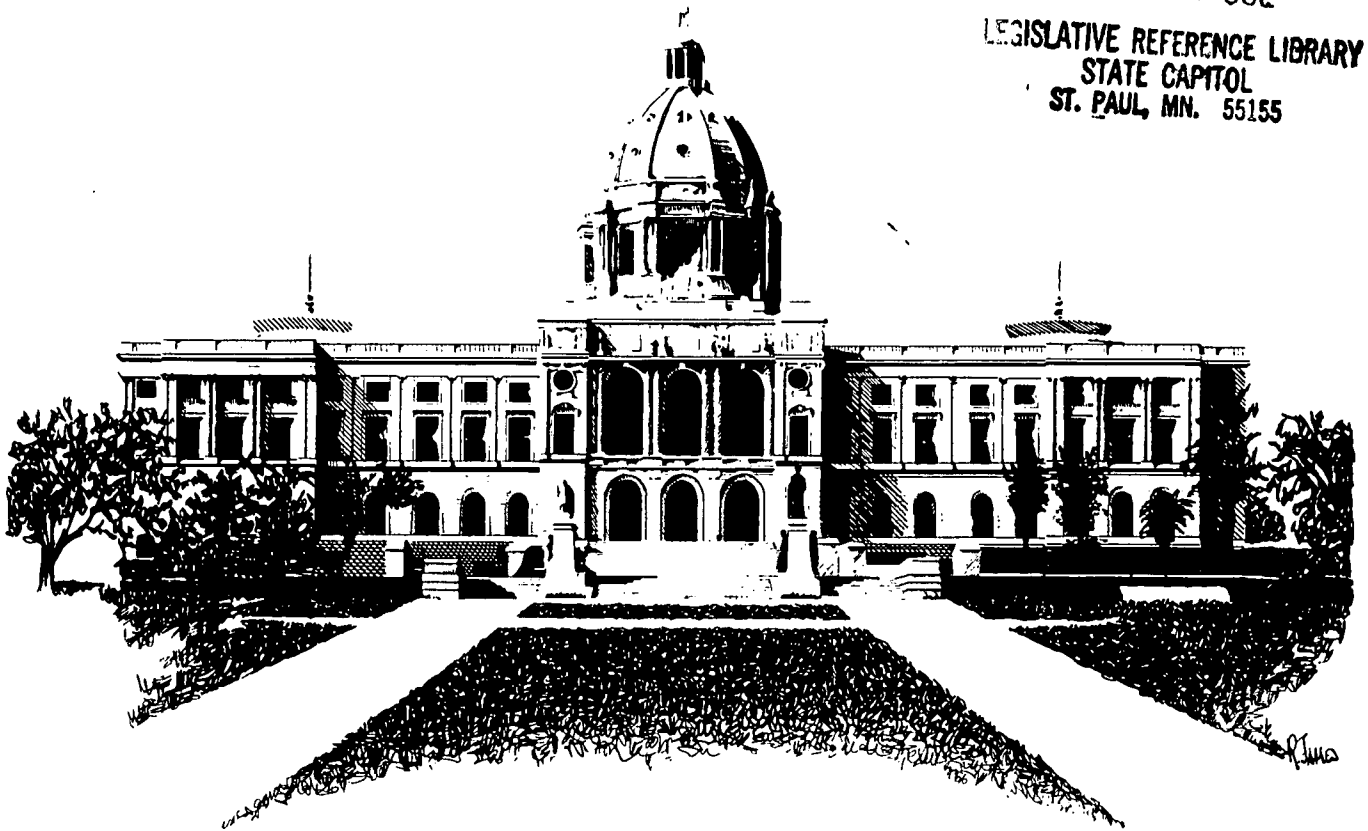
# STATE REGISTER

STATE OF MINNESOTA

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April 12, 1982

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Table with 4 columns: Issue Number, \*Submission deadline for Executive Orders, Adopted Rules and \*\*Proposed Rules, \*Submission deadline for State Contract Notices and other \*\*Official Notices, Issue Date. Includes SCHEDULE FOR VOLUME 6 with rows for issues 42-45.

\*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...

\*\*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.

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**NOTICE**

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

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

**The PROPOSED RULES section contains:**

- 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
Issue 26, cumulative for 1-26	Issue 52, cumulative for 1-52
Issue 27-38, inclusive	

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

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# PROPOSED RULES

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

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

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

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

## Department of Public Safety Fire Marshal Division

### Proposed Rules Governing Minimum Safety Standards for Transportation of Natural and Other Gas by Pipeline

#### Notice of Intent to Adopt Rules without a Hearing

Notice is hereby given that the State Department of Public Safety is proposing to adopt the above entitled rules without a public hearing. The Commissioner of Public Safety has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow procedures set forth in Minn. Stat. § 15.0412, subdivision 4h.

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified prior to final adoption if modifications are supported by the data and views submitted to the Department of Public Safety 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. The written request must be specific on which rule(s) a hearing is desired. Identification of the particular objection, the suggested modifications, and the reasons or data relied upon to support the suggested modifications are desired. In the event a public hearing is required, the department will proceed according to the provisions of Minn. Stat. § 15.0412, subdivision 4-4f.

Persons who wish to submit comments or a written request for a public hearing, or persons who wish to receive a copy of this notice and/or a copy of the proposed rules, should address their correspondence to the address below and include the name of the rulemaking:

Diane Hamilton  
Department of Public Safety  
211 Transportation Building  
St. Paul, MN 55155

The department's authority to adopt the proposed rules is contained in Minn. Stat. §§ 299F.56 through 299F.64. A statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from the Department of Public Safety 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 the Attorney General for

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## PROPOSED RULES

review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written request to the above address.

Please be advised that Minn. Stat. chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. Minn. Stat. § 10A.01, subdivision 11 defines a lobbyist as any individual: (a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or (b) who spends more than \$250, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

The department estimates that there will be no cost to local public bodies in the state to implement the rules for the two years immediately following their adoption, within the meaning of Minnesota Statutes § 15.0412, subdivision 7.

John P. Sopsic  
Commissioner of Public Safety

### Rules as Proposed (all new material)

**11 MCAR § 1.5201 Purpose.** The purpose of 11 MCAR §§ 1.5201-1.5210 is to prescribe reporting requirements for gas leaks and to prescribe minimum safety standards for pipeline facilities and the transportation of gas. These requirements and standards are required for state certification by the Natural Gas Pipeline Safety Act of 1968 as provided in United States Code, title 49, section 1674 (a) (1976 and Supplement III 1979).

**11 MCAR § 1.5202 Scope.** The requirements and standards in 11 MCAR §§ 1.5204-1.5210 apply to the design, installation, inspection, testing, construction, operation, extension, replacement, and maintenance of pipeline facilities. The scope of 11 MCAR §§ 1.5201-1.5210 is intended to be consistent with Minn. Stat. §§ 299F.56-299F.64.

**11 MCAR § 1.5203 Definitions.**

- A. Applicability. As used in 11 MCAR §§ 1.5201-1.5210 the following terms and phrases have the meanings given them.
- B. Secretary. "Secretary" means the Commissioner of Public Safety.
- C. State agency. "State agency" means the Department of Public Safety, State Fire Marshal Division.
- D. State. "State" means the state of Minnesota.

**11 MCAR § 1.5204 Federal regulations adopted by reference.** Reporting requirements for gas leaks and standards for gas and pipeline safety as provided in Code of Federal Regulations, title 49, parts 191 and 192 (1980) are incorporated by reference and made part of Minnesota rules subject to the amendments in 11 MCAR §§ 1.5205-1.5210.

**11 MCAR § 1.5205 Code of Federal Regulations, title 49, section 191.5.** Code of Federal Regulations, title 49, section 191.5 is amended by adding a clause to read:

§ 191.5 Telephonic notice of certain leaks.

(c) Each notice required by paragraph (a) of this section must also be telephoned to the State Fire Marshal, (612) 296-7641, and must include the information required by paragraph (b) of this section.

**11 MCAR § 1.5206 Code of Federal Regulations, title 49, section 191.7.** Code of Federal Regulations, title 49, section 191.7 is amended to read:

§ 191.7 Addressee for written reports.

Each written report required by this part must be made to the Director, Office of Pipeline Safety, Department of Transportation, Washington, D.C. 20590. One copy of each written report required by this part must be submitted to the Department of Public Safety, State Fire Marshal Division, St. Paul, Minnesota 55104.

**11 MCAR § 1.5207 Code of Federal Regulations, title 49, section 191.9.** Code of Federal Regulations, title 49, section 191.9 is amended by adding a clause to read:

§ 191.9 Distribution system: Leak report.

(c) Each operator of a distribution system serving 100,000 customers or fewer will comply with the leak reporting requirements of this paragraph by submitting one copy of each report to the Department of Public Safety, State Fire Marshal Division, St. Paul, Minnesota 55104.

11 MCAR § 1.5208 Code of Federal Regulations, title 49, section 191.11 (a). Code of Federal Regulations, title 49, section 191.11 (a) is amended to read:

§ 191.11 Distribution system: Annual report.

(a) Except as provided in paragraph (b) of this section, each operator of a distribution system shall submit an annual report on Department of Transportation Form DOT-F-7100.1-1. This report must be submitted not later than February 15 for the preceding calendar year. One copy of the report must be submitted to the Department of Public Safety, State Fire Marshal Division, St. Paul, Minnesota 55104, not later than February 15 for the preceding calendar year.

11 MCAR § 1.5209 Code of Federal Regulations, title 49, section 191.17. Code of Federal Regulations, title 49, section 191.17 is amended to read:

§ 191.17 Transmission and gathering systems: Annual report.

Each operator of a transmission system or a gathering system shall submit to the Department of Transportation an annual report on Department of Transportation Form DOT-F-7100.2-1 not later than February 15, for the preceding calendar year. One copy of the report must be submitted to the Department of Public Safety, State Fire Marshal Division, St. Paul, Minnesota 55104, not later than February 15 for the preceding calendar year.

11 MCAR § 1.5210 Code of Federal Regulations, title 49, section 192.17. Code of Federal Regulations, title 49, section 192.17 is deleted and replaced with the following:

§ 192.17 Filing of inspection and maintenance plans.

Each operator shall file with the State Fire Marshall a plan for inspection and maintenance of each pipeline facility he owns or operates. A change in an inspection and maintenance plan must be filed within 20 days after the change is made. Plans must be sent to the Department of Public Safety, State Fire Marshal Division, St. Paul, Minnesota 55104.

Repealer. Rules of the Department of Public Safety, Fire Marshal Division, Fire Mar 1-5 are repealed.

## **Department of Transportation**

### **Public Transportation/Planning Division**

#### **Proposed Rules Relating to the Implementation of the State Rail Bank Program**

#### **Notice of intent to Adopt Rules without a Public Hearing**

Notice is hereby given that the Minnesota Department of Transportation (Mn/DOT) intends to adopt, without a public hearing, rules that are to be permanent and that pertain to the implementation of the State Rail Bank Program. The Department of Transportation has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0412, subd. 4h (1980).

The proposed rules are authorized by Minn. Stat. § 222.63, subd. 7. The proposed rules, if adopted, would:

1. Establish criteria for property eligible for inclusion in the program, and
2. Establish public participation procedures for the acquisition, utilization and disposition of banked property.

The Department of Transportation has prepared a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules, and identifies that data and information relied upon by Mn/DOT to support the rule. Copies of the statement of need and reasonableness and of the proposed rule are available and may be obtained by contacting:

Mr. G. W. Boldt  
Director  
Office of Railroad Administration  
Division of Public Transportation/Planning  
Minnesota Department of Transportation  
St. Paul, Minnesota 55155  
(Telephone: 612-296-2452)

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## PROPOSED RULES

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Interested persons have 30 days, until May 12, 1982, to submit comments on the proposed rules. The proposed rules may be modified if the data and views submitted to the department warrant modification and the modification does not result in a substantial change in the proposed rule.

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 that a public hearing is required, Mn/DOT will proceed according to the provisions of Minn. Stat. § 15.0412, subd. 4-4f.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to Mr. G. W. Boldt, at the address and telephone number previously stated, no later than May 12, 1982. If a person desires to request a public hearing, Mn/DOT requests that 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.

Upon adoption of the rules by the commissioner, the rules as proposed, this notice, the statement of need and reasonableness, all written comments received, and the final rule as adopted will be sent to 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 this material to the Attorney General, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Mr. G. W. Boldt, at the address previously stated.

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1980) as any individual:

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

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

The statute contains certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

March 29, 1982

Richard P. Braun  
Commissioner

### Rules as Proposed (all new material)

**14 MCAR § 1.4010 Definitions.** For the purposes of 14 MCAR §§ 1.4010-1.4016 the following terms have the meanings given them.

- A. Acquire. "Acquire" means to purchase a rail line with state funds provided for the state rail bank program.
- B. Betterments. "Betterments" means required improvements made to acquired property to prepare the property for continued rail use.
- C. Commissioner. "Commissioner" means the Commissioner of the Minnesota Department of Transportation.
- D. Continued rail operations. "Continued rail operations" means the utilization of a rail line for rail service upon acquisition or in the near or immediate future after acquisition.
- E. Convey. "Convey" means to sell, lease, or grant an easement for the use of rail bank property for the purposes cited in Minn. Stat. § 222.63, subd. 4.
- F. Department. "Department" means the Minnesota Department of Transportation.
- G. Dispose. "Dispose" means to convey property to a governmental subdivision of the state for any of the purposes in Minn. Stat. § 222.63, subd. 4, or to sell the property as provided in Minn. Stat. § 222.63, subd. 5.
- H. Other uses. "Other uses" means any uses of banked property other than those specified in Minn. Stat. § 222.63, subd. 2b.
- I. Preserve. "Preserve" means to hold rail bank property during the period of time it is not being utilized for the purposes specified in Minn. Stat. § 222.63, subd. 2b.
- J. Project. "Project" means any rail line proposed for acquisition, and rail lines actually acquired under the program.
- K. Program. "Program" means the state rail bank program.



L. Rail line. "Rail line" means abandoned railroad roadbeds, right-of-way, track structure, and other appurtenances of railroad right-of-way including public-use sidings, and railroad buildings.

M. Railroad. "Railroad" means a rail carrier as defined in the Interstate Commerce Act, 49, United States Code, Section 10102(4), (18) and (19).

N. Utilize. "Utilize" means to use banked rail lines for the purposes cited in Minn. Stat. § 222.63, subd. 2b.

#### 14 MCAR § 1.4011 Program criteria.

A. Eligibility for acquisition and preservation. An abandoned rail line is eligible for acquisition and preservation in the state rail bank if it meets the requirements of Minn. Stat. § 222.63 and 14 MCAR §§ 1.4010-1.4016.

##### B. Funding criteria.

1. The following criteria will be considered in determining whether a project will be funded:

- a. the availability of program funds;
- b. the probability of the rail line being utilized for the purpose identified;
- c. the likelihood that an alternative rail line right-of-way could not be reestablished in the future;
- d. the adequacy of the title and the costs to cure any defects in the title; and
- e. the likelihood that no other entity will acquire a rail line for an appropriate use.

2. Special consideration and priority shall be given to rail lines meeting the criteria specified in a.-d. Priority shall be given in the following order:

- a. rail lines that are to be utilized for continued rail operations;
- b. rail lines that are needed as part of the future overall rail system;
- c. rail lines that have an identified future use that will benefit a greater portion of the state; and
- d. rail lines where the identified future utilization includes more than one use.

C. Continued rail operations projects. The following information shall be used to establish the priority for continued rail operations projects:

1. the costs of the project compared to the benefits resulting from the project;
2. a detailed plan of operations for the rail line; and
3. a detailed plan providing for financing of the project.

#### 14 MCAR § 1.4012 Acquisition of rail bank property.

A. Published list of proposed projects. The commissioner shall publish notice in the *State Register* listing the rail lines proposed to be acquired. The notice shall also be published once a week for two consecutive weeks in at least one newspaper of general circulation in the areas where the rail lines included in the list are located. After an initial publication, subsequent lists shall be published as necessary. The published list shall include the following information:

1. a statement that the list is published pursuant to Minn. Stat. § 222.63, subd. 3;
2. the name, length, and owning railroad of each line;
3. the counties where each line is located;
4. any identified future uses for each line;
5. the abandonment status of each line;
6. the name, address, and telephone number of the department's contact person; and
7. other pertinent information.

B. Initiation of title search. A title search of the property proposed for acquisition shall be initiated after the procedures under A. have been completed. For rail lines not yet abandoned, a title search shall be initiated after the owning railroad has

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## PROPOSED RULES

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filed an abandonment application with the appropriate decision making authority. To inform the public of its action the department shall publish a notice in at least one newspaper of general circulation in the area where the line is located.

C. Public information meeting. After the title search has been completed the department shall hold at least one public meeting to provide information and to seek comments from the public. Notice of the meeting shall be given by publication in at least one newspaper of general circulation in the area where the rail line is located. The meeting shall be held at least three days after publication of the notice. At least one meeting shall be held in the area where the rail line is located.

D. Decision to acquire. The commissioner shall decide whether or not to acquire a rail line after the public meeting. The decision shall be based upon the program criteria cited in 14 MCAR § 1.4011. The department shall publish notice of the decision in at least one newspaper of general circulation in the area where the line is located.

E. Simultaneous implementation of 14 MCAR §§ 1.4012-1.4014. The commissioner shall simultaneously implement the procedures for acquisition, utilization, or disposition of rail bank property when it is possible. The initial notices which are published in the *State Register* and newspapers shall include a statement noting which procedures are being implemented simultaneously.

### 14 MCAR § 1.4013 Utilization of rail bank property.

A. Notice to utilize rail bank property. The commissioner shall publish notice in the *State Register* when the department is considering utilizing banked property. The notice shall also be published once a week for two consecutive weeks in at least one newspaper of general circulation in the area where the property is located. The published notice shall include the following:

1. a statement that the notice is published pursuant to Minn. Stat. § 222.63, subd. 3;
2. the identifying name, length in miles, and acres of land of the property;
3. the counties where the property is located;
4. the purpose of the proposed use and the conditions under which the property would be utilized;
5. the name, address, and telephone number of the department's contact person; and
6. other pertinent information.

B. Public information meeting. After the procedures under A. have been completed, the department shall conduct at least one public meeting to provide information on the proposal for utilization and to seek comments. Notice of the meeting shall be given by publication in at least one newspaper of general circulation in the area where the rail line is located. The meeting shall be held at least three days after publication of the notice. At least one meeting shall be held in the area where the property is located.

C. Decision to utilize. The commissioner shall decide whether or not to utilize the property as proposed after the public information meeting. The department shall publish notice of the decision in at least one newspaper of general circulation in the area where the line is located.

### 14 MCAR § 1.4014 Disposition of rail bank property.

A. Notice to dispose of rail bank property. The commissioner shall publish notice in the *State Register* when considering disposing of property pursuant to Minn. Stat. § 222.63, subd. 4, or when required to dispose of property pursuant to Minn. Stat. § 222.63, subd. 5. The notice shall also be published once a week for two consecutive weeks in at least one newspaper of general circulation in the area where the property is located. The published notice shall include the following:

1. a statement that the notice is published pursuant to Minn. Stat. § 222.63, subd. 3;
2. the identifying name, length in miles, and acres of land of the property;
3. the counties where the property is located;
4. the reasons for and the conditions of the disposal;
5. the name, address, and telephone number of the department's contact person; and
6. other pertinent information.

B. Public information meeting. After the procedures under A. have been completed, the department shall conduct at least one public meeting to provide information on the proposed disposition and to seek comments. Notice of the meeting shall be given by publication in at least one newspaper of general circulation in the area where the rail line is located. The meeting shall be held at least three days after publication of the notice. At least one meeting shall be held in the area where the property is located.

C. Decision to dispose of property. The commissioner shall decide whether or not to dispose of property after the public

meeting. The department shall publish notice of its decision in at least one newspaper of general circulation in the area where the rail line is located. When the property is to be sold because it has not been utilized, the notice shall include the following:

1. a statement noting the required six-month period which allows owners of private property adjacent to the banked property to make offers to purchase the property from the department; and
2. the name, address, and telephone number of the department's contact person.

**14 MCAR § 1.4015 Management of banked property.**

A. Maintenance and other uses during preservation of property. Rail bank property shall be maintained and may be leased for other uses while it is being preserved in the program. Proposed other uses for rail bank property shall be considered if they meet one or more of the following conditions:

1. uses which were in effect prior to department acquisition of the property;
2. uses that minimize maintenance costs and maximize income to the program;
3. uses which are not in conflict with adjacent land uses; and
4. uses that provide a benefit to the state.

B. Other uses during utilization of property. Other uses which were in effect while the property was being preserved may be continued while the property is being utilized for the purposes of the program. The other uses shall be continued if they do not interfere with the utilization of the property. Other uses which were not in effect prior to utilization may be allowed if they do not interfere with utilization of the property.

**14 MCAR § 1.4016 Administration of the state rail bank program.**

A. Provision of information for continued rail service projects. The entity proposing a continued rail service project shall provide the commissioner with any pertinent information necessary to achieve proper evaluation and adequate administration of a project. The information shall include financial, commodity, cost and operations data, and other similar types of data and information.

B. Contracts. Executed written contracts shall be the documents used to commit betterment funds, implement utilization projects, and to authorize other uses of banked property.

C. Variance. The commissioner may approve a variance from any of the provisions of 14 MCAR §§ 1.4010-1.4016.

1. A variance shall be granted if:
  - a. the rationale for the rule in question can be met or exceeded by the specific alternate practice proposed for substitution;
  - b. the application of the rule in question would impose an excessive burden on the person or entity applying for the variance in attempting to carry out the intent of the program; and
  - c. the granting of the variance will not adversely affect the public health and safety.
2. The commissioner shall set forth in writing the reasons for granting or denying a variance.
3. The person or entity who is granted a variance shall comply with the alternative practice granted by the commissioner.
4. The person or entity who is granted a variance shall immediately notify the department of any material changes in the circumstances which justified granting the variance.
5. A variance shall be revoked if material changes occur in the circumstances which justified the variance, or if the person or entity who was granted the variance fails to comply with the alternative practice granted by the commissioner.

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

# ADOPTED RULES

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

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

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

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

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## Board of Animal Health

### Adopted Repeal of LSB 57, Approved Drylot Feeding Premises; Adopted Rule 3 MCAR § 2.057, Quarantined Feedlots

The rules proposed and published at *State Register*, Volume 6, Number 15, pages 617-619, October 12, 1981 (6 S.R. 617) are now adopted with the following modifications:

#### Rule as Adopted

3 MCAR § 2.057 Quarantined feedlots.

B. Approval of quarantined feedlot. The secretary and executive officer of the board and the veterinarian in charge, Veterinary Services Division, Animal and Plant Health Inspection Service, United States Department of Agriculture or their designees ~~may~~ shall approve any premises within the state to be a quarantined feedlot if the applicant for approval complies with the requirements of this part.

C. Expiration, renewal and revocation of approval. Approval of a quarantined feedlot shall expire each year on June 30 and may be renewed for a period of one year. Revocation of approval of a quarantined feedlot ~~may~~ shall be made by the board 21 days following written notice if no cattle have been in the feedlot for one year or the requirements of this rule and the other applicable rules of the board are not met.

E. Movement without testing. The board ~~may~~ shall issue permits for importation of cattle into Minnesota or movement of cattle from a public stockyard in Minnesota to a quarantined feedlot without testing for brucellosis, tuberculosis, or anaplasmosis if the following conditions are met:

## Department of Energy, Planning and Development Energy Division (Minnesota Energy Agency) Alternative Energy Development Section

### Adopted Temporary Rules for the Administration of the District Heating Bonding Act Regarding Construction Loans

The temporary rules proposed and published at *State Register*, Volume 6, Number 34, pages 1465-1468, February 22, 1982 (6 S.R. 1465) are now adopted with the following modifications:

#### Temporary Rules as Adopted

6 MCAR § 2.4024 [Temporary] Definitions.

E. Debt service coverage. "Debt service coverage" means the gross revenues of the project minus ~~the sum~~ of the operating expenses, plus the debt service cost. The debt service coverage shall be expressed as a percentage of the debt service cost.

# 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**  
County of Yellow Medicine

**Tax Court**  
Regular Division

Granite Falls Municipal Hospital  
and Manor, a Division of the  
City of Granite Falls, Minnesota,  
a Political Subdivision,

Appellant,

v.

The Commissioner of Revenue,

Appellee.

In the Matter of an Appeal  
from the Commissioner's  
Order dated January 26, 1981,  
relating to Refunding Income  
Tax withheld for the Taxable  
Period with Quarters Ending  
3/31/78 through 3/31/80 for  
Ex-employee and Taxpayer,  
Bruce B. Berg, Social  
Security Number 472-34-5935.

Findings of Fact, Conclusions  
of Law and Order for Judgment

Order dated: March 25, 1982.  
Docket No. 3270

The above entitled matter was submitted to the Minnesota Tax Court, Judge Carl A. Jensen presiding, on the basis of Stipulated Facts and evidentiary documents, together with briefs of the parties. A preliminary Order was issued by this Court dated January 12, 1982. Subsequently, letter briefs were filed by both parties, the last brief being dated March 9, 1982.

Gregory L. Holmstrom of Baker, Carlson, Reishus & Homstorm, represented Appellant.

Paul R. Kempainen, Special Assistant Attorney General, represented Appellee.

## Syllabus

Any sums received by an individual are taxable income in the year received regardless of whether or not the individual was entitled to the money received and whether or not the individual might be required to pay the money back in a subsequent year.

## Findings of Fact

1. Appellant is Granite Falls Municipal Hospital and Manor, (hereinafter, "Hospital"). It is a division of the City of Granite Falls, Minnesota, which is a political subdivision of the State of Minnesota.

2. During the period from September 27, 1977 through March 28, 1980, Hospital paid over to the State of Minnesota, Department of Revenue the sum of \$4,502.89, by way of state income tax withholding on amounts which Appellant had paid to one Bruce B. Berg and to others on his behalf by way of withholding. This sum of \$4,502.89 in state withholding taxes is the object of the present Tax Court appeal.

3. Prior to September 27, 1977, Bruce B. Berg had been employed by Appellant as its hospital administrator since May 1, 1970. On September 27, 1977, he was discharged from that employment by the hospital board. Because he was a veteran, Berg petitioned the Minnesota Department of Veterans Affairs for a hearing pursuant to the Minnesota Veterans Preference Act, Minn. Stat. § 197.46, alleging that he had been improperly dismissed without a hearing. A hearing examiner subsequently determined that Berg was not entitled to the benefits of the Veterans Preference Law but the Commissioner of Veterans Affairs reversed the determination of the hearing examiner and issued an Order requiring Granite Falls Hospital to provide Berg a discharge hearing and to pay him compensation at the rate in effect on September 27, 1977, the date of his dismissal, until final determination at said discharge hearing.

4. The Commissioner of Veterans Affairs Order was appealed to the Ramsey County District Court. On May 15, 1978, pursuant to a motion made by Berg's attorney, the Honorable Thomas E. Brennan of the Ramsey County District Court issued an interim Order requiring the Hospital to either reinstate Berg with full compensation or to pay Berg full compensation without reinstatement. The interim Order provided in part as follows: "that Bruce B. Berg be reinstated, forthwith, as hospital administrator for Petitioner, (Hospital), with full compensation, including fringe benefits, plus any salary deductions required

## TAX COURT

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by law, at the rate of compensation he was being paid at the date of his termination; provided however, Petitioner, (Hospital), may in its sole discretion elect to pay Mr. Berg such full compensation, including fringe benefits, but not reinstate him by giving Mr. Berg written notice of such election." Subsequent to that time, written notice was provided by counsel for Hospital to Mr. Berg that, pending further appeals, he would be paid the compensation pursuant to Judge Brennan's interim Court Order but that also, pursuant to the interim Court Order, he was not being reinstated.

5. On March 14, 1979, the Hospital's petition for review of the Commissioner of Veterans Affairs Order was heard before the Honorable William P. Murphy, Acting Ramsey County District Court Judge. On May 4, 1979, Judge Murphy issued the District Court's final Order affirming the Order of the Commissioner of Veterans Affairs. This final decision of the Ramsey County District Court was appealed by Granite Falls Hospital to the Minnesota Supreme Court, which on April 4, 1980, ruled that Berg, as a hospital administrator, was not entitled to the procedural benefits of the Veterans Preference Act. *Granite Falls Municipal Hospital and Manor Board v. Dept. of Veterans Affairs*, 291 N.W. 2d 683 (1980). The decision of the Ramsey County District Court was therefore reversed.

6. Prior to the aforementioned Supreme Court decision Appellant had, during the period from September 27, 1977, through March 28, 1980, paid to Berg and to others on his behalf by way of withholding, the sum of \$62,821.66, representing salary and fringe benefit payments computed at the rate received by Berg as of the date of his termination of September 27, 1977. This amount included the \$4,502.89 paid to the Department of Revenue by way of state income tax withholding, previously described in para. 2 above. Appellant issued standard W-2 Forms to Berg which reflected these amounts of total compensation and state withholding as follows:

<u>Year</u>	<u>Salary Paid to Berg</u>	<u>Minnesota Withholding</u>
1977 (Includes payments made prior to 9/27/77)	\$18,375.92	\$1,405.14
1978	\$27,184.28	\$2,319.53
1979	\$23,701.60	\$1,751.32

7. During the period from September 27, 1977, through March 28, 1980, Berg performed no affirmative or positive services or labor as administrator for Appellant Hospital nor was he within the premises of said facility.

8. Subsequent to the aforementioned Supreme Court decision, Hospital filed suit in the Yellow Medicine County District Court against Berg seeking reimbursement of the \$62,821.66, paid to him and to others on his behalf by way of withholding during the period from September 27, 1977, through March 28, 1980. In his Answer, Berg denied any liability for said reimbursement to the Hospital. On January 15, 1981, the District Court entered its Findings of Fact, Conclusions of Law, and Order for Judgment in favor of Appellant and ordering judgment against Berg in the sum of \$62,821.66.

9. On or about December 11, 1980, Berg filed a Petition for Bankruptcy in the United States Bankruptcy Court, District of Minnesota.

10. By a letter dated October 14, 1980, to the Minnesota Department of Revenue, Granite Falls Hospital, through its counsel, sought a refund of the \$4,502.89 which it had paid to the State of Minnesota by way of state income tax withholding for Berg between September 27, 1977, and March 28, 1980.

11. In connection with Appellant's refund claim, numerous contacts by way of telephone calls and correspondence were had between representatives of the Minnesota Department of Revenue and legal counsel for Appellant. After considering the arguments raised, the Commissioner of Revenue, by and through a letter dated January 26, 1981, and signed by the Director of the Income Tax Division, determined that Appellant's claim for refund must be denied.

12. Berg owed income tax on the payments to him regardless of whether or not they were payments for wages or for some other reason.

13. The Hospital has taken a timely appeal from the Commissioner's Order dated January 26, 1981, to this Court, and counsel for the Commissioner has duly interposed an Answer to said appeal.

### Conclusions of Law

1. There is no evidence to indicate that the state has collected any more income tax from Berg relative to the payments herein than was due to the state.

2. Appellant is not entitled to a refund of withholding taxes paid on behalf of Berg.

3. The Order of the Commissioner herein dated January 26, 1981, is hereby affirmed.

IT IS SO ORDERED. A STAY OF 15 DAYS IS HEREBY ORDERED.

By the Court,  
Carl A. Jensen, Judge  
Minnesota Tax Court

**Memorandum**

The Appellant is in an unfortunate position. Appellant consistently took the position that no wages or other payments were due to Berg, but the Courts required the payments to be made during the time the matter was proceeding through the Courts, despite the fact that the Appellant had appealed from the Order requiring payment. The Supreme Court ultimately determined that Berg was not entitled to payment of any amount, but by this time the Hospital had paid to Berg the sum of \$62,821.66 which included Minnesota withholding and apparently federal withholding. Of this amount, \$4,502.89 had been paid directly to Minnesota on behalf of Berg for income tax.

The Hospital has argued that since the payments to Berg were not wages within the meaning of Minnesota Statutes § 290.92, subdivision 2a or subdivision 3, then the Hospital should not have withheld taxes and that since the withholding was erroneous, the Hospital is entitled to have the payments refunded. There might be some logic to this position, if, in fact, the money was not due to the state for income taxes payable by Berg. The statute dealing with refunds, Minnesota Statutes § 290.92, subdivision 11, does not specifically provide for a refund to the payer of withholding taxes, unless the amount paid was not actually withheld from payments due to the payee. However, if the state was not entitled to the amount that had been paid to it as income taxes due from Berg, we would find that the Hospital was entitled to a refund. We find, however, that Berg did owe the income tax and there is no indication that more income tax has been paid on behalf of Berg than was due to the state.

The Hospital's letter brief of February 12, 1982, states the following:

"Accordingly, it would be appropriate to order that the Department refigure Berg's tax obligation, as it frequently does on a routine basis for many taxpayers, with the basic premise in mind that the monies paid him were not wages. This would thereby reduce or perhaps entirely eliminate any 'tax obligation' and to the extent that a cash refund had not previously been made to Berg by Appellee, Appellee could then make a refund to Appellant subject to the maximum being the amount erroneously withheld and paid in as noted in the Court file."

The error in the Hospital's position is that the Hospital concludes that Berg did not owe income tax on the payments received by him. It is true that Berg was not entitled to the payments, but income tax is owed whether or not the recipient of the income is entitled to the income. It is common knowledge that illegal gains are subject to income tax. The Supreme Court has held that embezzled funds constitute taxable income to the embezzler. *James v. U. S.*, 366 U.S. 313, 81 Supreme Court 1052. The Supreme Court has further held that illegal gains remain taxable income to the taxpayer even though the victim of the crime may eventually obtain a judgment against the taxpayer for the amount which was illegally obtained. *Horn v. Commissioner*, 387 F2d 621 (5th Cir., 1967).

Since Berg has gone through bankruptcy, it appears that he will probably not repay the \$62,821.66 judgment to the Hospital. However, even if Berg did repay this, any adjustment of income taxes payable by Berg would occur in the year repayment was made. This is provided for in Minnesota Statutes § 290.07, subdivision 4 and I.R.C. § 1341.

The Hospital claimed that these payments were not wages and, therefore, not subject to withholding. If this were in fact true, then the Hospital would not have withheld the amount paid to the state but it would have already paid that amount to Berg, so in either event, the Hospital would not be able to obtain the money. Berg owed the income tax and the Hospital paid the income tax to the state on behalf of Berg. If the payments were not subject to withholding, then the payments could be construed to be an assignment of such payments to the state for income taxes. Although Berg did not himself assign said money to the state, the Order of the Court in effect did make this assignment. As previously indicated in any event, the Hospital would have paid this money either to the state or to Berg.

Actually, although these payments to Berg did not really constitute wages, Revenue Rulings 72-572 and 78-336 indicate that they would be construed to be wages in regard to the withholding tax laws.

It appears that the state has not received any more taxes than were due to it, so the state has not been unjustly enriched.

It is unfortunate that the Hospital was required to make the payments discussed herein during the pendency of their appeal, but there is no remedy that this Court can supply.

C.A.J.

# SUPREME COURT

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## Decisions Filed Friday, April 2, 1982

### Compiled by John McCarthy, Clerk

81-560/Sp. *Roma Kouksi v. Hennepin County Medical Center et al.*, Appellants. Hennepin County.

Where, despite her request for confidentiality, information that recently discharged patient had given birth while hospitalized came not from permanent medical records but was disclosed by a Patient Information operator in response to direct inquiry, public hospital did not violate Patients' Bill of Rights, Minn. Stat. § 144.651 (1980), or Data Privacy Act, Minn. Stat. §§ 15.162-.1671 (1978).

Reversed. Peterson, J.

81-749/Sp. *State ex rel. Kevyn C. Clark, Appellant, v. The Honorable Delila F. Pierce, etc., et al.* Hennepin County.

District court properly discharged writ of habeas corpus in extradition proceeding in which petitioner, now present in Minnesota, challenged the governor's issuance, under Minn. Stat. § 629.06 (1980), of a rendition warrant granting extradition of petitioner to Wisconsin for prosecution for felony nonsupport of his child, who resides there.

Affirmed. Yetka, J.

81-1223 *Susan D. Miller, et al., v. Tom Foley, County Attorney, et al.*, Appellants. Ramsey County.

Employee termination does not legally justify the extraordinary relief of a temporary injunction where the harm suffered is of the type common to all discharged employees.

Scott, J.

## Decisions Filed Thursday, March 25, 1982

81-1304/Sp. *State of Minnesota v. Harold John Wilwert, Jr.*, Appellant. Ramsey County.

In a case in which the presumptive sentence established by the Sentencing Guidelines was stayed concurrent terms of 1 year and 1 day and 18 months, the trial court was not free to sentence defendant to more than 1 year in jail as a condition of probation.

Convicted criminal defendant has a right to refuse probation and insist on execution of prison sentence under *State v. Randolph*, \_\_\_ N.W.2d \_\_\_ (Minn., filed February 23, 1982).

Remanded. Amdahl, C. J.

82-107/Sp. *State of Minnesota v. Gerald J. Rohrer*, Appellant. Hennepin County.

In a postconviction proceeding in which the petitioner sought resentencing according to the Minnesota Sentencing Guidelines, the district court properly denied relief because it was unable to find, as required by law, that petitioner's early release would not present a danger to the public and would not be incompatible with the welfare of society.

Affirmed. Amdahl, C. J.

## Decisions Filed Friday, March 26, 1982

82-38/Sp. *State of Minnesota v. Keith Paul Hagen*, Appellant. Pope County.

Trial court properly departed from presumptive stayed sentence where defendant was unamenable to probation but court did not sufficiently justify decision to lengthen duration of presumptive term.

Affirmed as modified. Amdahl, C. J.

82-78/Sp. *Norbert Schnoor, Appellant, v. State of Minnesota*. Hennepin County.

In a postconviction proceeding brought by a convicted sex offender seeking resentencing according to the Sentencing Guidelines, the district court properly denied relief because it was unable to find that petitioner's early release would not present a danger to the public and would not be incompatible with the welfare of society.

Affirmed. Amdahl, C. J.



82-169/Sp. Joe Lee Smith, Appellant, v. State of Minnesota. Hennepin County.

In a postconviction proceeding seeking resentencing according to the Minnesota Sentencing Guidelines, the petitioner has the burden of proving that his early release would not present a danger to the public and would not be incompatible with the welfare of society.

Affirmed. Amdahl, C. J.

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**STATE CONTRACTS**

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

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

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## **Department of Administration Contract Management Division**

### **Notice of Request for Proposals for Court Reporting and Transcription Services**

The Minnesota Department of Administration is acting as contracting agent for state departments and agencies that have a need for:

1. Court reporting services to provide an accurate and verbatim record of proceedings and depositions required by state and federal laws, and
2. Transcription services to prepare an accurate and verbatim typewritten record from proceedings recorded on single track or four track audio magnetic recording devices; such as 5" reel-to-reel tapes and standard cassette tapes.

All state agencies needing one or both of these services will be required to use the contracts resulting from this proposal. Some of the state agencies having a need for the services are the Attorney General's Office, Office of Administrative Hearings (Administrative Procedure Act and Workers' Compensation Law hearings), Department of Labor and Industry, Tax Court, Public Service Commission, and Environmental Quality Board.

**IT IS UNLIKELY THAT WE WILL BE SOLICITING ADDITIONAL PROPOSALS DURING FISCAL YEAR 1983.**

Additional information on the requested services will be included in the Request for Proposal which will be sent to all persons or associations who ask to receive one. Persons or associations desiring to receive a Request for Proposal must request one by notifying Sharon A. Schmidt, Office of Administrative Hearings, 400 Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415, telephone 612/341-7644, no later than 4:30 p.m., May 7, 1982. Final proposals must be received by the Contract Management Division of the Department of Administration by 4:30 p.m., Friday, May 14, 1982.

## **Office of Administrative Hearings**

### **Notice of Request for Proposal for Hearing Examiner and Workers' Compensation Judge Services**

The Minnesota Office of Administrative Hearings will be contracting with qualified attorneys to serve as hearing examiners and workers' compensation judges for fiscal year 1983, beginning July 1, 1982, and ending on June 30, 1983.

Attorneys must be admitted to practice law in the State of Minnesota at the time they apply. Remuneration for contractual hearing examiners and workers' compensation judges is \$40.00 per hour. Additional information on the requested services is

## **STATE CONTRACTS**

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detailed in the Request for Proposal which will be sent to all persons who ask to receive one. Persons desiring to receive a Request for Proposal must request one by notifying Duane R. Harves, Chief Hearing Examiner, Office of Administrative Hearings, 400 Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415, telephone 612/341-7640, no later than 4:30 p.m. on Friday, May 7, 1982. Final proposals must be received by the Office of Administrative Hearings by 4:30 p.m. on Friday, May 14, 1982.

### **Department of Energy, Planning and Development Energy Division**

#### **Notice of Request for Proposals for Superinsulated Remodeling Demonstration Project Grants**

The Energy Division and Insulation Contractors Association Northwest are sponsoring a demonstration project to promote superinsulated remodeling. A total of five grants of \$4000 each are available to submitters of proposals judged best able to perform superinsulation remodeling of a home and fulfill other grantee duties specified in the request for proposal. A condition of these grants is that they be matched on a dollar for dollar basis from the private sector. The Insulation Contractors Association Northwest is working with insulation manufacturers and contractors to obtain these matching grants.

To obtain a copy of the request proposal contact:

Steve Youlan or Bruce Nelson  
DEPD—Energy Division  
980 American Center Building  
St. Paul, Mn. 55101  
(612) 297-2496

Deadline for submission of proposals is May 10, 1982.

### **Department of Health Health Systems Division Emergency Medical Services Section**

#### **Notice of Request for Proposals for Minnesota Poison Information Center**

The Minnesota Department of Health is requesting proposals from non-profit corporations and units of government to provide 24-hour poison information and referral services to the general public and to health professionals. Maximum state funding for this grant will not exceed \$77,000 for the year July 1, 1982, to June 30, 1983. Criteria for selection include five factors listed in the enabling statute (Minn. Stat. § 145.93) plus such general considerations as the availability of matching funds and in-kind support and the ability to pursue additional funding for a statewide poison control program from other sources. All selection criteria are described in a request for proposal available from the Minnesota Department of Health. Selection will follow the review of all proposals received before the deadline and a recommendation by a statutory Advisory Council. Responders will be expected to demonstrate ability to initiate service as soon as possible following selection and awarding of funds. The deadline for applications is 4:00 p.m. May 7, 1982. This deadline is essential if the grant is to be awarded prior to July 1, 1982.

Copies of the request for proposal and other information about this project are available from:

Peter Carr  
Emergency Medical Services  
Minnesota Department of Health  
717 Delaware St. S.E.  
Minneapolis, Minnesota 55440  
(612) 296-5284

## **Minnesota Higher Education Coordinating Board**

### **Notice of Request for Proposals for Auditing Services for the State Student Loan Programs**

Notice is hereby given that the Minnesota Higher Education Coordinating Board intends to engage the services of a certified public accounting firm to examine and report upon the financial statements of the State Student Loan Program for the fiscal year ending June 30, 1982 with the option to renew the contract for the fiscal years ending June 30, 1983 and June 30, 1984. The audit must comply with generally accepted auditing standards which encompass the AICPA's industry's audit guide, "Audits of State and Local Governmental Units."

Information contained in the audit report should be of sufficient detail to include in Official Statements of subsequent Student Loan Revenue Bond issues.

Those interested in receiving requests for proposals should contact:

Arlon J. Hauptert  
Director of Administrative Services  
400 Capitol Square Building  
550 Cedar Street  
St. Paul, MN 55101  
(612) 296-9685

Proposals will be accepted until 4:00 p.m. May 7, 1982.

## **Department of Public Welfare Faribault State Hospital**

### **Notice of Request for Proposals for Services to be Performed on a Contractual Basis:**

Notice is hereby given that Faribault State Hospital, Mental Health Division, Department of Public Welfare, is seeking the following services for the period of July 1, 1982-June 30, 1983; these services as requested by the Chief Executive Officer of the Faribault State Hospital.

1. A radiological consultant group to provide services at the Faribault State Hospital upon the request of the Medical Director, at times mutually agreed upon by both parties. The duties shall involve radiological consultations for residents/patients of Faribault State Hospital, which consist of interpretation and diagnosis of x-ray films of chest, skull, skeleton, abdomen, gall bladder, kidneys, etc., performance of fluoroscopic examination of chest, stomach, intestines, colon, etc., as requested by staff physicians. In addition, supervision of the X-ray Department in regard to equipment, methodology, safety, etc., will be included in this consultation service. The estimated amount of this contract will not exceed \$13,000.00.

2. The services of a physician group to provide weekend coverage at Faribault State Hospital upon request of the Medical Director by making rounds in the Medical Hospital and taking all emergency calls, the preceding service to be performed at the Faribault State Hospital. The estimated amount of this contract will not exceed \$15,000.00.

Response for the above services must be received by May 3, 1982.

Direct inquiries to:

Richard Fick, Accounting Supervisor  
Faribault State Hospital  
Faribault, Minnesota 55021  
(507) 332-3530

## STATE CONTRACTS

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### Department of Transportation Surveying and Mapping

#### Notice of Availability of Contract for Photogrammetric Services Fiscal Year 1983 (July 1, 1982 to June 30, 1983)

The Minnesota Department of Transportation desires an aerial surveys firm to provide the following photogrammetric services conforming to Mn/DOT specifications:

1. Aerial Vertical Photography

Provide negatives taken by the contractor using a precision aerial camera. The negatives shall be suitable for printing photographs and transparencies and for use in the state's photogrammetric instruments for analytical aerial triangulation and map compilation. The state may call for the use of panchromatic, color negative or infrared color emulsions in obtaining the photography.

2. Aerial Oblique Photography

Provide negatives taken by the contractor suitable for printing photography for illustrative purposes.

3. Photographic Laboratory Services

Provide, from aerial negatives, rectified, ratioed and controlled photographic enlargements and mosaics, 9½" × 9¼" diapositives on glass or film suitable for photogrammetric compilation of topographic mapping, screened photographic film positives from mosaic negatives, and continuous roll photographic film positives of topographic mapping from scribed originals on 36" wide roll.

4. Map Compilation

Provide map compilation by Wild A-10 Autograph or equivalent type instrument for the compilation of topographic maps or photogrammetric cross-sections.

The estimated fee is anticipated to be \$130,000. Firms desiring consideration shall express their interest and submit their Federal Forms 254 and 255 before April 19, 1982.

This is not a request for proposal. Send your response to:

E. R. Larson  
Director of Surveying and Mapping  
Room 711  
Transportation Building  
St. Paul, Minnesota 55155

## OFFICIAL NOTICES

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

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

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### Department of Education Instruction Division

#### Notice of Public Meeting

The Minnesota Special Education Advisory Council will hold a two-day meeting on April 15th and 16th, 1982. The meeting is scheduled to begin at 9:00 a.m. on the 15th in the Walnut Room of the Capp Towers Best Western Hotel in Downtown St. Paul. Agenda items include: Report on Minnesota special education legislation; update on federal special education activities; early childhood: special education definition and criteria; administrative reviews; discussions on the definition of special education, five major issues in special education, and meeting the needs of handicapped students and their regular education teachers.

For additional information contact Barbara Burke, Special Education Section, at (612) 297-3620.

## **Minnesota Pollution Control Agency**

### **Notice of Intent to Act on a Proposed Operating Permit**

Notice is hereby given that the Minnesota Pollution Control Agency is proposing to issue an Air Quality Operating Permit to the Northern States Power Company (NSP), St. Paul, Minnesota, for NSP's High Bridge Generating Plant located at 501 Shepard Road, St. Paul, Ramsey County, Minnesota 55102.

The operating permit being considered for reissuance is an Air Quality Total Facility Operating Permit for pulverized coal fired Boilers No. 9, 10, 11 and 12, and related coal handling and storage facilities. The boilers are used to generate steam for production of electric power. Particulate matter emissions from these boilers are controlled by separate electrostatic precipitators on each boiler, and sulfur dioxide emissions are controlled by blending low sulfur coals. Sources of fugitive particulate emissions from points other than chimneys are also addressed and controlled by permit conditions.

The agency plans to issue the proposed permit on or about May 10, 1982. The public is invited to submit written comments on the proposed permit before May 10, 1982 (see below). The agency will consider all written comments before making a decision to issue the permit.

In addition to providing written comments on the proposed permit, any person may request the agency to hold a public hearing on the proposed permit. If you would like to request a public hearing, you should put your request in writing and include comments on the following:

1. Why you feel the agency should hold a public hearing on the proposed permit as a whole or specific terms or conditions of the permit, and the specific questions or issues you would like the agency to address at the public hearing;
2. Your interest in the proposed permit;
3. A statement describing the action you wish the agency to take, including specific references to any section of the proposed permit which you believe should be changed;
4. The specific reasons supporting your position.

All written comments or requests for public hearing should be sent by May 10, 1982 to:

Bernard E. Gallagher  
Division of Air Quality  
Minnesota Pollution Control Agency  
1935 West County Road B-2  
Roseville, MN 55113

All materials relating to the issuance of this proposed operating permit are available for inspection at the Minnesota Pollution Control Agency, Division of Air Quality, 1935 West County Road B-2, Roseville, Minnesota 55113, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, State Holidays excluded.

Dated this 5th day of April, 1982.

Louis J. Breimhurst  
Executive Director  
Minnesota Pollution Control Agency

## **Office of the Secretary of State**

### **Notice of Vacancies in Multi-member State Agencies**

Notice is hereby given to the public that a vacancy has occurred in a multi-member state agency, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155-1299; (612) 296-2805. Application deadline is May 4, 1982.

ETHICAL PRACTICES BOARD has one vacancy open immediately, for term expiring in January 1986. The board administers campaign financing for state candidates; economic interest disclosure for state and metropolitan public officials; and lobbyist registration and reporting. Meetings are monthly. Members are appointed by the Governor and confirmed by the House and Senate, and receive \$35 per diem plus expenses. For specific information, contact the Ethical Practices Board, 41 State Office Building, St. Paul 55155; (612) 296-5148.

# OFFICIAL NOTICES

## Minnesota State Retirement System

### Regular Meeting, Board of Directors

A meeting of the Board of Directors, Minnesota State Retirement System, will be held on Friday, April 16, 1982 at 9:00 a.m. in the office of the system, 529 Jackson Street, St. Paul, Minnesota.

## Pollution Control Agency Water Quality Division

### Behind-Schedule and Substandard Project Lists

Minn. Stat. § 115.83 (1980) requires the Minnesota Pollution Control Agency ("agency") to issue an order incorporating lists of principal consulting engineers, contracting engineers, and principal contractors, who are responsible for behind-schedule or substandard municipal wastewater treatment projects, for publication in the *State Register*. A behind-schedule project is one which, due to failures of design or workmanship or other factors within the reasonable control of the contractor or engineer, the agency determines is more than 90 days behind schedule. A substandard project is one which, due to failures of design or workmanship or other factors within the reasonable control of the contractor or engineer, the agency determines does not accomplish the purpose for which it was designed or constructed.

In accordance with the statute, the agency has issued an order incorporating the following lists for publication in the *State Register*.

Louis J. Breimhurst  
Executive Director

#### BEHIND SCHEDULE PROJECTS 1981 FINAL LIST

<u>FIRM</u>	<u>MUNICIPALITY</u>	<u>NATURE OF DEFICIENCY NUMBER OF DAYS BEHIND SCHEDULE</u>	<u>PROJECT DESCRIPTION</u>
DeWild Grant Reckert and Associates	Hatfield	139	Facilities Plan
KBM, Incorporated	Minneota	166	Facilities Plan
Howard A. Kuusisto	Hector	184	Facilities Plan
	Wanamingo	245	Plans and Specifications
Widseth Smith Nolting and Associates, Incorporated	Clearbrook	541	Facilities Plan
	Crookston Lift Station	144	Plans and Specifications
	Erskine	426	Facilities Plan
	Verndale	118	Facilities Plan

Another entry withheld pending the outcome of hearings

#### SUBSTANDARD PROJECTS 1981 FINAL LIST

<u>FIRM</u>	<u>MUNICIPALITY OR SANITARY DISTRICT</u>	<u>NATURE OF DEFICIENCY</u>	<u>PROJECT DESCRIPTION</u>	<u>NATURE OF CORRECTION</u>
Entries withheld pending outcome of hearings				

## Errata

At 6 S.R. 1057 (November 30, 1981), rule 5 MCAR § 1.0221/11 MCAR § 1.0081 A., last sentence, change "weigh" to "weight".

STATE OF MINNESOTA

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