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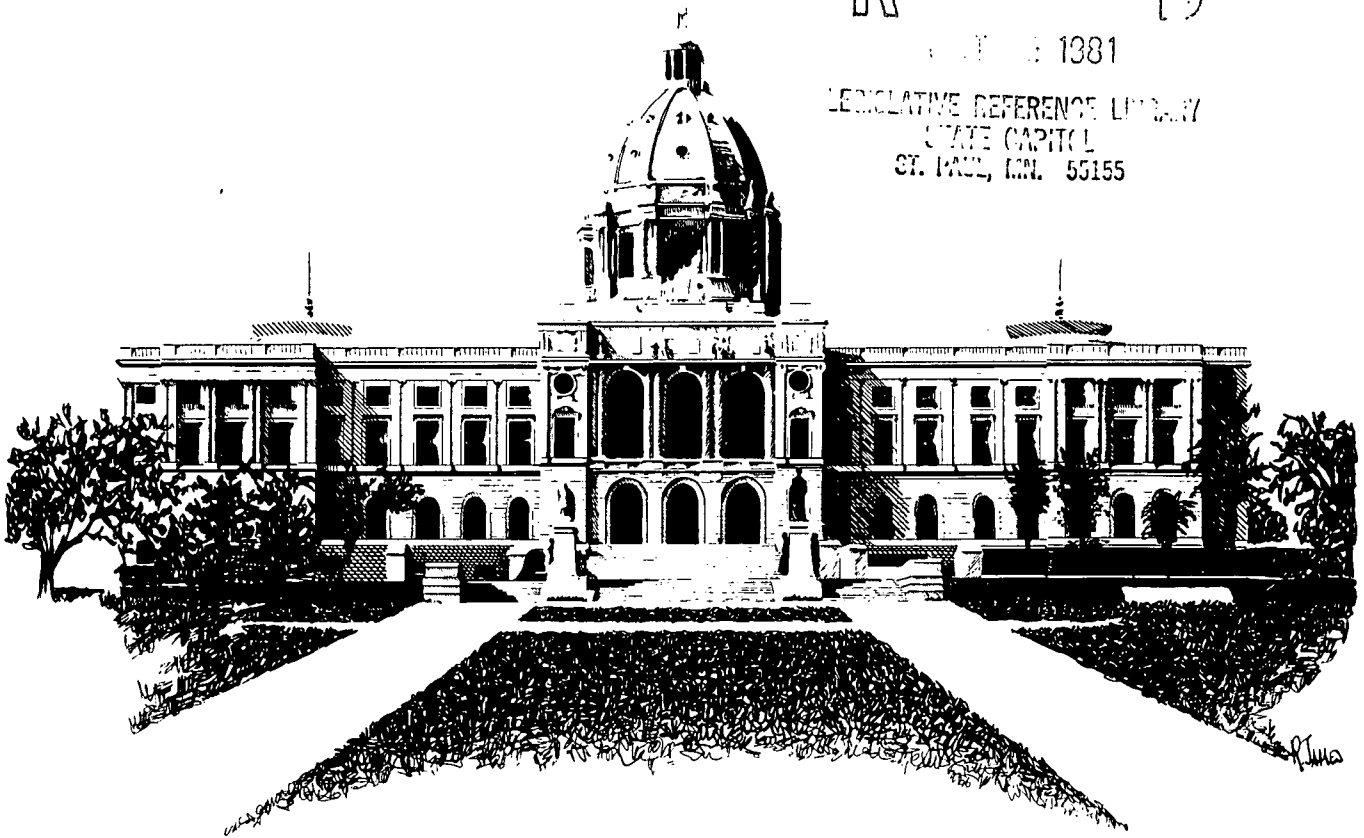
STATE REGISTER

STATE OF MINNESOTA

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VOLUME 6, NUMBER 8

August 24, 1981

Pages 209-244



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 6			
9	Monday Aug 17	Monday Aug 24	Monday Aug 31
10	Monday Aug 24	Monday Aug 31	Friday Sept 4
11	Monday Aug 31	Friday Sept 4	Monday Sept 14
12	Friday Sept 4	Friday Sept 11	Monday Sept 21

*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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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
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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.

Minnesota Housing Finance Agency

Proposed Amendment to and Adoption of Rules Governing Income Limits for Limited Unit Developments

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Housing Finance Agency ("agency") proposes to adopt the above-entitled rules without a public hearing. The agency 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).

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 Minn. Stat. § 15.0412, subds. 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:

Monte Aaker, Research Coordinator
Research Division
Minnesota Housing Finance Agency
Suite 200—Nalpak Building
333 Sibley Street
St. Paul, Minnesota 55101
Telephone (612) 296-9952

Rules as Proposed

12 MCAR § 3.002

O. "Persons and families of low and moderate income" means:

1. With respect to limited-unit mortgage loans pursuant to Chapter Four of these rules, development cost loans pursuant to Chapter Three of these rules, planning grants pursuant to Chapter Five of these rules, and American Indian housing loans

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

pursuant to Chapter Eight of these rules, which loans and grants are intended for a limited-unit development, or a dwelling unit in a planned unit development or a condominium, those persons and families whose adjusted income does not exceed ~~\$19,000 in the metropolitan area as defined in Minn. Stat. § 473.121, subd. 2 and \$17,500 in the remainder of the state~~ the amounts set forth in Exhibit 12 MCAR § 3.002 O.-1. or such lower amount as shall be required to assure that the interest on obligations of the agency will be exempt from federal income taxation; and, "Metropolitan area" has the meaning given it in Minn. Stat. § 473.121, subd. 2.

Exhibit 12 MCAR § 3.002 O.-1.

<u>Mortgage Interest</u>	<u>Nonmetropolitan</u>	<u>Metropolitan</u>
	<u>Area</u>	<u>Area</u>
<u>Rate</u>	<u>Maximum Adjusted</u>	<u>Maximum Adjusted</u>
	<u>Income</u>	<u>Income</u>
<u>0-10.59%</u>	<u>\$19,000</u>	<u>\$24,000</u>
<u>10.60-11.09%</u>	<u>\$20,000</u>	<u>\$25,000</u>
<u>11.10-11.59%</u>	<u>\$21,000</u>	<u>\$26,000</u>
<u>11.60-12.00%</u>	<u>\$22,000</u>	<u>\$27,000</u>

Minnesota Housing Finance Agency

Proposed Amendment to and Adoption of Rules Governing Eligibility for the Home Ownership Assistance Fund

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Housing Finance Agency ("agency") proposes to adopt the above-entitled rules without a public hearing. The agency 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).

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 Minn. Stat. § 15.0412, subds. 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:

Monte Aaker, Research Coordinator
Research Division
Minnesota Housing Finance Agency
Suite 200—Nalpak Building
333 Sibley Street
St. Paul, Minnesota 55101
Telephone (612) 296-9952

Rule as Proposed

12 MCAR § 3.133 Homeownership assistance fund ~~monthly assistance.~~

A. Monthly assistance. The agency may provide eligible recipients with interest-free monthly assistance loans in the form of monthly payments of a portion of the principal and interest installment due on the limited-unit development mortgage on qualifying property. Such payments shall not exceed ~~\$75~~ \$100 per month and shall decrease by ~~\$5~~ \$10 per month (or ~~\$60~~ \$120 per year) each year. The maximum amount of monthly assistance to which a recipient is originally entitled shall be determined by the agency from time to time on the basis of the percentage of income which may reasonably be spent on mortgage payments,

PROPOSED RULES

the interest rate charged for limited-unit development mortgage loans, and general housing and construction costs in the State of Minnesota, provided however, that the initial maximum monthly assistance which the agency shall determine to be available shall not exceed the following amounts for persons and families within the following annual adjusted income ranges: as set forth in Exhibit 12 MCAR § 3.133 B.-1. and Exhibit 12 MCAR § 3.133 C.-2. for various potential interest rates to be charged by the agency on its limited-unit development mortgage loans.

<u>Annual Adjusted Income Between</u>	<u>Initial Maximum Monthly Assistance</u>
<u>11,500</u>	<u>75</u>
<u>10,000-12,000</u>	<u>65</u>
<u>10,500-12,500</u>	<u>55</u>
<u>11,000-13,000</u>	<u>45</u>
<u>11,500-13,500</u>	<u>35</u>
<u>12,000-14,000</u>	<u>25</u>
<u>12,500-16,000</u>	<u>15</u>

B. Metropolitan area. Exhibit 12 MCAR § 3.133 B.-1. applies to eligible recipients whose qualifying property is in the metropolitan area as defined in Minn. Stat. § 473.121, subd. 2.

Exhibit 12 MCAR § 3.133 B.1.

Initial Maximum Monthly Assistance

Mortgage

Interest

Rate

		<u>\$100</u>	<u>\$80</u>	<u>\$60</u>	<u>\$40</u>	<u>\$20</u>
<u>0-</u>	<u>Adj. Hshld.</u>	<u>0-</u>	<u>15001-</u>	<u>16001-</u>	<u>17001-</u>	<u>18001-</u>
<u>10.59%</u>	<u>Income</u>	<u>15000</u>	<u>16000</u>	<u>17000</u>	<u>18000</u>	<u>19000</u>
<u>10.60-</u>	<u>Adj. Hshld.</u>	<u>0-</u>	<u>16001-</u>	<u>17001-</u>	<u>18001-</u>	<u>19001-</u>
<u>11.09%</u>	<u>Income</u>	<u>16000</u>	<u>17000</u>	<u>18000</u>	<u>19000</u>	<u>20000</u>
<u>11.10-</u>	<u>Adj. Hshld.</u>	<u>0-</u>	<u>17001-</u>	<u>18001-</u>	<u>19001-</u>	<u>20001-</u>
<u>11.59%</u>	<u>Income</u>	<u>17000</u>	<u>18000</u>	<u>19000</u>	<u>20000</u>	<u>21000</u>
<u>11.60-</u>	<u>Adj. Hshld.</u>	<u>0-</u>	<u>18001-</u>	<u>19001-</u>	<u>20001-</u>	<u>21001-</u>
<u>12.00%</u>	<u>Income</u>	<u>18000</u>	<u>19000</u>	<u>20000</u>	<u>21000</u>	<u>22000</u>

C. Nonmetropolitan area. Exhibit 12 MCAR § 3.133 C.-2. applies to eligible recipients whose qualifying property is not in the metropolitan area as defined in Minn. Stat. § 473.121, subd. 2.

Exhibit 12 MCAR § 3.133 C.-2.

Initial Maximum Monthly Assistance

Mortgage

Interest

Rate

		<u>\$100</u>	<u>\$80</u>	<u>\$60</u>	<u>\$40</u>	<u>\$20</u>
<u>0-</u>	<u>Adj. Hshld.</u>	<u>0-</u>	<u>10001-</u>	<u>11001-</u>	<u>12001-</u>	<u>13001-</u>
<u>10.59%</u>	<u>Income</u>	<u>10000</u>	<u>11000</u>	<u>12000</u>	<u>13000</u>	<u>14000</u>

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

<u>10.60-</u>	<u>Adj. Hshld.</u>	<u>0-</u>	<u>11001-</u>	<u>12001-</u>	<u>13001-</u>	<u>14001-</u>
<u>11.09%</u>	<u>Income</u>	<u>11000</u>	<u>12000</u>	<u>13000</u>	<u>14000</u>	<u>15000</u>
<u>11.10-</u>	<u>Adj. Hshld.</u>	<u>0-</u>	<u>12001-</u>	<u>13001-</u>	<u>14001-</u>	<u>15001-</u>
<u>11.59%</u>	<u>Income</u>	<u>12000</u>	<u>13000</u>	<u>14000</u>	<u>15000</u>	<u>16000</u>
<u>11.60-</u>	<u>Adj. Hshld.</u>	<u>0-</u>	<u>13001-</u>	<u>14001-</u>	<u>15001-</u>	<u>16001-</u>
<u>12.00%</u>	<u>Income</u>	<u>13000</u>	<u>14000</u>	<u>15000</u>	<u>16000</u>	<u>17000</u>

Minnesota Housing Finance Agency

Proposed Amendment to and Adoption of Rules Governing the Rental Rehabilitation Loan Program

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Housing Finance Agency ("agency") proposes to adopt the above-entitled rules without a public hearing. The agency 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).

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 Minn. Stat. § 15.0412, subds. 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 modification is desired.

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

Mary Tingerthal, Manager
Home Improvement Programs
Minnesota Housing Finance Agency
Suite 200—Nalpak Building
333 Sibley Street
St. Paul, Minnesota 55101
Telephone (612) 297-3126

Rules as Proposed (all new material)

Chapter Six A: Rental Rehabilitation Loans

12 MCAR § 3.053 Eligible applications.

A. Property interest. Each applicant for a rental rehabilitation loan must individually or in the aggregate possess at least a one-third interest in a fee, or a contract for deed, or a life estate in the property to be improved. However, occupancy of the property by the applicant shall not be required.

B. Credit risk. Each applicant must be a reasonable credit risk with the ability to pay the loan obligation, as determined by the agency or by the lending institution, if any, servicing the loan on behalf of the agency.

C. Eligible improvements. To be eligible, the structure must be in need of repairs in order to bring it into compliance with Minn. Stat. § 116H.129, subd. 3, state energy conservation standards. For structures less than 15 years old, only improvements necessary to bring the structure into compliance with the state energy conservation standards are eligible. Further explanation of this requirement is in 12 MCAR § 3.054.

D. Compliance with zoning ordinances. The structure to be improved must not be in violation of applicable zoning ordinances or other applicable land use guides.

E. Use of property restricted. The property must be used primarily for residential purposes and must consist primarily of comprehensive living units including kitchen and bathroom facilities. Mobile homes and trailers shall not be eligible for rental rehabilitation loans.

F. Restriction on loan use. Rental rehabilitation loan proceeds must be used to finance only improvements upon or in connection with existing structures.

G. Time of completion. All improvements must be reasonably capable of being completed within nine months of the date of the first disbursement of funds pursuant to the rental rehabilitation loan except for delays due to causes beyond the applicant's reasonable control, such as fire, strike, and shortage of materials.

H. Unavailability of financing. At the time of application, conventional financing must not be available from private lenders upon equivalent terms and conditions.

I. Required occupancy. The structure to be improved must be occupied at the time of loan closing primarily by persons and families of low and moderate income. Structures containing six rental units or fewer must be occupied by persons and families of low and moderate income in at least one of the units in the case of a one-unit or two-unit rental structure, two of the units in the case of a three-unit rental structure, three of the units in the case of a four-unit rental structure, four of the units in the case of a five-unit or six-unit rental structure, and at least 75 percent of the rental units in the case of rental structures containing more than six units.

12 MCAR § 3.054 Eligible improvements.

A. Restrictions in general. Improvements made with rental rehabilitation loan proceeds shall be in compliance with 1.-3.

1. The structure must be brought into compliance with the standards established in Minn. Stat. § 116H.129, subd. 3, state energy conservation standards.

2. For structures less than 15 years old, only improvements necessary to bring the structure into compliance with the state energy conservation standards are eligible.

3. For structures more than 15 years old, permanent general improvements as described in B. are eligible if the structure has been or will be brought into compliance with the state energy conservation standards.

B. Permanent general improvements. Each improvement must be a permanent general improvement. Permanent general improvements shall include additions, alterations, renovations, or repairs upon or in connection with existing structures which materially preserve or improve the basic livability, safety, or utility of the property. However, conversions of structures, or portions thereof, from nonresidential use to residential use are not eligible. Permanent general improvements shall not include materials, fixtures, or landscaping of a type or quality exceeding that customarily used in the locality for properties of the same general type as the property to be improved.

C. Other codes and standards. Each improvement must be made in compliance with all applicable health, fire prevention, building, and housing codes and standards, but no application for a rental rehabilitation loan for property occupied by the owner shall be denied solely because the improvements will not bring the property into full compliance with all codes and standards, except that the property must be brought into compliance with state energy conservation standards as specified in A.1.

D. Public improvements. Rental rehabilitation loan proceeds shall not be used for the payment, wholly or in part, of assessments for public improvements; provided, however, that the proceeds may be used for improvements which will bring an individual sewage disposal system located on the property, including septic systems, into compliance with local, state, or federal environmental and sanitary standards.

E. Warranty. All contracts covering all or any portion of an improvement must contain an agency approved warranty of workmanship and materials.

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Department of Labor and Industry Occupational Safety and Health Division

Proposed Revisions to the Occupational Safety and Health Standards

Request for Comments

Please take notice that Russell B. Swanson, Commissioner of the Minnesota Department of Labor and Industry, has determined that the following revisions to the Occupational Safety and Health Codes shall be promulgated pursuant to Minn. Stat. § 182.655 (1980) modifying the Occupational Safety and Health Standard described below. This standard has already been proposed and adopted by the Federal Occupational Safety and Health Administration.

A copy of the standard is available by writing: Occupational Safety and Health Division, Minnesota Department of Labor and Industry, 444 Lafayette Road, St. Paul, Minnesota 55101.

Interested persons are hereby afforded a period of thirty (30) days to submit written data or comments on the proposed standard. Any person may file with the commissioner written objections to the proposed standard stating the grounds therefor; such person may request a public hearing on those objections.

Russell B. Swanson
Commissioner

Rules as Proposed

MOSHC 1 (8 MCAR § 1.7001) Minnesota Occupational Safety and Health Codes is hereby changed by incorporating and adopting by reference the following addition made to Title 29 of the Code of Federal Regulations:

Part 1910—Occupational Safety and Health Standards for General Industry as published in Part II, Volume 39, No. 125 of the Federal Register on October 24, 1978 and corrected on November 7, 1978.

“Subpart S—Electrical” published in the Federal Register, Volume 46, No. 11, on January 16, 1981. This standard establishes “Design Safety Standards for Electrical Systems” by revising Subpart S of 29 CFR Part 1910. The intent of this revised standard is to simplify and update the former standard as evidenced by the reduction from approximately 250,000 words in the National Electrical Code (NEC) to approximately 15,000 words in this standard. OSHA has determined that electrical hazards in the workplace pose a significant risk of injury or death to employees, and that these regulations, which draw heavily on the experience of the National Electrical Code, are reasonably necessary to provide protection from these hazards. The final rule places relevant requirements of the NEC into the text of the regulations, making it unnecessary for employers to refer to the NEC to determine their obligations and unnecessary for OSHA to continue to incorporate NEC by reference.

OSHA accommodates changes in technology without the need for constantly revising this subpart by writing this standard in “performance” terms rather than “specification” terms to allow alternative installation methods if they provide comparable safety to the employee.

This revised subpart covers electrical utilization systems; wiring design and protection; wiring methods, components and equipment; specific purpose equipment and installations; hazardous (classified) locations; and special systems. This revision was adopted by Federal OSHA on January 16, 1981.

The provisions of the 1978 National Electrical Code were incorporated by reference into the Minnesota Occupational Safety and Health Codes on July 7, 1980. When revised Subpart S is adopted, that incorporation by reference will be repealed.

Pollution Control Agency Air Quality Division

Proposed Rule 6 MCAR § 4.0041 Governing the Agency's Permit Program for the Growth or Expansion of Industry in Nonattainment Areas

Notice of Withdrawal of Previous Proposed Rule and Intent to Adopt a Rule without Public Hearing

Notice is hereby given that the Minnesota Pollution Control Agency (hereinafter, “agency”) withdraws its previously proposed offset rule. This rule was published at page 1603 of the April 13, 1981, *State Register* (5 S.R. 1603) and was identified as “14 MCAR § 4.0041 Offset Rule” at page 1604 of that *State Register*.

Notice is hereby given that the agency intends to adopt a revised version of the offset rule without public hearing. This revised version is published below and is identified as “6 MCAR § 4.0041 Offset rule.” 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 Minn. Stat. § 15.0412, subd. 4h (1980), as amended in 1981 Minn. Sess. Law Serv. (West) ch. 253, sec. 14.

If adopted, the proposed rule would establish a permit program for the expansion or growth of emission facilities in areas of the state identified as nonattainment areas. The permit conditions set out in the proposed rule will insure that a subject emission facility grows or expands in a manner that results in an improvement in air quality.

The agency is authorized to adopt this rule under Minn. Stat. § 116.07, specifically, Minn. Stat. § 116.07, subd. 4 and subd. 4a (1980).

The agency has prepared a statement of need and reasonableness that describes the agency's reasons for each provision of the proposed rule and identifies the data and information relied upon by the agency to support the proposed rule. A copy of the statement of need and reasonableness and of the proposed rule are available and may be obtained by contacting:

Mr. Douglas Benson
Division of Air Quality
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113
[Telephone: (612) 296-7740].

Persons interested in this rule have until September 25, 1981, to submit comments on the proposed rule. In order to be considered, the comments must be written and must be received by the agency by 4:30 p.m. on September 25, 1981. The proposed rule may be modified if the data and views submitted to the agency warrant modifications and the modifications do not result in a substantial change in the proposed language of the rule.

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 it adopts the proposed rule. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 15.0412, subds. 4-4f, as amended in 1981 Minn. Sess. Law Serv. (West) ch. 253, sec. 8-13.

Persons who wish to submit comments or to request a public hearing should submit such comments or requests to Mr. Douglas Benson at the address above. The agency asks that persons requesting a public hearing identify the particular provisions they object to, their suggested modifications to the proposed rule and the reasons and data relied on to support the suggested modifications.

In the event a hearing is required, a new notice of hearing will be mailed out and published in the *State Register*. Unless seven or more persons submit written requests for a public hearing, a public hearing will not be held and the agency will consider the adoption of the proposed rule at the October, 1981, agency meeting or as soon thereafter as possible. Persons who wish to receive a copy of the final rule as proposed for adoption should submit a written statement of such request to Mr. Douglas Benson at the address noted above.

After adopting the final rule without a public hearing, the agency will submit the proposed rule, this notice, the statement of need and reasonableness, all written comments received, and the final rule as adopted 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 should submit a written statement of such request to Mr. Douglas Benson at the address noted above.

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.

(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.

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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.

August 10, 1981

Louis Breimhurst, Executive Director
Minnesota Pollution Control Agency

Rule as Proposed (all new material)

6 MCAR § 4.0041 Offset rule.

A. Purpose. The purpose of this rule is to establish conditions to be included in permits which the agency issues, in accordance with the requirements of Minn. Stat. § 116.07, subd. 4a, to persons who propose to construct or modify certain emission facilities in nonattainment areas. This rule may be known as the "offset rule."

B. Applicability.

1. Except as provided in 2., this rule applies to persons who propose to construct or modify a subject emission facility, as defined in C.18.

2. This rule does not apply in nonattainment areas of the state for which a plan has been developed and approved by the agency and the United States Environmental Protection Agency as providing sufficient emission reductions to both:

- a. Bring the area into attainment with the national primary ambient air quality standards by December 31, 1982; and
- b. Allow for an increase in emissions in the nonattainment area during that period of time the area is designated nonattainment.

C. Definitions. The definitions in rule APC 2 of the Minnesota Pollution Control Agency apply to the terms used in this rule unless the terms are defined herein. For the purposes of this rule, the following words have the meanings defined below.

1. "Air quality control region" means any of the seven geographic areas specified by the agency for administrative purposes based on jurisdictional boundaries, urban and industrial concentrations, climate, meteorology, topography, and other factors affecting the interchange and diffusion of pollutants in the atmosphere. These are identified in 40 Code of Federal Regulations, Section 52.1221 (1980).

2. "Criteria pollutant" means any of the following: sulfur dioxide; particulate matter; nitrogen oxides; carbon monoxide; ozone; nonmethane hydrocarbons; and lead.

3. "Fugitive emissions" means those pollutant discharges which do not pass through a stack, chimney, vent, or other functionally equivalent opening and which discharges are quantifiable by methods in "Compilation of Air Pollutant Emission Factors" (OAQPS AP-42, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, 1980), or methods that the director determines are comparably reliable.

4. "Gross increase in emissions" means the gross number of new tons per year of a nonattainment criteria pollutant that could be legally discharged from a subject emission facility. In determining the gross increase in emissions, the director shall include all nonattainment criteria pollutant discharges that the subject emission facility could emit but shall give a credit for all legally enforceable restrictions on or reductions of the nonattainment criteria pollutant discharges from the subject emission facility (such as a restriction in nonattainment criteria pollutant discharges that would result from installing required pollution control equipment). No credit shall be allowed for any other reductions of or restrictions on nonattainment criteria pollutant discharges.

5. "Lowest achievable emission rate" means, for any emission facility, the most stringent emission limitation or standard of performance that is achievable in practice by that class or category of emission facility. In no case shall the lowest achievable emission rate be construed to allow emissions in excess of any applicable standard. The emission limitation specified in any other state's plan shall be presumed to be achievable in practice unless a person demonstrates to the director that the emission limitation or standard of performance is not achievable for reasons other than economic costs.

6. "Modification" or "modified" means any physical change in, change in the method of operation of, or addition to an emission facility which would result in an increase in emissions. As used in this rule, the term modification or modified does not include:

- a. Routine maintenance, repair or replacement;
- b. Changes in method or hours of operation unless the changes are disallowed by an agency rule, stipulation agreement, permit or order, or by a court order;
- c. Increases in production rates unless the increases exceed the operating design capacity of any emission facility;
- d. Use of a fuel generated from municipal solid waste in a steam generating unit;

e. A change in ownership; or

f. Use of a fuel or raw material in an emission facility that:

(1) Was designed to accommodate the use prior to December 21, 1976; or

(2) Is commencing or has commenced the fuel or raw material use pursuant to an order under sections 2(a) and (b) of the Energy Supply and Environment Coordination Act of 1974, 15 United States Code, Section 792 (1980), under a natural gas curtailment plan pursuant to the Federal Power Act, 16 United States Code, Section 791a et seq. (1980), or under section 125 of the Clean Air Act of 1977, 42 United States Code, Section 7425 (1980).

7. "National ambient air quality standards" means the primary (health related) and secondary (welfare related) pollutant concentrations established by the Administrator of the United States Environmental Protection Agency, pursuant to section 109 of the Clean Air Act of 1977, 42 United States Code, Section 7409 (1980).

8. "Net air quality benefit" means that, in the area that would be affected by the subject emission facility, offsets proposed to be obtained by a person pursuant to D.1. are sufficient to result in a net reduction, on both a pounds per hour and tons per year basis, in both the rate of emissions and the concentration of nonattainment criteria pollutants.

a. The area that would be affected by the subject emission facility is defined as follows:

(1) For subject emission facilities proposed to be located in carbon monoxide, nitrogen oxide, nonmethane hydrocarbon, or ozone nonattainment areas, the area that would be affected by the subject emission facility is the air quality control region in which the subject emission facility is proposed to be located; and

(2) For subject emission facilities proposed to be located in sulfur dioxide, particulate matter, or lead nonattainment areas, the area that would be affected by the subject emission facility is the area that the modeling analysis, performed in accordance with D.2., demonstrates to be affected by the subject emission facility.

b. The director shall find that there is a net reduction in both the rate of emissions and the concentration of nonattainment criteria pollutants if Y divided by X is equal to or greater than 1.1, where:

(1) X = the restricted emissions to which the subject emission facility will be limited and

(2) Y = the offsets to be provided by the person proposing the subject emission facility.

9. "Net increase in emissions" means the net number of new tons per year of a nonattainment criteria pollutant that could be legally discharged from a subject emission facility. In determining the net increase in emissions, the director

a. Shall include all nonattainment criteria pollutant discharges that the subject emission facility could emit but

b. Shall give a credit for

(1) All legally enforceable restrictions on or reductions of the nonattainment criteria pollutant discharges from the subject emission facility (such as a restriction on nonattainment criteria pollutant discharges that would result from installing required pollution control equipment); and

(2) Any other restrictions on or reductions of the nonattainment criteria pollutant discharges that the person proposing the subject emission facility both obtains within the same plant and agrees to include within the terms of any permit issued for the subject emission facility.

10. "Nonattainment area" means any geographic region that has been designated by the agency as violating a state or national ambient air quality standard or by the United States Environmental Protection Agency as violating a national ambient air quality standard.

11. "Nonattainment criteria pollutants" means as follows:

a. For all nonattainment areas except ozone nonattainment areas, nonattainment criteria pollutant means the criteria pollutant for which an area is designated nonattainment; and

b. For ozone nonattainment areas, nonattainment criteria pollutant means nonmethane hydrocarbons.

12. "Offsets" means any documented reductions in restricted emissions of nonattainment criteria pollutants that:

a. Are legally enforceable and

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b. Are achieved after August 7, 1977, or after the date of completion of the emission inventory used by the agency in developing the most recent revision to the plan, whichever is later.

13. "Plan" or "state implementation plan" means any state air quality control laws, rules, permits, stipulation agreements, and procedures, developed to insure compliance with state and national ambient air quality standards.

14. "Plant" means any assemblage of buildings, structures or emission facilities, on one or more adjacent or contiguous properties that are under common ownership or control and that are identified by the same two digit Standard Industrial Code as specified in the Standard Industrial Classification Manual, 1972, as prepared by the Executive Office of the President, Office of Management and Budget and as amended by the 1977 Supplement.

15. "Resource recovery facility" means any emission facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. An energy conversion facility must utilize solid waste to provide more than 50 percent of the heat input to be considered a resource recovery facility under this rule. In calculating whether solid waste is used to provide more than 50 percent of the heat input, a 30-day rolling average shall be used.

16. "Restricted emissions" means the maximum nonattainment criteria pollutant discharges, including fugitive emissions, which may be emitted from an emission facility based on the most stringent of the following:

- a. Any emission standard or performance standard established in an applicable rule;
- b. Any emission standard or performance standard established in an applicable installation or operating permit or stipulation agreement;
- c. Any emission rate resulting from operation at design efficiency of air pollution control equipment for an emission facility;
- d. Any emission rate used as the basis for a revision to this state's plan unless such a rate is shown to be in error within 90 days of the effective date of this rule in which case the corrected rate shall be used; or
- e. The emission rate to which the subject emission facility is physically limited.

17. "State ambient air quality standards" means the pollutant concentrations in rule APC 1 of the Minnesota Pollution Control Agency.

18. "Subject emission facility" means:

- a. An emission facility that is proposed to be constructed or modified
 - (1) In any area designated a nonattainment area on the date the agency receives the completed permit application for the proposed construction or modification and
 - (2) The construction or modification of which will result in a gross increase in emissions of at least 100 tons per year of a nonattainment criteria pollutant; or
- b. An emission facility that is proposed to be modified
 - (1) In any area designated a nonattainment area on the date the agency receives the completed permit application for the proposed modification;
 - (2) Has existing restricted emissions of at least 100 tons per year of the nonattainment criteria pollutant; and
 - (3) The modification of which will result in a significant net increase in emissions of the nonattainment criteria pollutant. A net increase in emissions is significant if the rate of the increase is at least the rate specified below:

(a) carbon monoxide:	100 tons per year;
(b) sulfur dioxide:	40 tons per year;
(c) nitrogen oxides:	40 tons per year;
(d) nonmethane hydrocarbons:	40 tons per year;
(e) particulate matter:	25 tons per year;
(f) lead:	0.6 tons per year; or
- c. A plant that is proposed to be modified
 - (1) In any area designated a nonattainment area on the date the agency receives the completed permit application for the proposed modification and
 - (2) Which proposed modification, when considered in aggregate with X, will result in a significant net increase in emissions of the nonattainment criteria pollutant, where:

(a) X = the gross increase in nonattainment criteria pollutant discharges resulting from any construction or modification of the plant which was permitted by the agency during the following time period: any time both within the 18 months immediately prior to the date the agency receives the completed permit application for the proposed modification and during which the area within which the plant is located was designated a nonattainment area.

(b) A net increase in emissions is significant if the rate of the increase is at least the rate specified in b.(3).

19. "Thirty-day rolling average" means the arithmetic mean of daily values calculated with each new day as the last of a 30-day period; provided however, that the arithmetic mean of daily values obtained during times of breakdown shall be excluded from the calculation.

D. Conditions for permit. Except as provided in 5., the agency shall not issue permits for any subject emission facility unless the permit applicant has satisfied the conditions in 1.-3. All permits issued for subject emission facilities shall contain the conditions set forth in 4.

1. Requirement to get offsets. Prior to constructing or modifying a subject emission facility, except an emission facility that is intended to be located in a nonattainment area for less than two years, the owner or operator of that facility shall obtain offsets for all emissions of nonattainment criteria pollutants that will result from the construction or modification. An emission facility that was intended to be located in the nonattainment area for less than two years but that remains for two years or more shall be subject to all the applicable requirements of this rule.

2. Requirement to demonstrate a net air quality benefit. Prior to constructing or modifying a subject emission facility, the permit applicant shall demonstrate that the offsets to be provided are sufficient to result in a net air quality benefit, as defined in C.8.

a. For subject emission facilities located or proposed to be located in carbon monoxide, nitrogen oxide, nonmethane hydrocarbon or ozone nonattainment areas, a permit applicant shall not be required to perform a modeling analysis to demonstrate net air quality benefit but shall submit to the agency a detailed statement of all information that the director needs in order to be able to determine whether a net air quality benefit will result from the construction or modification.

b. For subject emission facilities located or proposed to be located in sulfur dioxide or particulate matter nonattainment areas, a permit applicant shall perform a modeling analysis to determine whether the offsets to be provided are sufficient to result in a net air quality benefit, shall analyze the data obtained and shall submit to the agency the modeling data, the modeling analyses, a detailed description of the system of continuous emission reduction planned, and emission estimates made, together with any other information that the director needs in order to be able to determine whether a new air quality benefit will result from the construction or modification. All modeling shall be performed in accordance with "Guidelines on Air Quality Models" (OAQPS No. 1.2-080, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, 1978) or methods that the director finds to be comparably reliable.

3. Requirement to certify compliance. Prior to constructing or modifying a subject emission facility, the permit applicant shall certify that all emission facilities in Minnesota which are either owned or operated in whole or in part by the same person for whom the application is made or which are operated under the common control of the same person for whom the application is made are in compliance or are on a compliance schedule.

4. Permit conditions. Any permit issued for a subject emission facility shall include a provision that

a. Limits emissions from the facility as follows:

(1) The owner or operator of a subject emission facility shall install technology that restricts emissions from the facility to the lowest achievable emission rate of the nonattainment criteria pollutants for which the facility is subject to this rule. The permit shall expressly describe the lowest achievable emission rate for the class or category of emission facility into which the subject emission facility falls.

(2) The director shall waive the requirement of (1) if the director determines that a performance standard based on design, equipment, work practice, operation or other alternative standard is more practicable than an emission rate.

b. States that the offsets that the subject emission facility has obtained in order to be issued a permit under this rule are legally enforceable by the agency and by the United States Environmental Protection Agency.

5. Exception from requirement to get offsets.

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a. A permit applicant proposing to construct or modify a resource recovery facility burning municipal solid waste shall not be required to obtain sufficient offsets to demonstrate a net air quality benefit if the director determines that the permit applicant

(1) Has made its best efforts to obtain sufficient offsets to comply with this rule and has demonstrated that such efforts were unsuccessful;

(2) Has obtained all available offsets; and

(3) Agrees to continue to seek the necessary offsets and apply them when they become available.

b. The director shall determine that the permit applicant has made its best efforts if the permit applicant demonstrates that the requirement to obtain sufficient offsets creates an undue economic hardship for the permit applicant or is technologically unachievable.

(1) If the permit applicant seeks to obtain an exception on the grounds of undue economic hardship, it shall submit to the director the information set out in rule MPCA 6(b)(5) of the Minnesota Pollution Control Agency.

(2) If the permit applicant seeks to obtain an exception on the grounds of technological unachievability, it shall submit to the director the information set out in rule MPCA 6(b)(6) of the Minnesota Pollution Control Agency.

E. Banking.

1. A person who has obtained a reduction in the amount of restricted emissions emitted from an emission facility shall be permitted to bank that reduction for future use as an offset (as allowed by this rule) under the following circumstances, limitations and conditions.

2. This rule authorizes a person to bank only those reductions in emissions that:

a. Were obtained after August 7, 1977, but prior to the effective date of this rule and that are reported to the agency within six months of the effective date of this rule; or

b. Are obtained after the effective date of this rule.

3. In order to be eligible for banking, the emission reductions shall be final and enforceable, either through the terms of a stipulation agreement, permit, or other legal instrument obtained by an owner of a facility or through a permanent, physical alteration of the facility.

4. In order to be able to bank reductions in emissions, the person obtaining those reductions shall report to the director the amount and location of the banked emissions and the time at which the banked emissions have become permanently and finally implemented. The report shall be made within six months after the reductions have become final and enforceable or within six months after this rule has been adopted, whichever is later.

F. Limitation on use of offsets. To the extent that this rule creates a program for the use of offsets or allows persons to purchase or obtain offsets, this rule shall not be construed to create a property right that requires compensation from the state should offsets later become unuseable due to a change in an applicable emission limitation or standard of the agency.

6 MCAR § 4.0041 C.13. “. . . any state air quality control laws, rules, permits, stipulation agreements, and procedures developed to insure compliance with state and national ambient air quality standards.

6 MCAR § 4.0041 C.14. Standard Industrial Classification Manual, 1972 and 1977 Supplement.

6 MCAR § 4.0041 C.16. “. . . maximum nonattainment criteria pollutant discharges . . . which may be emitted from an emission facility based on the most stringent of the following:

a. any emission standard or performance standard established in an applicable rule . . . ”

6 MCAR § 4.0041 C.17. Rule APC 1 of the Minnesota Pollution Control Agency

6 MCAR § 4.0041 D.2.b. “Guidelines on Air Quality Models.” (OAQPS No. 1.2-080, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, 1978).

6 MCAR § 4.0041 D.5.b.(1) Rule MPCA 6 (b) (5)

6 MCAR § 4.0041 D.5.b.(2) Rule MPCA 6 (b) (6)

Department of Public Welfare

Proposed Rule Governing Reimbursement for Cost of Care of Patients of a State Hospital (12 MCAR § 2.027)

Notice of Hearing

A public hearing concerning the above entitled matter will be held in Room A, 4th Floor, Centennial Office Building, St. Paul, Minnesota 55155 on October 15, 1981 commencing at 9:00 a.m. and continuing until all interested persons have an opportunity to be heard. The proposed rule may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rule, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to George Beck, Hearing Examiner, Office of Administrative Hearings, 1745 University Avenue, Room 300, St. Paul, Minnesota 55104, (612) 296-8108 either before the hearing or within five working days after the public hearing ends. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

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

The purpose of 12 MCAR § 2.027 is to establish the procedures and standards by which the Commissioner of Public Welfare shall carry out his responsibility under Minn. Stat. § 246.50 through § 246.55 governing reimbursement for cost of care of state hospital residents.

The rule has seven major sections: A. Applications; B. Definition; C. Determination Procedure; D. Sources of Income considered to be patient resources; E. Net income, patient; F. Property, patient; and G. Ability to pay, responsible relative.

Section A. *Application* cites the state statutes upon which the rule is based.

Section B. contains *definitions* which are unique to this rule.

Section C. specifies the *determination procedure*. The provisions include who shall be interviewed, the times of determination, verifications and consents required. The person is requested to complete, verify and sign a financial information form. Should the patient refuse to complete the financial information form, the rule states he shall pay the full cost of care as stated under Minn. Stat. § 246.51. This section requires the Department to send to the person and his guardian or conservator a Determination Order showing the amount to be paid for care at a state hospital. There is a provision for requesting a review and appeal of the Determination Order.

Section D. *Sources of Income* considered to be patient resources specifies that the patient's ability to pay shall be based on his insurance benefits, net income and value of property owned. Insurance benefits received on behalf of the patient will be deducted from the amount owed by the patient for cost of care. When the insurance benefits pay less than the per diem, the ability of the patient to pay the remaining amount shall be determined from his net income and non-excluded property.

The major part of Section E. *Net income, patient* describes the procedure to determine the net income of the patient.

Section F. *Property, patient* defines the property which is exempt from consideration as a resource in determining the patient's ability to pay his cost of care at a state hospital. For example, a patient may own many personal items and in addition have liquid assets of \$2,000 if single or \$10,000 if married. This section permits the Department to waive consideration of excess property in the case of undue hardship. There are restrictions on the transfer of property by the patient.

Section G. *Ability to pay, responsible relative* describes how to determine the ability of responsible relatives of the patient to pay cost of care not met by the patient's resources. The relative's ability to pay is based on his gross annual income and number

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PROPOSED RULES

of dependents. For example, a responsible relative with an income of less than \$11,000 is not required to pay for the patient's care. When a relative chooses not to provide the Department with a copy of his current income tax report he shall be assumed to have income in excess of \$11,000 and shall be required to pay the statutory amount of 10% of the cost of care.

The agency's authority to adopt the proposed rule is contained in Minn. Stat. § 253A.21, subd. 6.

The Department estimates that there will be no cost to local public bodies to implement this rule for the two years immediately following its adoption within the meaning of Minn. Stat. § 15.0412, subd. 7.

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to Jane Turner, Bureau of Support Services, Department of Public Welfare, Centennial Building, St. Paul, Minnesota 55155, telephone (612) 296-4415. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rule, contact Jane Turner.

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

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

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

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

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

July 31, 1981

Arthur E. Noot, Commissioner
Department of Public Welfare

Rule as Proposed (all new material)

12 MCAR § 2.027 Reimbursement for cost of care of patients in a state hospital.

A. Application. Rule 12 MCAR § 2.027 governs the administration of the State Hospital Cost of Care Program in the Department of Public Welfare. The provisions of this rule are to be read in conjunction with Minn. Stat. §§ 246.50-246.55 and other rules of the department. No person shall be denied state hospital services because of inability to pay the cost of care.

B. Definitions. For purposes of 12 MCAR § 2.027, the following terms have the meanings given them.

1. Business expense. "Business expense" means the cost of producing income from a business or farm. Capital expenditures and depreciation are not included as part of a business expense.

2. Capital expenditure. "Capital expenditure" means an investment made to purchase property or to make an improvement to property which has a useful life of more than one year.

3. Cost of care or per diem. "Cost of care" or "per diem" means the daily per capita cost of providing care to state hospital patients or the cost of outpatient services calculated in accordance with Minn. Stat. § 246.50, subd. 5.

4. Department. "Department" means the Minnesota Department of Public Welfare.

5. Dependent. "Dependent" means an individual whom a person is entitled to claim as a dependent on the Minnesota state income tax return. One person shall not be claimed as a dependent by two individuals. When two or more individuals are entitled to claim the dependent, the dependent shall be allocated equally among the individuals unless the individuals choose another allocation.

6. Gross income or gross earnings. "Gross income" or "gross earnings" means all income received including in kind income.

7. Homestead. "Homestead" means the house owned and occupied by the patient as his dwelling place, together with

the land upon which it is situated and an area no greater than two contiguous lots in a platted and laid out city or town or the smallest parcel allowed under applicable zoning regulations in unplatted land.

8. In kind income. "In kind income" means the annual sum of resources other than money received by a patient or dependent used to maintain the patient or the patient's family and having a value of more than \$100.

9. Inpatient. "Inpatient" means a person who occupies a bed in the hospital for the purpose of observation, care, diagnosis, or treatment.

10. Lump sum payment. "Lump sum payment" means income received at one time. It includes windfalls, repayment of debts, payments from sale of property, tax refunds, gifts, and inheritances.

11. Net income. "Net income" means the amount of income remaining after deductions and exclusions from gross income as provided in this rule.

12. Outpatient. "Outpatient" means a person who makes use of the services of the state hospital but does not occupy a regular hospital bed, as set forth in Minn. Stat. § 246.50, subd. 5.

13. Patient. "Patient" means any individual receiving observation, diagnosis, care or treatment in a state hospital.

14. Patient's financial information file. "Patient's financial information file" means financial data collected for the purpose of determining ability of the patient or the responsible relative to pay the patient's cost of care.

15. Person. "Person" means a patient or responsible relative.

16. Personal property. "Personal property" means all property which is not real property.

17. Property. "Property" means everything owned by a person, including money.

18. Real property. "Real property" means land, including the buildings and improvements on it, and its natural assets, such as minerals and water.

19. Resource. "Resource" means any property or benefit that is or may be available to pay for the cost of care of the patient.

20. Responsible relative. "Responsible relative" means the spouse, the parents of minor children, and in the case of the mentally ill, the adult children of a patient, in that order of liability for cost of care.

21. State hospital. "State hospital" means a state hospital for mentally ill, chemically dependent, or mentally retarded persons.

C. Determination procedure.

1. Time of determination.

a. Ability to pay the cost of care shall be determined when the patient is admitted, when there is or may be a change in the patient's financial status, when the patient has been hospitalized for 120 days or more, when the patient is being discharged and when the financial status has not been reviewed for one year.

b. Within the six-year period after the date of a patient's discharge from the hospital, the department from time to time may, and upon request of the patient shall, reevaluate the patient's ability to pay any balance of the charge for cost of care.

2. Persons interviewed.

a. The patient shall be interviewed to determine ability to pay except when the management of the patient's financial affairs is in the hands of another person, such as a guardian, custodian, conservator or the parent of a minor child, or when the patient is incapable of participating in the interview process because of the patient's illness or disability. When the patient is not interviewed, the reason shall be noted in the patient's financial information file.

b. When the patient cannot be interviewed, the person interviewed shall be the patient's legal guardian, the conservator, the parents of a minor child, a spouse, a relative of the patient, a trustee, a representative payee, the patient's legal representative, or a county social worker.

c. If the patient is unable to pay the full cost of the per diem, the responsible relative shall be interviewed.

3. Financial interview. When a person is interviewed, the department shall:

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a. Inform the person that he or she may choose an individual to assist in the determination process and any other contact with the department by authorizing such assistance in writing;

b. Provide the person with an informational pamphlet on cost of care and review with the person how the department determines the charges for the patient's cost of care;

c. Inform the person that financial information obtained from the person will not be released without the person's written consent except pursuant to Minn. Stat. §§ 15.1611-15.1698;

d. Inform the person of county, state, and federal financial programs which may assist in paying the cost of care and meeting personal and family needs; and

e. Request the person to complete and sign a financial information form provided by the department and to provide verification of financial information.

4. Verification required. This process shall be used to substantiate information entered on the signed financial information form. The following information shall be verified:

a. The patient's income, insurance benefits, property, deductions allowed to pay previously incurred debts, and the number of dependents claimed; and

b. Other information relevant to the person's ability to pay if the reimbursement officer has reason to question the accuracy of the information.

5. Consent forms. The person shall provide the reimbursement officer with a separate signed consent form for each verification which must be obtained from a third party. The name, date, and the information authorized shall be on the consent form prior to the person's signature. A blanket authorization may be used for a group of related agencies such as banks or insurance companies.

6. Refusal to complete financial information form. Failure or refusal to complete and sign the required financial information form, apply insurance benefits received to pay the cost of care, or provide signatures required to assign third party benefits and release medical and financial information or verification shall result in the determination that the person is able to pay the full cost of care permitted under Minn. Stat. § 246.51 until the person takes the required action.

7. Determination order. A determination order and notice of rate showing the per diem and the amount the person is ordered to pay shall be sent by the department to the person and the person's guardian or conservator.

8. Review of determination. A person who disagrees with the department's determination of ability to pay may request that the department review its decision. The request shall be made in writing within 15 calendar days of the date the order was mailed. The request for review shall include the reasons for disagreeing with the determination order. A request for review shall not extend the time for appeal given in Minn. Stat. § 246.55.

9. Appeal of determination. A person may also appeal from the determination order pursuant to Minn. Stat. § 246.55.

D. Sources of income considered to be patient resources.

1. In general. The patient's ability to pay shall be determined from insurance benefits, net income, and value of property owned.

2. Insurance benefits.

a. When the investigation of the patient's ability to pay discloses eligibility for insurance benefits, the patient shall be determined to be able to pay the cost of care provided to the full extent of insurance benefits available. The dollar amount of this coverage need not be specified in the determination order.

b. When the insurance benefits pay less than the per diem, the ability of the patient to pay the remaining part of the per diem shall be determined from the patient's net income and nonexcluded property.

3. Net income. The patient's entire net income remaining after the deductions from gross income have been made in accordance with E.4. shall be available to pay the cost of care and shall be converted to a daily amount.

4. Property. As long as the patient owns property not excluded under F., the patient shall be determined able to pay the full cost of care.

E. Net income; patient.

1. In kind income. The fair market value of in kind income included in the calculation of the patient's net income shall be established by any reliable means including, but not limited to, published reference documents, statements from merchants, or appraisals.

2. Lump sums. Lump sums, other than excluded property, shall be treated as income in the month received and thereafter shall be treated as property. The patient shall report the lump sum to the department within ten working days.

3. Seasonal income from business or farm. Average monthly amounts for gross income and the deductions allowed in 4. shall be used to calculate the net monthly income of farmers and other individuals who experience seasonal variations in income and business expenses.

4. Deductions from gross income to arrive at net income. The following items shall be deducted from the patient's monthly gross income:

- a. State and federal income tax payments, including back assessments;
- b. Payments made under the Federal Insurance Contributions Act and Supplemental Medical Insurance;
- c. Child care costs paid by the patient and not reimbursed from any source;
- d. Support payments ordered by a court and actually paid. If this deduction is taken, the individual for whom support is paid shall not be included as a member of the patient's household in determining the monthly household living allowance in Exhibit 12 MCAR § 2.027 E.4.n.;
- e. Guardianship fees;
- f. Monthly payments on previously incurred bills for medical, dental and hospital care, car payments, house payments or rent, and utilities. The deduction allowed shall be the lesser of the sum of the actual monthly payments or \$100 per month;
- g. Personal expenses of employment, including mandatory retirement fund deductions, cost of transportation to and from work, work uniforms, union dues, dues of a professional association required for employment, and cost of tools and equipment used on the job. The amount deducted for costs of transportation to and from work shall be either the actual cost of public transportation or a per mile reimbursement as paid by the state to an employee using a personal car on state business for actual miles travelled;
- h. Hospital and medical insurance premiums;
- i. Business and farm expenses as reported on United States income tax returns. The cost of repairs and upkeep of income producing property which may be deducted shall be limited, on an annual basis, to two percent of the value of the property;
- j. An allowance of \$71 per month per boarder, \$39 per month per roomer and \$130 per month for each person who is both a roomer and boarder. This amount shall be updated periodically by the percentage the legislature authorizes for public assistance grants;
- k. A personal needs and clothing allowance of the inpatient in the amount determined in accordance with Minn. Stat. § 256B.35 for persons receiving public assistance grants;
- l. Sixty percent of the income earned from child care in one's own home or, if the patient chooses, the actual itemized business expenses incurred in providing child care subject to the limitations provided in B.1., B.2., and i.;
- m. A housing allowance for inpatients. An inpatient without dependents living in his or her home shall be allowed the actual cost of his or her housing and utilities in the community for the month of admission and a period of three months of continuous hospitalization subsequent to that admission. An inpatient with dependents living in his or her home shall be allowed a pro rata share of his or her household's total actual housing costs during the month of admission and for a period of three months of continuous hospitalization subsequent to that admission. This housing allowance shall be available to the inpatient only twice in any one calendar year regardless of the number of times the patient is admitted to a state hospital in that calendar year;
- n. A monthly household living allowance calculated according to the schedule in Exhibit 12 MCAR § 2.027 E.4.n.

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Exhibit 12 MCAR § 2.027 E.4.n.

Number in Household	Monthly Household Living Allowance
1	\$ 356
2	\$ 534
3	\$ 712
4	\$ 890
5	\$1,068
6	\$1,246
over 6	\$1,246 plus \$178 for each additional person

The number in household of an inpatient shall be the number of dependents the patient claims. The number in household of an outpatient shall be the patient plus the number of dependents the patient claims. The housing allowance for the outpatient is included in the above budgets.

By July 1 of each year, the department shall adjust the monthly household living allowance to reflect the annual percentage change reported in the most recent consumer price index, for all urban consumers in the Minneapolis-St. Paul area. The consumer price index shall be as published by the Bureau of Labor Statistics, U.S. Department of Labor. The year 1967 is the "standard reference base period".

F. Property; patient. Property shall be available to pay for the cost of the patient's care to the extent owned by the patient, subject to the exclusions in 1.-6.

1. Real property.

a. The value of the patient's homestead shall be excluded from consideration as a resource if the patient remains in the hospital for less than 18 months, if the spouse or a minor child lives in it, or if it is rented while the patient is hospitalized.

b. The value of real property owned by the patient which produces a net income shall be excluded from consideration as a resource. Real property which the patient is selling on a contract for deed and for which the patient receives payments shall be considered income producing property.

2. Personal property. The value of the following personal property shall be excluded from consideration as a resource:

a. The value of personal property other than stocks, bonds, and money market certificates which is owned by the patient and which yields or contributes to the production of a net income;

b. Up to \$2,000 in cash or liquid assets, for a single patient;

c. Up to \$10,000 in cash or liquid assets, for a married couple;

d. Indian claim payments made by Congress to compensate for tribal land taken by the federal government;

e. Minnesota Housing Finance Agency loans for nine months after issuance;

f. One vehicle;

g. Household goods and furniture;

h. Clothing;

i. Mobile home used as home by the patient or the patient's dependents;

j. Personal jewelry;

k. Bicycles;

l. Cameras;

m. Life insurance owned by the patient up to a cash surrender value of \$1,500;

n. Trust funds, unless the trustee is required or has discretion to use the funds for paying the cost of care or the funds are designated for care, support, maintenance, or medical care; and

o. Burial expenses, including a burial lot and a prepaid burial account up to \$750 plus \$200 accrued interest.

3. Waiver of property as a resource.

a. The department shall waive consideration of property in excess of the exemptions when liquidation would result in undue hardship or the patient's equity cannot be converted, or when the spouse or dependent child needs a second vehicle as a means of transportation to obtain medical care, training for employment or employment;

b. Each case shall be referred to the department's legal advisor and decided on the merits of the facts recorded in the patient's financial information file to substantiate the circumstances;

c. The decision to waive the consideration shall be examined at least annually for changes in market value, opportunity for sale or mortgage, and other pertinent factors.

4. Transfer of property. The market value of any property transferred, less any value received, shall be treated as an available resource if the property is valued at more than \$1,000 and if the transfer is for less than the market value and if the transfer is made:

a. During or after hospitalization in a state hospital; or

b. Prior to hospitalization in a state hospital, but with intent to avoid the use of the property to pay for hospital care or in determining ability to pay for hospital care; or

c. Prior to hospitalization in a state hospital but after planning for placement in the state hospital has begun.

5. Documentation required. When property described in 4. is transferred during the period between two years prior to admission to a state hospital and six years following discharge, the patient or the patient's representative shall provide documentation of the circumstances of the transfer.

6. Exemption. The provisions of 4. and 5. do not apply when the patient is not continuing to accrue charges and the full cost of care has been paid. The provisions of 4. and 5. do not apply to property excluded from consideration under other provisions of 12 MCAR § 2.027.

G. Ability to pay; responsible relative.

1. In general. When the patient is determined not to be able to pay the full cost of care, the department shall determine the ability of each responsible relative of the patient to pay the amount permitted by statute.

2. Interview. The responsible relative shall be interviewed to obtain and verify financial information.

3. Insurance benefits. The responsible relative shall inform the department about dependent benefits from hospital and medical insurance carried by the relative.

a. Dependent benefits to a patient shall be considered the same as the patient's insurance.

b. Any difference between benefits to a patient and others covered by the responsible relative's policy shall be verified.

c. The responsible relative shall complete and sign the forms necessary to verify patient eligibility for benefits and assign benefits to pay the cost of care of the patient.

d. When insurance benefits are paid under a policy having premiums paid by the responsible relative, the amount of the premium paid by the responsible relative may be deducted from the responsible relative's total obligation to pay.

4. Liability of responsible relatives. When the sum of the benefits described in 3. and the patient's other resources pay less than the full cost of care, the ability of each responsible relative to pay shall be determined in the statutory order of liability for cost of care. When two or more responsible relatives have the same order of liability for cost of care, a determination shall be made for each one. This provision applies to parents of a minor child and to the adult children of a mentally ill patient.

5. Limitations on relative's ability to pay. The ability of a responsible relative to pay shall be determined from the annual gross earnings of the responsible relative subject to the limitations in a.-e.

a. A responsible relative who verifies annual gross earnings of less than \$11,000 shall be determined not able to pay the cost of care.

b. No responsible relative who is a resident of Minnesota shall be ordered to pay more than ten percent of the cost of care for each patient.

c. The department shall require payment of the full cost of care for a child if the child's parents and guardians all live outside Minnesota.

d. Only the annual gross earnings of the spouse of a patient shall be used to determine the spouse's ability to pay.

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e. When a responsible relative is married to a person who is not a responsible relative, only the annual gross earnings of the responsible relative shall be used to determine the responsible relative's ability to pay.

6. Determination of relative's ability to pay.

a. A responsible relative who provides the department a copy of the income tax return filed in the current year shall have his or her ability to pay determined from the table in Exhibit 12 MCAR § 2.027 G.7. For purposes of this table, household size consists of the responsible relative and the responsible relative's dependents living in the responsible relative's household, other than the patient.

b. A responsible relative who chooses not to provide the department a copy of the income tax return filed in the current year shall be assumed to have an income in excess of \$11,000 and to be able to pay the statutory limit of ten percent of the cost of care. The relative shall be requested to sign an agreement to pay the balance of the patient's cost of care up to the ten percent limit.

7. Exhibit 12 MCAR § 2.027 G.7. shall be used to determine a relative's ability to pay, as described in 6.

Exhibit 12 MCAR § 2.027 G.7.

Daily Payment Based on Ability to Pay According to Household Size and Annual Gross Earnings of Responsible Relatives

Annual Gross
Earnings of
Responsible
Relative

	Household Size									
	1	2	3	4	5	6	7	8	9	10
11,000-12,999	1.00	-	-	-	-	-	-	-	-	-
13,000-14,999	1.50	.50	-	-	-	-	-	-	-	-
15,000-16,999	2.00	1.00	-	-	-	-	-	-	-	-
17,000-18,999	2.50	1.50	.50	-	-	-	-	-	-	-
19,000-20,999	3.00	2.00	1.00	-	-	-	-	-	-	-
21,000-22,999	3.50	2.50	1.50	.50	-	-	-	-	-	-
23,000-24,999	4.00	3.00	2.00	1.00	-	-	-	-	-	-
25,000-26,999	4.50	3.50	2.50	1.50	.50	-	-	-	-	-
27,000-28,999	5.00	4.00	3.00	2.00	1.00	-	-	-	-	-
29,000-30,999	5.50	4.50	3.50	2.50	1.50	.50	-	-	-	-
31,000-32,999	6.00	5.00	4.00	3.00	2.00	1.00	-	-	-	-
33,000-34,999	6.50	5.50	4.50	3.50	2.50	1.50	.50	-	-	-
35,000-36,999	7.00	6.00	5.00	4.00	3.00	2.00	1.00	-	-	-
37,000-38,999	7.50	6.50	5.50	4.50	3.50	2.50	1.50	.50	-	-
39,000-40,999	7.50	7.00	6.00	5.00	4.00	3.00	2.00	1.00	-	-

ADOPTED RULES

41,000-42,999	7.50	7.50	6.50	5.50	4.50	3.50	2.50	1.50	.50	-
43,000-44,999	7.50	7.50	7.00	6.00	5.00	4.00	3.00	2.00	1.00	-
45,000 and over	7.50	7.50	7.50	6.50	5.50	4.50	3.50	2.50	1.50	.50

8. Adjustments to table. The department shall annually adjust the daily payment to reflect the annual percentage change reported in the most recent consumer price index for all urban consumers in the Minneapolis-St. Paul area.

9. Verification of financial information.

a. The annual gross earnings of a relative and the number of dependents of a relative shall be verified from the relative's Minnesota state income tax return or, in the case of a relative who is not a resident of Minnesota and does not file a Minnesota state income tax return, from the United States income tax return.

b. The amount of the premium paid by the relative to provide dependent hospital and medical insurance coverage for the patient shall be verified.

10. Clothing and personal needs allowance of a minor. The parents of a patient who is an unmarried, dependent child shall be responsible for meeting the patient's clothing and personal needs allowance in addition to the amount they are determined able to pay to meet the cost of care.

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 Administration
Board of Electricity****Adopted Rule Amending License and Renewal Fees**

Rule 4 MCAR § 11.032, proposed and published at *State Register*, Volume 5, Number 50, pp. 2092-2093, June 29, 1981 (5 S.R. 2092) is now adopted as proposed.

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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
County of St. Louis**

**Tax Court
Regular Division**

Lewis H. and Bernice C. Walters,

Appellants,

v.

Commissioner of Revenue,

Appellee.

In the Matter of the Appeal
from the Commissioner's Order
dated June 30, 1980, relating
to the income tax returns for
the years 1974 and 1975.

Docket No. 3179

Order dated August 6, 1981.

This is an appeal from an Order of the Commissioner of Revenue dated June 30, 1980, denying claims for refund of income taxes paid by the Appellants for calendar years 1974 and 1975. The claims were disallowed because the original returns were filed more than three and one-half years after their due date and more than ninety days after the change or correction with the Commissioner of Internal Revenue pursuant to Minnesota Statute § 290.50.

The matter came on for hearing before the Honorable John Knapp, Chief Judge of the Minnesota Tax Court, at the St. Louis County Courthouse, Duluth, Minnesota, on Friday, March 27, 1981.

Lewis H. Walters and Bernice C. Walters appeared pro se.

Paul R. Kempainen, Special Assistant Attorney General, appeared for Appellee.

Decision

The Order of the Commissioner of Revenue dated June 30, 1980, is hereby affirmed.

From the evidence adduced at the trial and from the files and records herein, the Court makes the following:

Findings of Fact

1. The Appellants, Lewis H. and Bernice C. Walters, were cash-basis taxpayers and residents of the State of Minnesota during each of the years in question: 1974 and 1975.
2. During the year 1974, Appellant Lewis Walters earned total compensation of \$9,510.73, for which he received W-2's from his employers prior to April 15, 1975.
3. During the year 1975, Lewis Walters earned total compensation of \$10,908.26, and Bernice Walters earned total compensation of \$867.99, for which they both received W-2's from their employers prior to April 15, 1976.
4. In 1972, the Appellants suffered a substantial loss as a result of a fire, which enabled them to amend their federal income tax returns by carrying back the casualty losses to 1969, 1970, and 1971, and then carried forward the remaining casualty losses into 1974 and 1975. A controversy arose as to the amount of the casualty loss deduction for the years here in issue, which was not finally disposed of until the middle of November of 1979. At that time the Appellants accepted the decision of the Internal Revenue Service and a refund of taxes was made to the Appellants based on the federal adjusted gross income for 1974 of \$7,760 and on federal adjusted gross income for 1975 of \$8,126 for the husband and \$273 for the wife.
5. Instead of filing timely Minnesota income tax returns for the years 1974 and 1975, the Appellants held off filing anything with the state because of the controversy they were having with the Internal Revenue Service over their federal income tax returns.
6. The Appellants did not file their 1974 and 1975 Minnesota income tax returns until April 16, 1980.
7. On their 1974 and 1975 Minnesota income tax returns Appellants claimed refunds of amounts they claimed to have been excessively withheld from their wages. For 1974, their refund claim was \$447.00. For 1975, their refund claim was \$647.00.
8. Upon audit, the Commissioner denied Appellants refund claims because they were filed beyond the three and one-half

year statute of limitations for such claims set by Minn. Stat. § 290.50, subd. 1. The Commissioner's Orders to that effect were issued on June 30, 1980.

Conclusions of Law

1. The Appellants' claim for refunds for the years 1974 and 1975 were not filed within the time required by Minn. Stat. Sec. 290.50, subd. 1.

2. The Orders of the Commissioner of Revenue denying the claims are affirmed.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

John Knapp, Chief Judge

Memorandum

The issue is whether the Appellants' claims for refunds for the taxable years 1974 and 1975 may be allowed under Minn. Stat. 290.50.

Minnesota Statutes, § 290.50, subd. 1, provides in part as follows:

(a) A taxpayer who has paid or from whom there has been collected an amount of tax for any year in excess of the amount legally due for that year, may file with the Commissioner a claim for a refund of such excess. Except as otherwise provided in this section, *no claim or refund shall be allowed or made after three and one-half years from the date prescribed for filing the return* (plus any extension of time granted for filing the return, but only if filed within the extended time) *or after two years from the date of overpayment*, whichever period is longer, unless before the expiration of the period a claim is filed by the taxpayer. (Emphasis added)

The above statute gives a taxpayer the right to file a claim for a refund of tax payments made by the taxpayer. At the same time it places a time limitation on that right. As with any statute of limitations, the purpose of the restriction is to provide an adequate time to assert legal rights and to prohibit assertion of claims thereafter. These limits are placed without reference to the validity of the claim being asserted and without reference to the reasons for a claim being brought after the allowable time period. No basis has been provided in this statute for exceptions to or a waiver of the time limits. The effect is to prohibit the bringing of valid claims if the time requirements are not met.

The Legislature was undoubtedly aware of both the purpose and the consequences of the time limitations of § 290.50 when it enacted the law. Since that time, the limitations in § 290.50 have, in fact, become more stringent rather than more lenient.

Recognizing that the Legislature is the most appropriate institution for making these decisions, the Courts have consistently held that statutes limiting the right to assert claims are within the legislative domain and may not be altered by the Courts or administrative agencies. *Henle Publishing Co. v. Commissioner of Revenue*, Minn. Tax Ct. Dkt. No. 2644 (March 8, 1979); *Dumont v. Commissioner of Taxation*, 278 Minn. 312, 154 N.W. 2d 196 (1967); *Johnson v. Winthrop Laboratories Division of Sterling Drug, Inc.*, 291 Minn. 145, 190 N.W. 2d 77 (1971). To hold otherwise would be to write exceptions into the law and to make the time limits depend upon the merits of the claim. Such an interpretation goes contrary to the clear wording of § 290.50.

In this case the Appellants made no attempt to file their 1974 and 1975 Minnesota income tax returns until 1980. That is clearly more than three and one-half years after each of these returns was due. For both years at issue, the overpayment of taxes was by virtue of taxes withheld in the respective tax years. There has been no claim that the date of overpayment was later than the due date of the returns.

Even if Appellants had sought an extension of time in which to file, which the Commissioner has no record of, such an extension could only have been for a maximum of six months. Minn. Stat. § 290.42(6).

Under the facts of this appeal, there is no alternative but to conclude that the returns constituting the Appellants' claims for refunds for the years 1974 and 1975 were not filed within the time required by Minn. Stat. § 290.50, subd. 1. Therefore, the claims for refunds for those years must be denied.

SUPREME COURT

Decisions Filed Friday, August 14, 1981

Compiled by John McCarthy, Clerk

51864/Sp. Howard Kinney, Appellant, v. Mario Retica, Mayor of the City of Hibbing, *et al.*, Wallace Ylatupa. St. Louis County. The Firefighter's Civil Service Commission Act, Minn. Stat. § 420.01-16. (1980) employs a "rule of three" rather than a "rule of one" in the process of promotion.

Affirmed. Sheran, C. J.

50317/Sp. Jasaka Company v. City of St. Paul, Appellant, Prichard Tower Erection, Inc., Defendant. Ramsey County.

The issuance of a permit by a municipal planning commission which authorizes the erection of a radio tower in violation of existing zoning ordinances which are designed to protect the public from the danger of structural failure, does not estop the city from halting construction when notified of the violation.

The fact that a city's purpose in declining to vacate an unopened street may be to prevent the completion of a radio tower which encroaches on the street does not invalidate the city's refusal to act, but reflects a legitimate concern for the safety of the surrounding area.

Affirmed in part, reversed in part. Otis, J.

49747/137 In the Matter of the Estate of Chris Boysen, Deceased. Genevieve Thompson, contestant, Appellant, v. Raymond Boysen, proponent. Dodge County.

By allowing "the circumstances of the revocation" of a later will to be considered by a trier of fact deciding the question whether a decedent revived an earlier will, the legislature meant to allow an examination of all matters relevant to the decedent's intent at the time of the revocation. Minn. Stat. § 524.2-509(a) (1980).

Reversed and remanded for a new trial. Peterson, J. Dissenting, Scott, J. Took no part, Amdahl, J.

50744/Sp. A. Gay Jenson Farms Co., *et al.*, v. Cargill, Incorporated, Appellant, Warren Grain & Seed Company, *et al.*, Defendants. Marshall County.

On the facts of this case, the financial and managerial control assumed by a corporation, which was a major grain dealer, over the operations of a local grain elevator established an agency relationship.

An undisclosed principal is not discharged from liability to a third party by payment to an agent, unless it does so with reliance on the conduct of the third party.

Trial court did not err in failing to submit specific jury instructions requested by defendant or in refusing to allow the introduction of collateral evidence.

Denial of defendant's motion for a change of venue was proper.

Affirmed. Peterson, J. Took no part, Simonett, J.

51415/Sp. Hugh Ploog, Appellant (51460), v. Richard Ogilvie, trustee in bankruptcy for Chicago, Milwaukee, St. Paul and Pacific Railway Company, Appellant (51415), Donald Litin, d.b.a. Litin Paper Company. Dakota County.

The removal of pallets from a sidetrack was not an obligation of defendant railroad under its track agreement with defendant industry. Therefore, the trial court erred in holding the indemnity and contribution provision of the track agreement inapplicable and awarding indemnity to defendant industry.

Both defendants were causally negligent. Therefore, under the indemnity and contribution provision of the track agreement, they must share liability for plaintiff's damages equally.

Affirmed in part, reversed in part and remanded with directions. Peterson, J.

51226/Sp. Gregory McGrath, *et al.*, Appellants, v. State of Minnesota, *et al.* Ramsey County.

Minnesota adopts the restrictive view that only allegations of constitutional violations which are clear and unambiguous shall be a basis for interrupting the arbitration process. In Minnesota, arbitrators are without authority to decide constitutional issues irrespective of contractual language.

A finding of immunity under 42 U.S.C. § 1983 (1976) actions requires an evidentiary hearing to determine the issue of good faith. The officer claiming good faith shall have the burden of proof. Determinations of an arbitrator, while not binding, may be considered by the court.

Affirmed in part, reversed in part, and remanded to the district court for further proceedings consistent with this opinion. Todd, J. Conc. spec. Scott, J.

51922/31, 32, 33, 51619 and 51718, 51463, 52074 Dennis O. Wegan, Appellant, v. 51922 Village of Lexington, d.b.a. Village of Lexington Liquor Bar, Defendant and Third-Party Plaintiff, v. Village of Circle Pines, third-party defendant, and James Rounsville and Bonnie R. Rounsville, individually, and as husband and wife, *et al.*, Appellants, v. 51619 and 51718 Leons, Inc., d.b.a. Leon's Supper Club, Dennis R. Fredrickson, Defendant, and Leslie J. Wolfe, Appellant, v. 51468 Chinook, Inc., Timothy Gillaspie, Defendant, Brian J. Ecker, Appellant, v. 52074 Arcade Bar, Inc., *et al.*, Defendants, Mohawk Bar, Inc., *et al.*, Bram Corporation, *et al.*, Defendants. Anoka, Ramsey, and Hennepin Counties.

We hold that the commencement-of-suit and notice-of-claim provision of the "Dram Shop Act," Minn. Stat. § 340.951, violate the equal protection clause of the United States and Minnesota Constitutions and that all such claims are controlled by the six-year statute of limitations contained in Minn. Stat. § 541.05.

Reversed and remanded for trial on the merits. Scott, J. Conc. spec. Amdahl, J., Peterson, J., and Wahl, J. Dissenting, Simonett, J., Sheran, C. J., Otis, J., and Todd, J.

51823/Sp. Jean M. Lingl v. Gary John Lingl, Appellant. Renville County.

Reversed and remanded. Per Curiam.

Decision Filed Thursday, August 6, 1981

81-458/Sp. State of Minnesota v. Larry Leibfried, Appellant. Martin County.

Trial court, in departing from presumptive sentence established by Sentencing Guidelines, must make findings and provide written reasons justifying departure.

Remanded for resentencing. Sheran, C. J.

Decision Filed Friday, August 7, 1981

81-436/Sp. State of Minnesota v. David Childers, Appellant. Itasca County.

Trial court, in sentencing defendant convicted of second or subsequent drug offense, has discretion to place defendant on probation.

Remanded for resentencing. Sheran, C. J.

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 Administration Cable Communications Board

Notice of Solicitation of Public Comments Regarding Revision of the Minnesota Cable Communications Board's Statewide Cable Communications Development Plan

Notice is hereby given that public comments in the above-entitled matter are being solicited by the Minnesota Cable Communications Board pursuant to Minnesota Statutes, § 238.05, subdivision 1.

The board will conduct *public hearings* concerning the Statewide Development Plan during its regular meetings on *September 11, and October 9, 1981*. Board meetings are scheduled to convene at 9:00 a.m., 500 Rice Street (at University Ave.) in Saint Paul.

OFFICIAL NOTICES

Information concerning the plan may be obtained from and written comments may be submitted to the board at 500 Rice Street, Saint Paul, MN 55103; telephone—(612) 296-2545.

All interested or affected persons will have an opportunity to be heard.

State Board of Investment

Meeting Notices

Investment Advisory Council

Notice of Regular Meeting

The Investment Advisory Council will meet Wednesday, August 26, 1981, at 3:00 p.m., in the Fifth Floor Conference Room of the Veteran's Services Building, 20 West 12th Street, Saint Paul.

State Board of Investment

Notice of Regular Meeting

The State Board of Investment will meet on Thursday, August 27, 1981, at 9:00 a.m., in the State Capitol, Room 130, Saint Paul.

Metropolitan Council

Notice of Public Hearing for Interstate Hwy. 35E from Hwy. 110 in Dakota County to Hwy. I-94 near Downtown St. Paul, Ramsey County

The Minnesota Department of Transportation and the Twin Cities Metropolitan Council will hold a Hwy. I-35E Location and Design Public Hearing on September 9, 1981, 6:30 p.m., at Highland Park Junior High School, 975 Snelling Ave. S., St. Paul, Minnesota. The hearing is in accordance with Title 23, United States Code, Section 128, and Minnesota Statutes 116D-01 et seq. Beginning at 5:30 p.m. that day, people may review a draft Environmental Impact Statement (EIS) and related engineering and environmental studies. To be discussed are: state and federal relocation and assistance programs for displaced persons and schedules of right-of-way acquisition and construction.

The highway project proposes construction of Hwy. I-35E from Hwy. 110 in Dakota County to Hwy. I-94 near downtown St. Paul. Twelve design and routing alternatives are considered. Options include: a six-lane freeway along Shepard Rd.; a "no-build" alternative; and 10 variations along the Pleasant Ave. corridor, two of which involve a Shepard Rd. truck routing and a by-pass east of downtown St. Paul. Three of the alternatives would encroach significantly on the Mississippi River floodplain, (as defined in Executive Order 11988-Floodplain Management). All alternatives would affect properties protected by Section 4(f) of the U.S. Department of Transportation Act.

The hearing will provide an opportunity to discuss the location, design and construction of the proposed project. Interested governmental agencies, and public interest groups will have an opportunity to present their views on the proposed highway improvement. Exhibits and written statements relative to the hearing and received by the Metropolitan Council, postmarked no later than September 30, 1981, will also be considered in the preparation of the final EIS. Statements should be sent to: Ghaleb Abdul-Rahman, Project Manager, Metropolitan Council, 300 Metro Square Building, 7th and Robert Sts., St. Paul, Minnesota 55101.

In addition to the public hearing, an open house will be held from 11 a.m. to 7 p.m. on Tuesday, September 8, at the University Club, 420 Summit Ave., St. Paul. Participants in the study will be available to respond to questions. Plans, design layouts, and supporting studies will be available for review at the open house.

A draft EIS has been prepared by a consulting firm to the Metropolitan Council and circulated by the Council. Copies are available for public review and copying at the following libraries:

St. Paul Public Library
Central Library
90 W. Fourth St.
St. Paul, MN 55101

St. Paul Public Library
Merriam Park Branch
1831 Marshall Ave.
St. Paul, MN 55104

St. Paul Public Library
Highland Park Branch
1974 Ford Pkwy.
St. Paul, MN 55116

St. Paul Public Library
Lexington Branch
1080 University Ave.
St. Paul, MN 55104

Dakota County Library
1101 West County Rd. 42
Burnsville, MN 55337

Metropolitan Council Library
Suite 300 Metro Square Bldg.
7th and Robert Sts.
St. Paul, MN 55101

Maps, right-of-way information and other data are available for public review at the Road Plans Information Office, Room 609, State Transportation Building, St. Paul. Draft EIS summaries are available by calling the Metropolitan Council's Public Information Office at 291-6464.

Charles Weaver, Chairman
Metropolitan Council

Metropolitan Council

1982 Budget and Work Program

Public Hearing

The Metropolitan Council will hold a public hearing on Tuesday, September 15, 1981, at 5 p.m. in the Metropolitan Council offices, Room E, 300 Metro Square Building, 7th and Robert Streets, St. Paul, Minnesota 55101, on a proposed 1982 Budget and Work Program. Before the budget is adopted, the council must decide upon the total amount necessary to be raised from ad valorem tax to meet its budget. All interested persons are encouraged to attend the hearing and offer comments. Persons may wish to register to speak in advance by contacting the council's public hearing coordinator at 291-6421. Copies of the proposed 1982 Budget and Work Program are available free of charge from the council's Public Information Office at 291-6464.

Charles Weaver, Chairman
Metropolitan Council

Department of Natural Resources Soil and Water Conservation Board

Notice of Change of Location of October Meeting

The Minnesota Soil and Water Conservation Board has changed the meeting place for their October meeting from 6th floor, Space Center Building, St. Paul, Minnesota, to the Holiday Inn, Winona, Minnesota. The Board will resume their regular schedule on November 10, 1981.

Department of Natural Resources Soil and Water Conservation Board

Notice of Change of September Meeting Date

The Minnesota Soil and Water Conservation Board has changed the date of their regular monthly meeting from September 8, 1981 to September 15, 1981. They will meet in Conference Room B, Sixth Floor, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota.

Office of the Secretary of State

Notice of Vacancies in Multi-Member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, 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; (612) 296-7876. Application deadline is September 15, 1981.

ADVISORY TASK FORCE ON THE WOMEN OFFENDER IN CORRECTIONS has 18 vacancies open for members to reflect a statewide geographical representation. The task force consults with the Commissioner of Corrections regarding choice of model programs to receive funding, and reviews and makes recommendations to the commissioner on matters affecting women offenders. It identifies problem areas and makes recommendations for problem resolution, and assists the commissioner when and where possible in seeking improved programming for women offenders. Members are appointed by the Commissioner of Corrections, and receive \$35 per diem. Meetings are held 3rd Wednesday of each month at the Dept. of Corrections. For specific information contact Dept. of Corrections, 430 Metro Square Bldg., St. Paul 55101; (612) 296-3535.

OFFICIAL NOTICES

VETERANS ADVISORY COMMITTEE has one vacancy for an individual with experience in the fields of mental and physical health services, education and vocational rehabilitation. The committee examines the operation of the Department of Veterans Affairs; examines issues and problems relating to veterans; and advises the Commissioner of Veterans Affairs on the veterans home and veterans camps. Members are appointed by the Commissioner of Veterans Affairs. Meetings are bi-monthly at the Minnesota Veterans Home. Members receive \$35 per diem plus expenses. For specific information, contact Veterans Advisory Committee, Veterans Service Building, St. Paul 55155; (612) 296-2562.

BOARD ON AGING has one vacancy for a member. The board develops, coordinates, evaluates, and administers federal and state funds for programs for the aging; makes grants to 12 area agencies on aging and non-profit agencies; and serves as an advocate for older persons and programs and legislation for older persons. Members are appointed by the Governor, and receive \$35 per diem plus expenses. Monthly meetings, Metro Square Building, St. Paul. For specific information, contact Board on Aging, Suite 204, Metro Square Building, St. Paul 55101; (612) 296-2770.

OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD has one vacancy in the management sector. The board reviews cases involving OSHA citations and proposed penalties. Members are appointed by the Governor, confirmed by the Senate, and must file with EPB. Meetings are at the call of the chairperson in St. Paul. Members receive \$35 per diem plus expenses. For specific information, contact Occupational Safety and Health Review Board, 5th floor, Space Center Building, 444 Lafayette Road, St. Paul 55101; (612) 296-8946.

ASSIGNED RISK PLAN REVIEW BOARD has 4 vacancies. Two must be insured holding workers' compensation policies issued by the Assigned Risk Plan and 2 must be representatives of members of the Workers' Compensation Insurers Rating Association of Minnesota. The board is required to audit the reserves established by insurers for individuals cases for workers' compensation policies issued and the total book of business pursuant to Minn. Stat. § 9.25, monitor the operations and periodically make recommendations to the Insurance Commissioner, the Governor and the legislature for improvement in the operation of the Assigned Risk Plan. Members are appointed by the Commissioner of Insurance to a 3 year term, and receive \$35/day compensation plus expenses. Meetings will be held at variable times at the Commerce Department. For specific information contact the Assigned Risk Plan Review Board, 500 Metro Square Bldg., St. Paul 55101; (612) 296-2488.

Water Planning Board

Notice of Meeting

Notice is hereby given that the Water Planning Board will hold a meeting on Wednesday, September 16, 1981, in the third floor conference room at the Department of Natural Resources, Centennial Building, beginning at 1:00 p.m. An agenda for the meeting may be obtained one week prior to the meeting by contacting the undersigned at 600 American Center Building, 150 E. Kellogg Boulevard, St. Paul, Minnesota 55101.

Thomas Kalitowski, Chairman

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.

Administration Department Real Estate Management Division

Request for Office Space Proposal

Approximately 15,000 square feet of office space is needed for the Office of Administrative Hearings in downtown Minneapolis. For information contact:

Department of Administration
Real Estate Management Division
50 Sherburne Avenue, Room G-22
Telephone: (612) 296-6674

Department of Corrections Community Services Division

Notice of Availability of Funds for Battered Women Programs

The Minnesota Department of Corrections has received an appropriation of \$3,565,800 from the Legislature to enable the department to award grants to providers of service to programs for battered women during the biennium beginning July 1, 1981. A majority of the funds will be awarded to continue the services of existing programs. A minimal amount of funds has been set aside for new proposals.

Two 18-month grants for \$119,400 each will be awarded to two nonprofit corporations for the establishment of shelters for battered women. Funds are available to support one shelter not restricted to any geographical location and one shelter which primarily serves the Hispanic community.

A total of \$14,000 through June 30, 1982 will be awarded for a community education project or advocacy program which will benefit battered women throughout Minnesota. Examples of the types of projects which will be considered include a direct advocacy program, development of school curriculum materials or an informational media production. Direct advocacy programs would not be required to serve the entire state.

The second program grant, which totals \$11,800 through June 30, 1982, will be awarded to model treatment or training program for violent partners.

Nonprofit corporations are eligible to apply. For a request for proposal which explains how to apply for funding contact Maggie Arzdorf-Schubbe or Sue Aumer, Battered Women's Programs, Minnesota Department of Corrections, 430 Metro Square Building, 7th and Robert Streets, St. Paul, Minnesota 55101, (612) 296-6463. Application deadline is October 5, 1981.

Department of Corrections Minnesota Correctional Facility—Stillwater

Notice of Request for Proposals for Providing Physical Examinations

Notice is hereby given to request proposals for providing physical examinations for approximately 150 Correctional Counselor trainees at an annual cost not to exceed \$13,500.00. This proposal shall include the following laboratory examinations: complete blood count, sequential multiple analysis, urinalysis, stool examination for occult blood, vision testing, tonometry, audio special testing, pulmonary function testing, and electrocardiogram. These proposals must be submitted by 4:30 p.m., September 28, 1981, to David Corbo, Personnel Director. Please contact Mr. Corbo at (612) 439-1910, Ext. 320 if interested.

Energy Agency

Notice of Request for Proposals for Advertising Agency Services

Notice is hereby given to request proposals for advertising contract services for the purpose of purchasing radio time and newspaper space for advertising the Minnesota Energy Conservation Service program in Minnesota. Master materials are prepared for publication and distribution.

MECS is a program conducted by major utilities in the state in cooperation with the Minnesota Energy Agency. Elements include home energy audits, a list of state-approved businesses who provide energy conservation services or supplies, and information on financial assistance for improvements.

Audits will be offered at various times by participating utilities. The campaign, however, will run from October 1, 1981 through March 31, 1982.

For detailed information, contact:

Beth Allen
Minnesota Energy Agency
980 American Center Building
150 East Kellogg Blvd.
St. Paul, Mn. 55105
(612) 297-2982

STATE CONTRACTS

Estimated cost: Not to exceed \$35,000.

Proposals should include recommendations for placements, estimated costs per medium and proxies of agency people who would be assigned to the account.

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 to the Minnesota Department of Human Rights, 240 Bremer Building, St. Paul, Minnesota, 55101.

Department of Natural Resources Waters Division

Notice of Request for Proposals for Consultant Services Related to Koochiching County Ditch Repairs

The Department of Natural Resources, Division of Waters is requesting proposals for engineering consultant work to be performed related to the repair of segments of Judicial Ditches 17 and 18 in Koochiching County.

The engineering consultant contractor will be required to provide hydrologic and hydraulic analyses, field cross-sections and profiles, construction plans and specifications, and a cost breakdown. Sufficient economic evaluation will be conducted to develop clear strategies for apportionment of project costs among private lands associated with the drainage system and the state owned lands within the watershed. Distinct differences will be developed for policy decision.

Contact person:

Daniel G. Retka
Minnesota Department of Natural Resources
Division of Waters, Region II
1201 E. Highway 2
Grand Rapids, MN 55744
Phone: (218) 327-1716

Estimated cost: Not to exceed \$35,000.00

Submission deadline: September 15, 1981.

Department of Public Welfare Social Services Division

Notice of Availability of Contract for Migrant Day Care Services

The Department of Public Welfare/Division of Social Services is seeking an agency to organize and implement a short-term bilingual/bicultural day care service program for the children of Minnesota's Migrant farm workers.

It is expected that a total of 20,500 days of developmental day care services be provided to approximately 900 Spanish speaking children (0-5 years of age) of migrant farm workers in Minnesota. Direct services shall be provided between the months of May and September of 1982 in cooperation and coordination with the Department of Education—Migrant Special Education Programs, Minnesota Migrant Head Start Programs, USDA Summer Feeding Program and Migrant Health Services, Inc.

Project funding level: \$497,000.

Final submission date: September 15, 1981.

Inquiries and formal expressions of interest should be directed to:

Cherie Kotilinek
Division of Social Services
Department of Public Welfare
Centennial Office Building
St. Paul, MN 55155
(612) 296-3929

STATE OF MINNESOTA
State Register and Public Documents Division
117 University Avenue
St. Paul, Minnesota 55155

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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