

84 May 14

# STATE REGISTER

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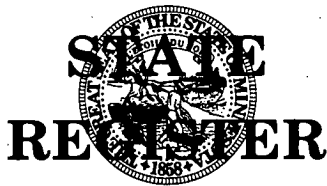
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**VOLUME 8, NUMBER 46**

**May 14, 1984**

**Pages 2393-2440**



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### Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
<b>SCHEDULE FOR VOLUME 8</b>			
47	Monday May 7	Monday May 14	Monday May 21
48	Monday May 14	Monday May 21	Monday May 28
49	Friday May 18	Friday May 25	Monday June 4
50	Friday May 25	Monday June 4	Monday June 11

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

\*\*Notices of public hearings on proposed rules 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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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* and filed with the Secretary of State before September 15, 1982, are published in the *Minnesota Code of Agency Rules 1982 Reprint*. **ADOPTED RULES** and **ADOPTED AMENDMENTS TO EXISTING RULES** filed after September 15, 1982, will be included in a new publication, *Minnesota Rules*, scheduled for publication in spring of 1984. In the **MCAR AMENDMENT AND ADDITIONS** listing below, the rules published in the *MCAR 1982 Reprint* are identified with an asterisk. Proposed and adopted **TEMPORARY RULES** appear in the *State Register* but are not published in the *1982 Reprint* due to the short-term nature of their legal effectiveness.

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

Issues 1-13, inclusive	Issue 39, cumulative for 1-39
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# PROPOSED RULES

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Pursuant to Minn. Stat. of 1980, §§ 14.21, 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 25 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, 25 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 §§ 14.13-14.20 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. § 14.29, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

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## Department of Commerce

### Proposed Rules Relating to Trade Conduct—Claims Settlement

#### Notice of Withdrawal of Proposed Rules

Notice is hereby given that the Department of Commerce is withdrawing the above-entitled rules. These rules were published as proposed on January 2, 1984. This should also serve as notice that the continuation of hearing on these rules, scheduled for May 21, 1984, has been cancelled.

These rules are being withdrawn because of the passage of H.F. 1896 and S.F. 1862 which adopte most, if not all, of the elements of the proposed Claims Settlement Rules. Copies of the act are available from the Chief Clerk of the House, Room 214 Capitol, (612) 296-2314, or the Secretary of the Senate, Room 231 Capitol, (612) 296-2343. The bill was enacted on April 26, 1984 and was effective the day thereafter.

Michael A. Hatch  
Commissioner of Commerce

## Housing Finance Agency

### Proposed Rules Governing Accessory Apartment Loans

#### 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. §§ 14.21 to 14.28.

Persons interested in these rules shall have 30 days to submit comments on the proposed rules within the 30-day comment period. The rule may be modified as the result of comments received if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language. Unless 25 or more persons submit written requests for a public hearing on the proposed rule within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 14.13 *et. seq.* 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:

Kathleen J. Johnson  
Legal Division  
Minnesota Housing Finance Agency  
Suite 200  
333 Sibley Street  
St. Paul, Minnesota 55101  
Telephone: 612/296-9793

## PROPOSED RULES

Authority for the adoption of these rules is contained in Minn. Stat. § 462A.06, Subd. 4 and 11. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules, and that identifies the data and information relied upon to support the proposed rules has been prepared and is available from Kathleen J. Johnson upon request.

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

A copy of the proposed rule is attached to this notice. Additional copies may be obtained by contacting Kathleen J. Johnson.

Please be advised that Minn. Stat. Ch. 10A.03 requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, Subd. 11 as any individual:

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

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

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

May 11, 1984

James J. Solem  
Executive Director

### Rules as Proposed (all new material)

#### 4900.0581 DEFINITIONS.

**Subpart 1. Scope.** For the purposes of parts 4900.0581 to 4900.0584, the following terms have the meanings given them.

**Subp. 2. Accessory apartment loan.** "Accessory apartment loan" means a loan the proceeds of which are used to construct an additional dwelling unit within a structure, or to improve not more than two rental dwelling units located in a structure that, at the time of the loan application, contains a total of not more than three dwelling units.

**Subp. 3. Borrower.** "Borrower" means one or more persons who apply for and receive an accessory apartment loan and who are the makers of a note in evidence of the loan.

**Subp. 4. Dwelling unit.** "Dwelling unit" means a housing unit that includes self-contained cooking, sleeping, and bathroom facilities, and is located in the structure. A dwelling unit may be occupied by either a tenant or the owner of the structure.

**Subp. 5. Rental dwelling unit.** "Rental dwelling unit" means a dwelling unit that is occupied by a person or household other than the owner of the structure and for which rent in cash or in kind is received by the owner.

**Subp. 6. Structure.** "Structure" means a building that was originally built as a single-family residence and that satisfies the eligibility requirements of part 4900.0582, subpart 5.

#### 4900.0582 ELIGIBILITY REQUIREMENTS.

**Subpart 1. Property interest.** A borrower shall individually or in the aggregate possess at least a one-third interest in a fee ownership of, a contract for deed for, or a life estate in the property on which the structure to be improved is located.

**Subp. 2. Occupancy.** If the proceeds of an accessory apartment loan are used to construct an additional dwelling unit, at least one of the borrowers shall occupy the structure as his or her principal residence at the time of loan application or shall occupy one dwelling unit within the structure within 60 days of the date of the note in evidence of the loan.

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

## PROPOSED RULES

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If the proceeds from an accessory apartment loan are used to improve one or more dwelling units, at least one of the borrowers shall occupy one of the dwelling units as his or her principal residence at the time of loan application.

**Subp. 3. Credit worthiness.** A borrower shall be a reasonable credit risk and shall be able to pay the loan obligation as determined under part 4900.0080.

**Subp. 4. Borrower eligibility.** A borrower shall meet either of the following standards to be eligible for an accessory apartment loan:

A. a borrower shall be a person or household of low or moderate income as defined in part 4900.0010, subpart 23: or

B. a borrower shall agree to rent all of the dwelling units that he or she does not occupy at a rate not to exceed the current United States Department of Housing and Urban Development (HUD) Fair Market Rents for Existing Dwellings in the section 8 program under the United States Housing Act of 1937, United States Code, title 42, sections 1437 et seq. as amended through December 31, 1983, as determined and adjusted from time to time by HUD, for a period of at least one year from the date the dwelling unit is first occupied by a renter.

**Subp. 5. Eligibility of structure.** The structure to be improved or modified with the proceeds of an accessory apartment loan must comply with applicable zoning ordinances or other applicable land use guides upon completion of the construction or improvements.

If a borrower qualifies for a loan by satisfying the requirement in subpart 4, item A, the structure to be modified or improved must have been completed and occupied as a residence for at least 90 days at the time of the loan application.

If a borrower qualifies for a loan solely by satisfying the requirements in subpart 4, item B, the structure to be modified or improved must be at least 15 years old at the time of loan application.

### 4900.0583 ELIGIBLE IMPROVEMENTS.

**Subpart 1. Permanent general improvements.** Proceeds from an accessory apartment loan must be used to finance only permanent general improvements. Permanent general improvements include additions, alterations, renovations, or repairs upon or in connection with existing structures. Permanent general improvements do 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 structure to be modified or improved.

**Subp. 2. Loan proceed restrictions.** The proceeds from an accessory apartment loan must be used to finance only improvements or modifications to, or in connection with, an existing structure. The proceeds from an accessory apartment loan may be used as follows:

A. to add not more than one dwelling unit to a structure that is a single-family residence at the time of the loan application; or

B. to improve a structure that, at the time of the loan application, contains one or two rental dwelling units in addition to a dwelling unit occupied by the owner of the structure. Use of the proceeds from an accessory apartment loan for the type of structure described in this item is restricted to improvements that will bring all rental dwelling units into compliance with local zoning ordinances and other applicable health, fire prevention, building, and housing codes and standards.

The proceeds from an accessory apartment loan must not be used to pay for assessments for public improvements except if the improvements will bring an individual sewage disposal system (including septic system) located on the property on which the structure is located into compliance with local, state, or federal environmental and sanitary standards.

**Subp. 3. Energy conservation.** If an existing or newly constructed rental dwelling unit does not comply with the state energy conservation standards for rental housing, the proceeds from an accessory apartment loan must be used to bring the rental dwelling unit into compliance with these standards.

**Subp. 4. Time of completion.** Improvements or construction financed in whole or in part by an accessory apartment loan must be completed within nine months of the date of the first disbursement of the loan except for delays due to causes beyond the borrower's reasonable control, such as fire, strike, and shortage of materials.

### 4900.0584 OTHER REQUIREMENTS.

**Subpart 1. Unavailability of financing.** At the time of application for an accessory apartment loan, conventional financing for this purpose must not be available from private lenders upon equivalent terms and conditions.

**Subp. 2. Other codes and standards.** Following the completion of construction or improvement, all rental dwelling units must comply with all applicable health, fire prevention, building, and housing codes and standards. However, an accessory apartment loan shall not be denied solely because the construction or improvements to be financed by it will not bring the entire structure into full compliance with these codes and standards.



Subp. 3. Warranty of workmanship and materials. Contracts for construction or improvement of a dwelling unit that are financed in whole or in part by the proceeds from an accessory apartment loan must contain a warranty of workmanship and materials that is approved by the agency.

## **Housing Finance Agency**

### **Proposed Rules Governing Cooperative or Rental Multifamily Housing Innovative Loans**

#### **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. §§ 14.21 to 14.28.

Persons interested in these rules shall have 30 days to submit comments on the proposed rules within the 30-day comment period. The rule may be modified as the result of comments received if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language. Unless 25 or more persons submit written requests for a public hearing on the proposed rule within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 14.13 et. seq. 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:

Kathleen J. Johnson  
Legal Division  
Minnesota Housing Finance Agency  
Suite 200  
333 Sibley Street  
St. Paul, Minnesota 55101  
Telephone: 612/296-9793

Authority for the adoption of these rules is contained in Minn. Stat. § 462A.06, Subd. 4 and 11. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules, and that identifies the data and information relied upon to support the proposed rules has been prepared and is available from Kathleen J. Johnson upon request.

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

A copy of the proposed rule is attached to this notice. Additional copies may be obtained by contacting Kathleen J. Johnson.

Please be advised that Minn. Stat. Ch. 10A.03 requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, Subd. 11 as any individual:

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

(b) Who spends more than \$250.00, not including his own traveling expenses and membership dues, in any year for the

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## PROPOSED RULES

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purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

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

May 11, 1984

James J. Solem  
Executive Director

### Rules as Proposed (all new material)

#### 4900.1220 DEFINITIONS.

**Subpart 1. Scope.** For the purposes of parts 4900.1220 to 4900.1260, the following terms have the meanings given them.

**Subp. 2. Applicant.** "Applicant" means one or more persons or entities that apply for a cooperative or rental multifamily housing innovative loan.

**Subp. 3. Borrower.** "Borrower" means an applicant that is granted a cooperative or rental multifamily housing innovative loan, and that is the maker of a note in evidence of such loan.

**Subp. 4. Cooperative or rental multifamily housing innovative loan.** "Cooperative or rental multifamily housing innovative loan" means a loan to be made to a borrower under Minnesota Statutes, section 462A.05, subdivision 18a, and the proceeds of which must come from the money in the fund established by Minnesota Statutes, section 462A.21, subdivision 9a.

**Subp. 5. Democratic resident association.** "Democratic resident association" means an association, incorporated or unincorporated, whose membership is limited to and open to residents of a project, and where each member of the association has an equal vote in the affairs of the association.

**Subp. 6. Persons and families of low and moderate income.** "Persons and families of low and moderate income" means those persons and families whose adjusted income does not exceed the greater of \$16,000 or 550 percent of the gross rental or annual carrying charge for the dwelling unit which they are to occupy; provided, however, that the gross rentals or annual carrying charge for at least 75 percent of the dwelling units in the project do not exceed 120 percent of the fair market rents for the geographical area in which the project is located, as determined and adjusted from time to time by the United States Department of Housing and Urban Development; provided further, that higher gross rentals or annual carrying charges may be allowed for a dwelling unit in a project if the members determine that higher gross rents and annual carrying charges are necessary because of prevailing levels of construction costs, unusually high or low family incomes, or similar factors relating to income available for housing or housing costs.

**Subp. 7. Project.** "Project" means a multifamily housing development for which a cooperative or rental multifamily housing innovative loan is requested.

#### 4900.1230 ELIGIBILITY REQUIREMENTS.

**Subpart 1. For applicants.** To be eligible for selection for a cooperative or rental multifamily housing innovative loan, an applicant shall satisfy the following requirements:

- A. The applicant shall be either a cooperative housing corporation or a limited dividend entity.
- B. The applicant shall demonstrate the ability to organize and complete the project.
- C. The applicant shall demonstrate that it has, or will have, the ability to repay the cooperative or rental multifamily housing innovative loan, and to obtain other financing, if needed, at the expiration of the loan.
- D. The applicant shall have developed a training and education program for the residents of the project, and shall include a copy of the program with its application for a loan. The training and education program must include, at a minimum:
  - (1) details of how the resident association will be organized and operated;
  - (2) what the legal rights of the residents and the association are, and how the residents will be advised of these rights;
  - (3) what the financial interests and obligations of the individual residents and the association are, and how the residents will be advised of such obligations; and
  - (4) how the project will be managed and maintained.

**Subp. 2. For projects.** To be eligible for selection for a cooperative or rental multifamily housing innovative loan, a project must satisfy the following requirements:

- A. The project must be located in Minnesota.
- B. The project must be in the form of a cooperative or rental multifamily housing development, which is either owned

and operated on a nonprofit cooperative basis by the residents or owned by a limited dividend entity and operated by a residents' association.

C. The operation and management of the project must be substantially under the control of a democratic residents' association, which shall include the filling of housing unit vacancies.

#### **4900.1240 OTHER REQUIREMENTS.**

**Subpart 1. Unavailability of financing.** At the time of application for a cooperative or rental multifamily housing innovative loan, conventional financing for the purpose for which the loan is requested must not be available from private lenders upon equivalent terms and conditions.

**Subp. 2. Occupancy.** Initial occupancy in a project that receives a cooperative or rental multifamily housing innovative loan is limited to persons and families of low and moderate income as follows: provided, however, that to the extent necessary to avoid economic loss resulting from an inability to achieve full occupancy, and in order to encourage economic integration, with the prior written approval of the executive director, up to 25 percent of the units in a project may be occupied by persons and families who are not persons and families of low and moderate income.

Preference for occupancy in a project that receives a cooperative or multifamily housing innovative loan may not be given to persons and families by virtue of their prior residence in the community in which the project is located; except that, with the prior written approval of the executive director, preference may be given to persons and families displaced by public action or natural disaster or for previous residents of the project.

#### **4900.1250 SELECTION CRITERIA FOR COOPERATIVE OR RENTAL MULTIFAMILY HOUSING INNOVATIVE LOANS.**

In determining whether or not to approve applications for cooperative or rental multifamily housing innovative loans, the agency shall examine the following facts:

A. the extent to which the project will provide housing to persons and families whose income is 50 percent or less of the statewide median family income, as estimated by the United States Department of Housing and Urban Development;

B. the extent to which the project will provide long-term affordability to persons and families of low and moderate income;

C. the extent to which the resident association has control over the operation and management of the housing and over the filling of housing vacancies;

D. the geographic location of the proposed project within Minnesota, taking into account other projects theretofore approved for cooperative or rental multifamily housing innovative loans;

E. the period of time required to complete the project;

F. the amount and term of the requested cooperative or rental multifamily housing innovative loan, as compared to the total resources of the agency available for these loans; and

G. whether the applicable regional development commission has determined that the project is consistent with regional plans and policies.

#### **4900.1260 PROJECT FEASIBILITY LOANS.**

The agency may consider applications for a cooperative or rental multifamily housing innovative loan, the funds from which are to be used to determine the feasibility of a project. These applications need not comply with the requirements in part 4900.1230, subpart 1, item C.

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# PROPOSED RULES

## Housing Finance Agency

### Proposed Rules Governing Solar Energy and Energy Conservation Bank Programs

#### 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. §§ 14.21 to 14.28.

Persons interested in these rules shall have 30 days to submit comments on the proposed rules within the 30-day comment period. The rule may be modified as the result of comments received if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language. Unless 25 or more persons submit written requests for a public hearing on the proposed rule within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 14.13 *et. seq.* 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:

Kathleen J. Johnson  
Legal Division  
Minnesota Housing Finance Agency  
Suite 200  
333 Sibley Street  
St. Paul, Minnesota 55101  
Telephone: 612/296-9793

Authority for the adoption of these rules is contained in Minn. Stat. § 462A.06, Subd. 4 and 11. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules, and that identifies the data and information relied upon to support the proposed rules has been prepared and is available from Kathleen J. Johnson upon request.

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

A copy of the proposed rule is attached to this notice. Additional copies may be obtained by contacting Kathleen J. Johnson.

Please be advised that Minn. Stat. Ch. 10A.03 requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, Subd. 11 as any individual:

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

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

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

May 11, 1984

James J. Solem  
Executive Director

#### Rules as Proposed (all new material)

##### 4900.1600 SCOPE.

Parts 4900.1600 to 4900.1650 govern the residential energy conservation programs authorized by assistance awards from the federal Solar Energy and Energy Conservation Bank under subtitle A of title V of the Energy Security Act, United States Code, title 12, sections 3601 to 3620, and the disposition of the funds received under assistance awards and of funds received from other sources in conjunction with assistance awards.

**4900.1610 INCORPORATION OF FEDERAL REGULATIONS.**

Except as further defined and limited by parts 4900.1600 to 4900.1650, the residential energy conservation programs are governed by the Solar Energy and Energy Conservation Bank Final Rule, Code of Federal Regulations, title 24, part 1800 as published in the Federal Register, volume 49, number 53, March 16, 1984, as amended, and any waivers to the final rule obtained by the agency and published in the *State Register*.

**4900.1620 DEFINITIONS.**

**Subpart 1. Scope.** The following definitions apply to parts 4900.1600 to 4900.1650.

**Subp. 2. Agency.** "Agency" means the Minnesota Housing Finance Agency or its designee.

**Subp. 3. Bank.** "Bank" means the Solar Energy and Energy Conservation Bank as established under subtitle A of title V of the Energy Security Act, United States Code, title 12, sections 3601-3620.

**Subp. 4. Bank assistance.** "Bank assistance" means financial assistance from the bank provided to eligible recipients according to Code of Federal Regulations, title 24, part 1800.

**Subp. 5. Deferred loan.** "Deferred loan" means a loan without periodic payments made to an eligible deferred loan recipient from a source other than the bank. The loan's purpose must be to finance the cost eligible energy conservation measures in a one-to-four family residential building.

**Subp. 6. Deferred loan recipient.** "Deferred loan recipient" means one or more individuals who apply for and receive both a deferred loan and bank assistance.

**Subp. 7. Grant.** "Grant" means the extension of financial assistance without interest or periodic payments made to an eligible grant recipient. The grant's purpose must be to finance the cost of eligible energy conservation measures in a one-to-four family residential building.

**Subp. 8. Grant recipient.** "Grant recipient" means one or more individuals who apply for and receive both a grant and bank assistance.

**Subp. 9. Participating entity.** "Participating entity" means an entity, including, but not limited to, a private corporation, a public utility, a foundation, a nonprofit organization, and a local government, that contributes funds to be used in conjunction with funds received from the bank.

**Subp. 10. Passive solar subsidy.** "Passive solar subsidy" means bank assistance provided to an eligible passive solar subsidy recipient to finance a portion of the purchase of a newly constructed single-family residential building that contains a passive solar space heating system.

**Subp. 11. Passive solar subsidy recipient.** "Passive solar subsidy recipient" means one or more individuals who apply for and receive a passive solar subsidy.

**Subp. 12. Rental subsidy.** "Rental subsidy" means bank assistance provided to an eligible rental subsidy recipient to finance a portion of the cost of eligible energy conservation measures in a rental property.

**Subp. 13. Rental subsidy recipient.** "Rental subsidy recipient" means one or more persons, as defined in Code of Federal Regulations, title 24, section 1800.3, who apply for and receive a rental subsidy.

**Subp. 14. Rental property.** "Rental property" means an existing building that is used primarily for residential purposes, is owned by the rental subsidy recipient, and in which all dwelling units are rented or available for rental to others; provided, however, that the owner may occupy not more than one of the dwelling units in the building as his or her residence.

**4900.1630 ENERGY CONSERVATION DEFERRED LOAN AND GRANT PROGRAM.**

**Subpart 1. Additional recipient eligibility criteria.** In addition to meeting the applicable eligibility criteria in Code of Federal Regulations, title 24, section 1800.63, a deferred loan or grant recipient:

A. shall own and occupy the one-to-four family residential building, as defined in Code of Federal Regulations, title 24, section 1800.3, to be improved with the proceeds of a deferred loan and bank assistance or a grant and bank assistance; and

B. shall not be seeking, have a current commitment for, or be able to obtain within a reasonable period of time, assistance for the same eligible energy conservation improvements under subpart 5 from any of the following programs: federal

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## PROPOSED RULES

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Weatherization Program under United States Code, title 42, section 6863; agency home improvement loan program under parts 4900.0510 and 4900.0520; agency home improvement grant and rehabilitation loan programs under parts 4900.0610 to 4900.0700; and energy conservation assistance programs available from local entities.

**Subp. 2. Restrictions on eligibility.** The following are restrictions on eligibility:

A. Grants may be made available only to families, as defined in Code of Federal Regulations, title 24, section 1800.3, whose annual incomes are not in excess of 80 percent of the median area income, as defined in Code of Federal Regulations, title 24, section 1800.3.

B. Deferred loans may be made available to families, as defined in Code of Federal Regulations, title 24, section 1800.3, whose annual incomes are not in excess of 150 percent of the median area income, as defined in Code of Federal Regulations, title 24, section 1800.3.

C. If the agency determines that sufficient funds are not available to adequately make available bank assistance to persons who meet the qualifications in subpart 1, and subpart 2, items A and B, the agency may limit the availability of bank assistance to families who meet the qualifications of subpart 1, and subpart 2, item A, and may limit the maximum assistance as provided in subpart 3 and items eligible for financing as provided in subpart 5. Notice of these limitations must be published in the *State Register*.

**Subp. 3. Maximum assistance.** The combined maximum amount of financial assistance provided to a deferred loan recipient from a deferred loan and bank assistance, or to a grant recipient from a grant and bank assistance, may not exceed \$5,000.

**Subp. 4. Type of financial assistance.** Bank assistance provided to a deferred loan recipient must be in the form of a reduction of principal as defined in Code of Federal Regulations, title 24, section 1800.15. Bank assistance provided to a grant recipient must be in the form of a grant as defined in Code of Federal Regulations, title 24, section 1800.19.

**Subp. 5. Items eligible for financing.** In addition to the eligible energy conservation measures in Code of Federal Regulations, title 24, section 1800.65, the proceeds of a deferred loan or a grant may be used to finance the cost of a loan or grant processing fee established or approved by the agency.

**Subp. 6. Repayment.** A deferred loan or grant recipient shall enter into an agreement with the agency, or may be required to enter into an agreement with a participating entity, for repayment of the deferred loan and bank assistance or grant and bank assistance. If the agreement is with the agency, the agreement must provide that in the event the property improved with the proceeds of the deferred loan or grant and bank assistance is sold, transferred, or otherwise conveyed, or ceases to be the deferred loan or grant recipient's principal place of residence within five years from the date upon which the deferred loan or grant application was approved by the agency, the deferred loan or grant recipient shall repay all or a portion of the loans or grants. The agency or participating entity may place a lien or other security device on the improved property as security for repayment of the loans.

**Subp. 7. Notice of fund availability.** From time to time, the agency shall publish a notice of fund availability in the *State Register* prior to the date upon which it first accepts applications for deferred loans or grants and bank assistance. The notice must include the names and addresses of agents authorized by the agency to process and submit applications, the date upon which applications will first be accepted, and the specific items that constitute a valid application.

**Subp. 8. Submission of applications.** The agency shall accept applications for deferred loans or grants and for bank assistance only if submitted through one of its authorized agents identified in its notice of fund availability.

The agency shall review applications for both deferred loans or grants and bank assistance to determine their compliance with Code of Federal Regulations, title 24, part 1800. The agency may accept or reject applications for bank assistance and for deferred loans or grants funded by the agency based on the requirements in this part. Applications for deferred loans or grants funded by a participating entity other than the agency must be accepted or rejected based on criteria established by the participating entity.

**Subp. 9. Selection of applications.** The agency shall fund qualifying applications for bank assistance on a first-come, first-served basis, based upon the date on which a valid application is received by the agency, and until the available funds are exhausted.

If, on the day that the funds are exhausted, sufficient funds are not available to fund all applications received on that day, the applications to be funded must be selected by lot from among the applications received on that day.

### 4900.1640 RENTAL PROPERTIES ENERGY CONSERVATION PROGRAM.

**Subpart 1. Eligible rental subsidy recipient.** A rental subsidy recipient shall meet the applicable eligibility criteria in Code of Federal Regulations, title 24, section 1800.63.

**Subp. 2. Type of financial assistance.** Bank assistance provided to rental subsidy recipients may be either in the form of a

reduction of principal, as defined in Code of Federal Regulations, title 24, section 1800.15 or a grant as defined in Code of Federal Regulations, title 24, section 1800.19, based on the eligibility standards in Code of Federal Regulations, part 1800.

**Subp. 3. Energy conservation standards.** To the extent necessary, the proceeds of a rental subsidy must be used to finance, in whole or in part, improvements that will bring the rental property into compliance with the state energy conservation standards for rental housing.

**Subp. 4. Notice of fund availability.** From time to time, the agency shall publish a notice of fund availability in the *State Register* prior to the date upon which it will first accept applications for rental subsidies. The notice must include the names and addresses of lending institutions authorized by the agency to process and submit requests for rental subsidy funding, the address of the agency, the date upon which the authorized lending institutions and the agency, if applicable, will first accept applications, and the specific items that constitute a valid application.

**Subp. 5. Submission of applications.** Applications for rental subsidies may be submitted directly to the agency only if so specified in the notice as described in subpart 4. If not so specified, applications must be submitted to one of the authorized lending institutions identified in its notice of fund availability.

**Subp. 6. Selection of applications.** Qualifying applications for rental subsidies will be funded on a first-come, first-served basis, based on the date on which the agency receives a request for rental subsidy funding directly or from a lending institution, and until the available funds are exhausted.

If, on the day that the funds are exhausted, sufficient funds are not available to fund all applications received on that day, the applications to be funded must be selected by lot from among the applications received on that day.

#### **4900.1650 PASSIVE SOLAR NEW CONSTRUCTION PROGRAM.**

**Subpart 1. Eligibility.** In addition to meeting the applicable eligibility criteria in Code of Federal Regulations, title 24, section 1800.43, a passive solar subsidy recipient shall intend to own and occupy the residential building, the construction of which is partially financed by a passive solar subsidy.

**Subp. 2. Eligible properties.** The passive solar subsidy may be used only in conjunction with permanent financing for a newly constructed single-family residential property that includes a passive solar space heating system.

**Subp. 3. Type of financial assistance.** Bank assistance provided to passive solar subsidy recipients must be in the form of a reduction of principal, as defined in Code of Federal Regulations, title 24, section 1800.15.

**Subp. 4. Access to property.** A passive solar subsidy recipient shall enter into an agreement with the agency to allow the agency to install monitoring equipment in a residential building whose construction is partially financed by a passive solar subsidy. The recipient shall also agree to allow the agency access to the building to monitor its energy performance for five years from the date on which permanent financing on the property is closed.

**Subp. 5. Notice of fund availability.** From time to time, the agency shall publish a notice of fund availability in the *State Register* prior to the date upon which it will first accept applications for passive solar subsidies. The notice must include the last date upon which the agency will accept applications, the specific materials that constitute a valid application, the specific design standards upon which applications will be evaluated, the amount of the review fee to be charged by the agency, and if applicable, the maximum annual income of applicants to be given selection priority as set forth in subpart 6.

**Subp. 6. Selection of applications.** Applications that are received prior to the deadline announced by the agency, that fulfill the basic standards in the notice of fund availability, and that meet the other eligibility requirements in this part are eligible applications.

If the agency receives more eligible applications than can be financed with the available funds, the agency shall use the following method to select those applicants who will receive a passive solar subsidy:

A. The agency shall first award funds to all eligible applicants with certified annual adjusted incomes of \$38,000 or less.

B. If there are more applications from eligible applicants with annual adjusted incomes of \$38,000 or less than can be financed with the funds available, the applications to be funded will be selected by lot.

C. After funds are awarded to all eligible applicants with adjusted incomes of \$38,000 or less, if funds remain available, the agency may award funds to applicants with adjusted incomes of greater than \$38,000, with the applications to be funded to be selected by lot, if necessary.

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# PROPOSED RULES

## Department of Labor and Industry Occupational Safety and Health Division

### Proposed Revisions to the Occupational Safety and Health Standards

#### Request for Comments

Notice is hereby given that the Department of Labor and Industry proposes to adopt the following revisions to the Minnesota Occupational Safety and Health Codes, as authorized under Minnesota Statutes § 182.655 (1982) establishing, modifying or revoking the Occupational Safety and Health Standards described below. This is an action to adopt, modify or revoke Occupational Safety and Health Standards that have already been proposed and adopted by the federal Occupational Safety and Health Administration.

Complete copies of the specific standards are available by writing: Occupational Safety and Health Division, Department of Labor and Industry, 444 Lafayette Road, St. Paul, Minnesota 55101; or by calling: (612) 297-3254.

Interested persons are hereby afforded a period of 30 days to submit written data or comments on the described standards. Any interested person may file with the Commissioner written objections to the proposed standards stating the grounds for those objections; such person may request a public hearing on those objections.

Steve Keefe  
Commissioner of Labor & Industry

#### Rules as Proposed

8 MCAR § 1.7001 Adoption of federal Occupational Safety and Health Standards by reference. The Minnesota Department of Labor and Industry, Occupational Safety and Health codes and rules are amended by incorporating and adopting by reference and thereby making a part thereof. Title 29 of the Code of Federal Regulations as follows:

Part 1910—Occupational Safety and Health Standards as published in Volume 43, No. 206 of the Federal Register on October 24, 1978 and corrected in Volume 43, No. 216 on November 7, 1978 which incorporates changes, additions, deletions, and corrections made up to November 7, 1978; and subsequent changes made prior to—November 1, 1983—April 1, 1984.

—Federal Register, Vol. 49, No. 4, dated 1/6/84—“Commercial Diving Operations: Deletion of 1910.411”

—Federal Register, Vol. 49, No. 24 dated 2/3/84—“Servicing of Single Piece and Multi-Piece Rim Wheels—1910.177

—Federal Register, Vol. 49, No. 29, dated 2/10/84—“Revocation of Advisory and Repetitive Standards.”

—Federal Register, Vol. 49, No. 37, dated 2/23/84—“Occupational Exposure to Cotton Dust: Partial Administrative Stay of 1910.1043(m)(2)(ii)”

**Summary of Standards:** The following summary of the above standards is very brief; persons interested in reviewing the entire standard may obtain a copy at the address noted above.

A) “Commercial Diving Operations: Deletion of 1910.411.” The federal Occupational Safety and Health Administration published a final standard for commercial diving operations (29 CFR §§ 1910.401-1910.441) on July 22, 1977. Minnesota OSHA adopted the standard on March 20, 1978. Shortly after the standard became effective, a petition for review was filed in the United States Court of Appeals for the Fifth Circuit challenging, among other things, the validity of § 1910.411 “Medical Requirements.” The Court, in *Taylor Diving and Salvage v. U.S. Department of Labor* (599 F.2d 622) (5th Cir., 1979), held § 1910.411 to be invalid and vacated that section. Federal OSHA has therefore deleted § 1910.411 of 29 CFR Part 1910.

By this notice, Minnesota OSHA proposes to remove 1910.411 “Medical Requirements” from the Commercial Diving Operations Standard.

B) “Servicing of Single Piece and Multi-Piece Rim Wheels—1910.177.” The final standard on servicing multi-piece rim wheels was adopted by federal OSHA on January 29, 1980; Minnesota OSHA adopted the standard on May 19, 1980. That standard established procedures for servicing multi-piece rim wheels fitted on vehicles used on and off highways. Multi-piece rim wheels consist of two or more detachable rim components, one of which is a side or locking ring designed to hold the tire on the rim base when the tire is inflated. These wheels are used on motor vehicles such as trucks, trailers, campers, buses and motor homes. The major hazard in servicing multi-piece rim wheels is the possibility of an employee being struck by a wheel component which has been thrown from an inflated wheel during an unintended explosive separation. The original standard contained requirements for employee training, use of proper servicing equipment, use of compatible components only, and use of accepted, safe procedures. The original standard was restricted to servicing of multi-piece rim wheels since the majority of the accidents being reported at that time were occurring during servicing of that type of rim wheel.



Single piece rim wheels are used on virtually all types of motor vehicles, including automobiles, trucks, trailers, buses and off-highway vehicles. A standard governing servicing of single piece rim wheels was not previously considered because the largest number of accidents being reported were occurring when multi-piece rim wheels were being serviced. Accidents involving single piece rim wheels were, for the most part, not being reported. Since the adoption of the original standard, however, additional data reveals an increasing number of accidents occurring during the servicing of single piece rim wheels. Based on this additional data, federal OSHA determined that a serious risk of injury exists for the worker who services single piece rim wheels, and that lack of training and experience in proper servicing procedures appears to be a significant factor in many single piece rim wheel servicing accidents. 29 CFR 1910.177 was amended to incorporate provisions governing single piece rim wheels. The amended standard includes requirements for training all employees who service large vehicle rim wheels; use of accepted safe practices and procedures; use of restraining devices, barriers or other safeguards; and use of other essential equipment. Criteria for interchangeability of rim wheel components has also been revised and clarified.

By this notice, Minnesota OSHA proposes to amend 29 CFR 1910.177 as adopted on May 19, 1980 by adopting revised 1910.177 "Servicing Multi-piece and Single Piece Rim Wheels."

C) "Revocation of Advisory and Repetitive Standards." Many of the standards adopted by federal OSHA were originally developed by the American National Standards Institute and the National Fire Protection Association. Some of these standards contained advisory provisions which were adopted verbatim by OSHA. Other advisory, or "should," provisions were changed by OSHA to "shall" when adopted and, thereby, made mandatory. Enforcement of "should" standards as mandatory requirements has been denied by the Occupational Safety and Health Review Commission and by most appellate courts in which contested cases have been heard. This final rule revokes 153 provisions of the General Industry Standards (29 CFR Part 1910) that use the word, "should," or other advisory language instead of the mandatory "shall." Also revoked are three sections whose requirements are repeated elsewhere in Part 1910, and one advisory paragraph which was improperly adopted by OSHA as a mandatory provision. Provisions that use the word, "should," but which provide valuable guidance to employers in addressing significant workplace hazards or that are tied to or are part of mandatory provisions and, therefore, critical to the application or understanding of those provisions, have been retained.

By this notice, Minnesota OSHA proposes the revocation of "should" provisions as described in Federal Register, Volume 49, No. 29, published on February 10, 1984.

D) "Occupational Exposure to Cotton Dust." The current cotton dust standard (1910.1043) was adopted by Minnesota OSHA on November 6, 1978. This standard requires that by March 27, 1984 all operations to which the standard applies must be in compliance with the permissible exposure limit using engineering and work practice controls. As evidence of actual implementation of the cotton dust standard became available, federal OSHA undertook a further review of the feasibility of the standard. A problem was discovered for specific processes in the manufacturing of certain types of yarn to come into compliance with engineering controls by March 27, 1984. These problem areas were concentrated in the ring spinning operations for high-cotton-content, coarse count yarn. These yarns are used in denim, duck, heavy terry cloth, and heavy industrial fabrics. Recent experience with these particular processes indicates that ventilation systems may not always be effective and that this production equipment cannot generally be isolated. It appeared, therefore, that it might not be feasible for employers to lower dust levels to the permissible exposure limit by March 27, 1984 for high-cotton-content, coarse count ring spinning operations. Compliance in the relatively near future appears to be a possibility because of rapidly advancing control technology. Based on the evidence in the record and the joint recommendations of both the affected union and industry association, it is likely that federal OSHA will incorporate an extension of the compliance deadline for engineering and work practice controls in the revised standard. In the meantime, the effective date for engineering controls found in 1910.1043(m)(2)(ii) is temporarily stayed for the operations of ring spinning and winding, twisting, spooling, beaming, and warping following ring spinning, where the yarns meet specified criteria. The stay of enforcement is for the period beginning March 27, 1984 and ending September 27, 1984. All remaining provisions of the cotton dust standard are fully effective for yarn production and slashing and weaving operations.

By this notice, Minnesota OSHA proposes the adoption of the temporary stay of 1910.1043(m)(2)(ii) for the designated industries.

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# PROPOSED RULES

## Board of Pharmacy

### Proposed Rules Governing Unprofessional Conduct

#### Notice of Intent to Amend and Repeal Rules without a Public Hearing and Notice of Intent to Amend and Repeal Rules with a Public Hearing if Twenty-Five or More Persons Request a Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Board of Pharmacy proposes to adopt the above-entitled rules' changes without a public hearing unless twenty-five or more persons submit written requests for a public hearing. The Board has determined that the proposed changes will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §§ 14.21-14.28.

Interested persons shall have 30 days to submit comments in support of or in opposition to the proposed rules' changes. Comment is encouraged. Each comment should identify the portion of the proposed rule change being addressed, the reason for the comment, and any change proposed. The proposed changes 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.

PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD. A HEARING WILL BE HELD ON JUNE 19, 1984. IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE BOARD. To verify whether a hearing will be held, please call the Board before June 19, 1984, at (612) 623-5411.

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

David E. Holmstrom  
Executive Secretary  
Minnesota Board of Pharmacy  
Room 351, 717 Delaware St. SE  
Minneapolis, Minnesota 55414  
Telephone (612) 623-5411

Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed.

The statutory authority of the Board to make the proposed rules' changes is contained in Minn. Stat. § 151.06, subd. 1(9).

If adopted, the proposed changes would clarify an existing rule prohibition against claims of professional superiority and repeal current prohibitions against the public promotion of prescription drugs and pharmaceutical services. A copy of the proposed changes relative to claims of professional superiority and a citation to the rule to be repealed is attached to this Notice. One additional, free copy is available from the Board upon request.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed changes and identifies the data and information relied upon to support the proposed changes has been prepared and is also available from the Board upon request.

Promulgation of the proposed rules' changes will not result in the expenditure of public monies by local public bodies. The proposed changes could reduce costs to consumers by affecting price competition among pharmacies. In accordance with Minn. Stat. § 14.115, the Board's consideration of any such effect on small business will be addressed in the Statement of Need and Reasonableness. Persons representing small businesses are invited to participate in the rulemaking process.

Upon adoption of the final rules' changes without a public hearing, the proposed changes, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final rules' changes as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to receive a copy of the final rules' changes as proposed for adoption, should submit a written statement of such request to David E. Holmstrom.

May 2, 1984

David E. Holmstrom  
Executive Secretary  
Minnesota Board of Pharmacy

#### Notice of Hearing and Notice of Intent to Cancel Hearing if Fewer Than Twenty-five Persons Request a Hearing in Response to Notice of Intent to Amend and Repeal Rules without a Hearing

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in Courtroom No. 12, at the Minnesota Office of Administrative Hearings, 400 Summit Bank Building, 310 South Fourth Avenue, Minneapolis, Minnesota

55415, on June 19, 1984, commencing at 9:00 a.m. PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELLED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO AMEND AND REPEAL THE SAME RULES WITHOUT A HEARING PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE BOARD OF PHARMACY. To verify whether a hearing will be held, please call the Board before June 19, 1984 at (612) 623-5411.

All interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of hearing which is to be included in the hearing record may be mailed to Peter C. Erickson, Hearing Examiner, Office of Administrative Hearings, 400 Summit Bank Building, 310 South Fourth Avenue, Minneapolis, Minnesota 55415, telephone (612) 341-7606. Unless a longer period not to exceed 20 calendar days is ordered by the Hearing Examiner at the hearing, the hearing record will remain open for the inclusion of written material for five working days after the hearing ends. The rule hearing procedure is governed by Minn. Stat. §§ 14.01-14.56 and by Minn. Rules p. 1400.200-1400.1200 (9 MCAR §§ 2.101-2.113). Questions about procedure may be directed to the Hearing Examiner.

If adopted, the proposed rules' changes would clarify an existing rule prohibition against claims of professional superiority and repeal current prohibitions against the public promotion of prescription drugs and pharmaceutical services. A copy of the proposed changes relative to claims of professional superiority and a citation to the rule to be repealed is attached to this Notice. One additional, free copy may be obtained by writing to the Board of Pharmacy, 717 Delaware Street Southeast, Room 351, Minneapolis, Minnesota 55414. Additional copies will be available at the door on the date of the hearing.

The statutory authority of the Minnesota Board of Pharmacy to make the proposed rules' changes is contained in Minn. Stat. § 151.06 subd. 1(9).

The proposed rules' changes may be modified as a result of the rule hearing process. Those who are potentially affected in any manner by the substance of the proposed changes are therefore advised to participate in the process.

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 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.

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the office of the Board of Pharmacy and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the Board at the hearing justifying both the need for and the reasonableness of the proposed rules' changes. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Pursuant to rules of the Office of Administrative Hearings please note that:

Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the Board 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 Board. 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 the Board (in the case of the Board's submission or resubmission to the Attorney General).

Please also note, however, that the immediately preceding procedures have been modified in accordance with 1984 legislative amendments. Under the amendments, submissions to the Attorney General are no longer made. Further, the Board shall give

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## PROPOSED RULES

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notice to all persons who request to be informed that the proposed rules' changes have been adopted and filed with the Secretary of State. For more information about the effects of the pertinent 1984 legislative amendments, please contact the Hearing Examiner.

Promulgation of these proposed rules' changes will not result in the expenditure of public monies by local public bodies. The proposed changes could reduce costs to consumers by affecting price competition among pharmacies. In accordance with Minn. Stat. § 14.115, the Board's consideration of any such effect on small business will be addressed in the Statement of Need and Reasonableness. Persons representing small businesses are invited to participate in the rule hearing process.

May 2, 1984

David E. Holmstrom  
Executive Secretary  
Minnesota Board of Pharmacy

### Rules as Proposed

#### 6800.0900 UNPROFESSIONAL CONDUCT.

**Subpart 1. Prohibited conduct.** Unprofessional conduct shall include, but is not limited to, the following acts of a pharmacist or pharmacy:

A. the assertion or inference in a public manner of material claims of professional superiority in the practice of pharmacy that cannot be substantiated;

B. to J. [Unchanged.]

Subp. 2. [Unchanged.]

Subp. 3. [See repealer.]

Subp. 4. [Unchanged.]

**REPEALER.** Minnesota Rules, part 6800.0900, subpart 3 is repealed.

## ADOPTED RULES

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The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.13-14.28 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. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under § 14.18.

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## Department of Revenue Income Tax Division

### Adopted Rules Relating to Income Tax; Reciprocity with Michigan

The rule proposed and published at *State Register*, Volume 8, Number 35, pages 1919-1921, February 27, 1984 (8 S.R. 1919) is adopted as proposed.

# OFFICIAL NOTICES

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

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

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## Department of Administration Department of Agriculture Department of Energy, Planning and Development Department of Natural Resources Department of Transportation

### Notice of Request for Resumés from Fee Appraisers

The State of Minnesota is establishing a list of qualified real estate appraisers to do contract appraisals for the Departments of Administration, Agriculture, Energy, Planning and Development, Natural Resources, and Transportation for the period ending June 30, 1985. In developing the list of qualified appraisers, the State invites appraisers to submit requests to be on that list, together with their resume, reflecting one or more of qualifications listed below:

The request and resume must be received no later than May 30, 1984.

#### I. Individuals with Appraisal Designations:

Individuals holding a designation from one or more of the following organizations and furnishing evidence of good standing in that organization shall be qualified to be on the State's List of Qualified Appraisers.

##### A. American Institute of Real Estate Appraisers

1. Member of the American Institute (M.A.I.)
2. Residential Member (R.M.)

##### B. Society of Real Estate Appraisers

1. Senior Residential Appraiser (S.R.A.)
2. Senior Real Property Appraiser (S.R.P.A.)
3. Senior Real Estate Analyst (S.R.E.A.)

##### C. American Farm Managers and Rural Appraisers

1. Accredited Rural Appraiser (A.R.A.)

##### D. American Society of Appraisers

1. Senior Member (A.S.A.)
2. Fellow (F.A.S.A.)

##### E. National Association of Independent Fee Appraisers

1. Member (I.F.A.)
2. Senior Member (I.F.A.S.)
3. Appraiser—Counselor (I.F.A.C.)

Candidates, Associate members and nondesignated appraisers must show further evidence of training, experience and proficiency, as noted in paragraph II below.

#### II. Individuals without Appraisal Designations:

Individuals not having one of the designations set forth above, shall be qualified to be on the State's List of Qualified Appraisers provided they meet all the requirements below:

##### A. Experience

Appraisers shall have had at least two years experience in Real Estate Appraising. A resume should relate the type of appraisal experience along with a listing of clientele.

## OFFICIAL NOTICES

### B. Training

1. Appraisers holding a Bachelor's degree with a core curriculum in Real Estate or in Valuation Sciences from a nationally accredited university or college shall have met the training requirements, or

2. An appraiser having completed any of the following appraisal course work sequences in the last 5 years shall have met the training requirements.

AIREA Courses —Real Estate Appraisal Principles	(#1A-1)
—Basic Valuation Procedures	(#1A-2)
SRA Courses—An Introduction to Appraising Real Property	(101)
—Applied Residential Property Valuation	(102)
AFMRA Courses—Principles of Rural Appraisals	
—Advanced Rural Appraisals	
IFA Courses—Principles of Real Estate Appraising	(1.1)
—Income Property Appraising	(2.1)
—Farm, Ranch and Rural Property Appraising	(3.1)

3. An appraiser having completed the above courses prior to January 1, 1979, shall submit a list of continuing education course work completed since that date.

### C. Sample Appraisal

The State reserves the right to request a sample appraisal done for a client. The sample appraisal is to be examined for compliance with generally recognized appraisal procedures.

III. Certification to a state list of qualified appraisers is not a guarantee of subsequent assignments. The State of Minnesota reserves the right to assign appraisers at the discretion of the assigning agency, dependent on the qualifications of the appraisers, geographic location, and fee requirements.

NOTE: Appraisers will be entitled to reject any assignment offered.

A list of the basic standards may be obtained upon written request to the address below.

Mail resumes, requests and other material:

Phone calls may be directed to:

Department of Natural Resources

Denis Dailey at 296-7945, or

Bureau of Land Acquisition and Exchange Section

Russ Gustafson at 296-1135

670 Space Center Building

444 Lafayette Road

St. Paul, Minnesota 55101

## Department of Commerce

### Outside Opinion Sought Regarding Proposed Rules Relating to Homeowner's Insurance Nonrenewal Including the Impact of the Rules on Small Businesses

Notice is hereby given that the Department of Commerce is seeking information or opinions from persons outside the agency in preparing to promulgate new rules governing homeowner's insurance nonrenewal. Promulgation of these rules is authorized by Minnesota Statutes, section 65A.29.

Outside opinion is also being solicited as to how these rules will affect small businesses as defined by Minnesota Laws 1983, ch. 188, codified as Minnesota Statutes § 14.115, subd. 1.

The Department of Commerce requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing to: William Kyle, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101, (612) 296-6944.

All statements of information and comment shall be accepted until June 13, 1984. Any written material received by the Department of Commerce shall become part of the record in the event that the rules are promulgated.

Michael A. Hatch  
Commissioner of Commerce

**Department of Commerce  
Division of Financial Examinations****Minnesota Personal Property Exemption—Adjustment of Dollar Amounts**

Commissioner of Commerce Michael A. Hatch announced today that no change will occur in the personal property exemption from creditor collection action under Minnesota Statutes, Chapter 550. Personal property exempted includes all wearing apparel, one watch, utensils and foodstuffs of the debtor and his family; and household furniture, household appliances, phonographs, and radio and telephone receivers. The exemption may not be waived except for purchase money security interest. A periodic adjustment of the \$4,500 amount of personal property exempted would be effective on July 1 in even-numbered years based on a percentage change in the Implicit Price Deflator for the Gross National Product.

Information obtained from the U.S. Department of Commerce, Economic Development Administration, in their monthly publication "Survey of Current Business" for February 1984, indicates the percentage change from the reference base to be 9% rounded to the nearest whole percentage point as required. The reference base index, December 1982, was 210% and for December 1983, 218.67%, an increase of 8.67 basis points or a percentage change of 4.1%. The statute requires that the change in the reference base index be 10% or more in order to adjust the dollar amounts. Since this is less than 10% there will be no change at this time.

According to Commissioner Hatch, this means the \$4,500 limit as amended for personal property exemption in 1983 will remain unchanged. The next published adjustment is scheduled to take place on or before April 30, 1986, for July 1, 1986, based on the December 1985 index.

April 30, 1984

Michael A. Hatch  
Commissioner of Commerce

**Department of Commerce  
Division of Financial Examinations****Minnesota Regulated Loan Act—Adjustment in Dollar Amounts**

Commissioner of Commerce Michael A. Hatch announced today that a ten percent (10%) change will occur in dollar amounts under the Regulated Loan Act (The Act). The Act provides for periodic adjustment in dollar amounts that would be effective on July 1 in even-numbered years based on a percentage change in the Implicit Price Deflator for the Gross National Product.

Information obtained from the U.S. Department of Commerce, Economic Development Administration, in their monthly publication "Survey of Current Business" for February 1984, indicates the percentage change from the reference base to be 19% rounded to the nearest whole percentage point as required. The reference base index, December 1980, was 183.81% and for December 1983, 218.67%, an increase of 34.86 basis points or a percentage change of 18.96%. The statute requires that the change in the reference base index be 10% or more in order to adjust the dollar amounts. The portion of the percentage change in the index in excess of a multiple of ten percent shall be disregarded. Dollar amounts change only in multiples of ten percent of amounts appearing in law effective August 1, 1981.

According to Commissioner Hatch, this means the dollar limits enacted in 1981 will increase by 10% effective July 1, 1984. This includes the \$35,000 loan maximum raised to \$38,500 with no more than \$385 at 33% interest per annum and no real estate taken as security unless the loan exceeds \$2,970. Maximum fees remain limited to 1% of the principal balance or at least \$275 for closing costs on real estate secured loans with a \$165 charge for assumption of such loans. The default charge minimum is raised to \$2.20. Affected dollar amounts in 1984 Session Law changes likewise will be adjusted by a 10% increase. The next published adjustment is scheduled on or before April 30, 1986 to be effective July 1, 1986, based on the December 1985 index.

April 30, 1984

Michael A. Hatch  
Commissioner of Commerce

**OFFICIAL NOTICES**

**Department of Energy and Economic Development**

**Notice of Certification Process for Entitlement Issuers of Industrial Development Bonds**

To all industrial development bond issuers and interested parties:

From April 27, 1984 to 4:30 p.m. May 29, 1984, during its regular business hours, the Minnesota Department of Energy and Economic Development will accept Certifications from local issuers qualifying as Entitlement Issuers based on previous use of Industrial Development Bonds during the four years from 1980 through 1983.

Entitlement Issuers are defined in Minn. Laws 1984, ch. 582 § 13 to be codified as Minn. Stat. § 474.16, subd. 2 as local issuers having an average previous use of \$1,000,000 or more, for any three of the four years 1980 through 1983.

Previous use for these purposes means the principal amount of obligations of a type subject to limitation under the terms of Section 721 of the Tax Reform Bill of 1984, H.R. 4170, as reported by the Ways and Means Committee of the United States House of Representatives on March 5, 1984. Bonds issued to refinance previous issues are not to be included in calculations qualifying an Entitlement Issuer.

At the present time, there are no rules relating to local issuers that are not Entitlement Issuers.

The Department of Energy and Economic Development will not provide for allocations to Non-Entitlement Issuers until a federal limitations act is passed as defined in Minn. Statutes.

Certifications and inquiries should be addressed to:

Richard Nadeau  
Financial Management Division  
Minnesota Department of Energy and Economic Development  
150 E. Kellogg Blvd., Room 900  
St. Paul, MN 55101

**SAMPLE CERTIFICATION**

Pursuant to Minn. Laws 1984, ch. 582 § 15 to be codified as Minn. Stat. § 474.18, subd. 2, the undersigned certify that (name of local issuer as defined by Minn. Laws 1984, ch. 582 § 13 to be codified as Minn. Stat. § 474.16, subd. 2) (hereinafter the local issuer) issued obligations of a type subject to limitation under the terms Section 721 of the Tax Reform Bill of 1984, H.R. 4170, as reported by the Ways and Means Committee of the United States House of Representatives on March 5, 1984 (hereinafter "obligations") listed herein for each of the four preceding calendar years.

For each of the four preceding calendar years list the total principal amount of obligations issued by any issuer within the geographic boundaries covered by the local issuer. (For example, bonds issued by port authorities or redevelopment authorities operating within the geographic boundaries of the local issuer should be included in these totals)

- 1980
- 1981
- 1982
- 1983

For each obligation issued by the local issuer, each of the four preceding calendar years, list the following information:

	Date of Issuance of Obligation	Total Principal Amount of Obligation	Local Issuer if other than Local Issuer Listed above	Description of Project with Respect to which the Obligation was issued
1980				
1981				
1982				
1983				

(Attach additional pages if necessary)



The following authorized official is designated for contact by the Department of Energy and Economic Development:

Name \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mayor/Chair of Local Issuer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Attorney for Local Issuer

## **Ethical Practices Board**

### **Request for Advisory Opinion Re: Reimbursement for Administrative Costs**

The Minnesota Ethical Practices Board solicits comments about the following request for an advisory opinion which will be discussed at its May 18, 1984, Board meeting. Send written comments about the opinion request to the Board's office or telephone Mrs. McCoy at (612) 296-1720 by May 17, 1984.

May 1, 1984

State of Minnesota  
State Ethical Practices Board  
41 State Office Building  
St. Paul, MN 55155

Dear Sir or Madam:

The Minnesota Association of Realtors (MAR), a nonprofit corporation, requests an advisory opinion from the Ethical Practices Board on behalf of REPAC, the duly registered political committee of the MAR.

REPAC has no permanent staff and no periodic publication, newsletters or magazines. REPAC has used the services of the staff of the MAR and also REPAC has placed ads in the monthly publication of the MAR. In addition to these specific costs, MAR or its local Boards have contributed administrative staff time or incurred other costs on behalf of REPAC. In all instances, REPAC has reimbursed the MAR for administrative costs incurred in its behalf by the MAR or its affiliated Boards including staff time, publication expense and other similar expenditures. This practice is in accordance with frequently expressed Ethical Practices Board policy. (December 1, 1981—opinion issued to Lawyers Public Affairs Commission—Opinion No. 81 "The Board recommends that since MSBA is incorporated, LAW PAC fully reimburse MSBA for all solicitations and administrative costs and expenses incurred by MSBA relative to the checkoff system.")

In the Minnesota Supreme Court's opinion of MACI v. Foley, 316 NW.2d 524 (Minn. 1982), the Court held that Minn. Stat. 210A.34 declaring it unlawful for corporations to make contributions to promote or defeat the election of any candidates to any political office, does not apply to nonprofit corporations.

Is REPAC, as a duly registered political committee, required to reimburse MAR, a nonprofit corporation, for administrative costs and expenses incurred by MAR or its affiliated Boards on behalf of REPAC?

Very Truly Yours,  
Glenn S. Dorfman,

Director of Governmental Affairs, Minnesota Association of Realtors

## OFFICIAL NOTICES

### Department of Health Health Systems Division

#### Outside Opinion Sought Concerning a Request for a Waiver of HMO Statutes and Rules by Group Health Association of Northeastern Minnesota

Notice is hereby given that the Department of Health is seeking opinions and comments pertaining to a request by Group Health Association of Northeastern Minnesota for a waiver of HMO statutes and rules regarding "MAXI MED". Such waivers are authorized for demonstration projects by Minn. Stat. § 62D.30.

The request submitted by Group Health Association of Northeastern Minnesota is available for inspection during normal business hours at the following location.

HMO Unit  
Room 217  
Minnesota Department of Health  
717 Delaware Street S.E.  
Minneapolis, Minnesota 55440

Comments on the application must be received at the HMO Unit by May 25, 1984.

### Metropolitan Council

#### Applications Open for New Regional Transit Board

Applications are now being taken for 14 vacancies on a new regional transit board made up of Metropolitan Council districts in the Metropolitan Area and the board chair. The board will coordinate transit operations within the Metropolitan Area and implement the Metropolitan Council's long-term transit plans; establish a transit information service; adopt a transit service implementation plan; contract with transit operators in the Metropolitan Area to provide transit services; coordinate special transportation services for the elderly, handicapped or others with special transportation needs; administer contracts for paratransit projects; appoint the members of the Metropolitan Transit Commission; and other transit related responsibilities. Members are appointed by the Metropolitan Council. The chair is appointed by the Governor. Meetings will be scheduled by the board. Members receive \$50 per diem and expenses. Application forms can be obtained from the Secretary of State's Office, 296-3266. Applications must be received by June 6. For more information contact Bill Lester at the Metropolitan Council, 300 Metro Square Bldg., St. Paul 55101, 291-6630. All public hearings will be held at 7 p.m. for candidates for the chair and the 14 district representatives, as follows:

Wednesday, June 6

Public hearing on candidates for board chair,  
and public hearing on candidates representing board  
District A

Metropolitan Council Chambers  
300 Metro Square Building  
St. Paul, Mn. 55101

Thursday, June 7

District B  
Highland Park Jr. High School  
Room 105  
975 S. Snelling Avenue  
St. Paul, Mn. 55116

Monday, June 11

District C  
Roseville City Hall  
Police Training Room  
N.W. Corner of Lexington & Co. Rd. C  
St. Paul, Mn. 55113

Wednesday, June 20

District I  
St. Louis Park City Hall  
Community Room—First Level  
5005 Minnetonka Blvd.  
St. Louis Park, Mn. 55416

Thursday, June 21

District J  
Richfield Community Center  
General Room  
7000 Nicollet Ave.  
Richfield, Mn. 55423

Tuesday, June 12  
District D  
Regina High School  
Room 116  
4225 Third Av. S.  
Minneapolis, Mn. 55409

Wednesday, June 13  
District E  
South High School  
Room 101  
3131-19th Av. S.  
Minneapolis, Mn. 55407

Thursday, June 14  
District F  
Hennepin County Government Center  
Meeting Room A—Level A  
300 S. Sixth St.  
Minneapolis, Mn. 55487

Monday, June 18  
District G  
Fridley City Hall  
Classroom—Basement Level  
6431 University Av.  
Fridley, Mn. 55432

Tuesday, June 19  
District H  
Brooklyn Center City Hall  
Council Chambers  
6301 Shingle Creek Parkway  
Brooklyn Center, Minnesota 55430

Monday, June 25  
District K  
West St. Paul City Hall  
Conference Room  
1616 Humboldt Ave.  
West. St. Paul, Mn. 55118

Tuesday, June 26  
District L  
White Bear Lake City Hall  
Council Chambers, North Bldg.  
4820 Cook Av.  
White Bear Lake, Mn. 55110

Wednesday, June 27  
District M  
Hopkins City Hall  
Council Chambers  
1010 First St. S.  
Hopkins, Mn. 55343

Thursday, June 28  
District N  
Burnsville City Hall  
Council Chambers  
1313 E. Hwy. 13  
Burnsville, Mn. 55337

## **Pollution Control Agency**

### **Outside Opinion Sought Regarding Implementation of a Procedural Rule for Section 401 Certification Actions**

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (Agency) is seeking information and opinions from sources outside the Agency on the development of a procedural rule for actions required under Section 401 of the Clean Water Act. The rule addresses the procedures for reviewing, acting upon, and the conditions of Section 401 Certifications. Interested persons or groups may submit statements of information or opinions orally or in writing. Written comments received by June 7, 1984, will become a part of the rulemaking record on this matter. Written comments should be submitted to Mary Kimlinger, Minnesota Pollution Control Agency, Division of Water Quality, 1935 West County Road B-2, Roseville, Minnesota 55113, or by telephone at (612) 296-7232.

Future announcements concerning activities on this subject will be published in the *State Register* and/or mailed to those persons who have participated by written comment or have requested to be placed on a mailing list by contacting Mary Kimlinger at the address or telephone number listed above.

May 3, 1984

Sandra S. Gardebring  
Executive Director

## **OFFICIAL NOTICES**

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

#### **Outside Opinion Sought Regarding Rules for Solid Waste Management Facilities**

Notice is hereby given that the Minnesota Pollution Control Agency (MPCA) is seeking information or opinions from sources outside the MPCA for the purpose of revising the State's solid waste rules pursuant to Minnesota Statutes, section 116.07 as amended by the 1984 legislative session.

The legislative amendments mandate the establishment of requirements for the closure and post-closure care of solid waste disposal facilities and requirements for proof of financial capability by owners or operators of solid waste disposal facilities. A certificate of need process is required for new capacity at land disposal facilities located outside the metropolitan area. The revisions may also include changes to rules on county solid waste management plans, resource recovery facilities, ground water protection, design and operation of solid waste management facilities, and ground water monitoring systems. These rules will pertain to mixed-municipal solid waste and nonhazardous industrial waste.

The MPCA invites all interested persons or groups to submit information or comments on these subjects to:

Mr. Roger Bjork  
Solid and Hazardous Waste Division  
Minnesota Pollution Control Agency  
1935 West County Road B2  
Roseville, Minnesota 55113

Oral statements will be accepted during regular business hours over the telephone at 612/296-7785.

Any written material received by the MPCA by July 1, 1984 shall become part of the background record regarding these rules.

### **State Planning Agency Developmental Disabilities Program**

#### **Request for Applications to Administer Client Assistance Program**

Recent amendments to the Rehabilitation Act of 1973 require the Governor of each state to designate an organization or agency as the Client Assistance Program for clients of or applicants for service from the state vocational rehabilitation program and services for the blind.

Application forms are available from the State Planning Agency for organizations interested in directing the Client Assistance Program. All applications are due by 4:30 p.m., June 1, 1984. A decision will be made by July 1, 1984.

Requests for the application form should be directed to:

Ron Kaliszewski  
State Planning Agency  
201 Capitol Square Building  
550 Cedar Street  
St. Paul, MN 55101  
612/297-3207

# STATE CONTRACTS

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

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

Commodities contracts with an estimated value of \$5,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers by calling 296-2513. If the appropriate buyer is not available, contact Harvey Leach or Barbara Jolly at 296-3779.

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## Department of Administration Information Services Bureau

### Availability of Contract for Back-Up Programming Services

The Information Services Bureau (ISB), Department of Administration, for the State of Minnesota is requesting a proposal from qualified firms to provide back-up programming services to be used by the Bureau on an as-needed basis. This may involve programming in COBOL, BAL, BASIC, or FORTRAN IV programming languages, with emphasis on COBOL, and BAL. This may also involve coding for the report generators ASI-ST and DYLA KOR. These services may also include designing and coding the linkages to the TOTAL data base manager, and designing and coding for the interface to the on-line monitor CICS. This work may be on projects for any of forty-one (41) State agencies. Proposals for part of this work will be considered (i.e., responders are not required to commit to the entire \$800,000.00). However: the Bureau will not consider proposals for increments of less than \$250,000.00 except for those vendors certified in the SED set-aside program.

The Bureau reserves the right to contract this work out to several responders, or to award the entire amount to one responder. The total amount expended for this activity will not exceed \$800,000.00 for fiscal year 1985 (i.e., July 1, 1984 through June 30, 1985).

The full text of the Request for Proposal is available on request. Inquiries and responses must be directed to:

Norbert A. Bohn, Director  
Application Services Division  
Information Services Bureau  
658 Cedar Street, Centennial Office Building  
St. Paul, MN 55155  
(612) 296-6326

Responses must be received no later than 4:00 p.m. on May 25th, 1984.

## Department of Administration Information Services Bureau

### Availability of Contract for Back-up Systems Analysis

The Information Services Bureau (ISB), Department of Administration, for the State of Minnesota, is requesting a proposal from qualified firms to provide back-up systems analysis services to be used by the Bureau on an as-needed basis. This will involve basic systems analysis using the PRIDE systems development methodology. This may involve back-up assistance to a staff analyst of the Bureau on a specific phase of a project, or taking responsibility for specific phases of a project—this work to be assigned at the discretion of the Bureau. This work may be on projects for any of forty-one (41) State agencies. The total amount expended for this activity will not exceed \$175,000.00 for fiscal year 1985, (i.e., July 1, 1984 through June 30, 1985).

The full text of the Request for Proposal is available on request. Inquiries and responses must be directed to:

Norbert A. Bohn, Director  
Application Services Division  
Information Services Bureau  
658 Cedar Street, Centennial Office Bldg.  
St. Paul, MN 55155  
(612) 296-6326

Responses must be received no later than 4:00 p.m. on May 18th, 1984.

# STATE CONTRACTS

## Department of Administration Procurement Division

### Commodities Contracts Currently Open for Bidding

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
02-410-43505 & 07-300-29298 02-430-44071	Initial share of Stock of Spare Parts	Info. Services Bureau	St. Paul	Contact buyer
	Upgrade MCBX	Administration/ Telecomm	St. Paul	Contact buyer
02-443-41738	Purchase of Microfilm/Reader Printer	Micrographic Services	St. Paul	Contact buyer
29-000-35771	Personal Floatation Devices	Natural Resources	St. Paul	Contact buyer
29-000-35744	Ammunition	Natural Resources	St. Paul	Contact buyer
26-074-09332	Mail Processing System	Winona State University	Winona	Contact buyer
07-500-29746, etc. Sch 50	Emergency Lights	Public Safety	St. Paul	Contact buyer
	Tires & Tubes	Various	Various	Contact buyer
07-500-29749	Operational Fixed Stations	Transportation	Duluth	Contact buyer
79-000-41587	Ind. Tractor Loader-rebid	Transportation		Contact buyer
26-072-08626	Phototypesetting paper-Rebid	Moorhead State University	Moorhead	Contact buyer
07-300-29555	Car	Public Safety/Crime Bureau	St. Paul	Contact buyer
78-000-13916	Purchase of Photocopy Machine	Dept. of Corrections	Same	Contact buyer
29-006-03846	Portable Docks	Natural Resources	Various	Contact buyer
29-000-35763	Boat Trailers	Natural Resources	St. Paul	Contact buyer
29-000-35526	Car-rebid	Natural Resources	Grand Rapids	Contact buyer
21-200-07766	Furnish & install Liebert Air Conditioner & Dry Cooler & removal of an existing air conditioner & dry cooler	Economic Security	St. Paul	Contact buyer
26-073-16282	Film Coating & Processing Facility	St. Cloud University	St. Cloud	Contact buyer
07-200-29767	Dosimeters	Emergency Services	St. Paul	Contact buyer
39-000-03632	Purchase of Photocopy Machines	Governor's Office	St. Paul	Contact buyer
29-000-35764	Canoes	Natural Resources	Grand Rapids	Contact buyer
55-000-87934	Apollo Imager	Services for the Blind	St. Paul	Contact buyer
29-000-35762	Aluminum Canoes	Natural Resources	St. Paul	Contact buyer
29-000-35759	Lumber	Natural Resources	Jay Cooke State Park	Contact buyer
29-002-09423 & 09464	Lumber	Natural Resources	Gooseberry Falls St. Park	Contact buyer
94-511-22753 & 776945	Mn in the Eighties	Agriculture	St. Paul	Contact buyer
78-830-06865	Purchase of Photocopy Machines	MN Correctional Facility	Same	Contact buyer
67-350-09240	Typewriters	Revenue	St. Paul	Contact buyer
77-900-08192	Material for Shelter Bldg.	Minnesota Zoo	Apple Valley	Contact buyer
99-906-24497 & 8	State Trunk Highway & Various Purpose Bonds	Finance	St. Paul	Contact buyer
12-200-77789	Atomic Absorption Spectrophotometer	Health	Minneapolis	Contact buyer
26-070-10389, etc. Contract	Musical Instruments Photographic Lamps (All types)	Bemidji State Univ. Various	Bemidji Various	Contact buyer 100,000.-110,000.

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
26-071-14069	Process Camera	Mankato University	Mankato	Contact buyer
29-000-35631 & 35702	Purchase wor Processing System	Natural Resources	St. Paul	Contact buyer
78-620-16343, etc.	Riding Lawn Mowers	Various	Various	Contact buyer
21-200-07756	Rental of Photocopy Machine	Economic Security	Same	Contact buyer
26-072-08627	Pole Vault Pit	Moorhead State Univ.	Moorhead	Contact buyer
07-200-29704	Firefighters Clothes	Public Safety	St. Paul	Contact buyer
02-307-43407	Surface Grinding Machine	Plant Management	St. Paul	Contact buyer
07-500-29692	Overhaul Cent. Aircraft	Public Safety	St. Paul Downtown Airport	Contact buyer
27-147-40838	Hockey Equipment	Vermilion Community College	Ely	Contact buyer
29-000-35760	Lumber	Natural Resources	DNR Trails	Contact buyer
77-000-08197	Lumber	Zoo	Apple Valley	Contact buyer

Contact the receptionist at 296-2513 for referral to specific buyers.

## **Community College System Office of the Chancellor**

### **Request for Proposals for Auditing Services**

The Minnesota Community College System is accepting bid proposals for audits of Federal Student Financial Aid programs for all 18 community colleges. Those persons interested in receiving a detailed copy of the request for proposal may write to the address below or contract Jerry Jarosch at 612-296-3935.

Minnesota Community College System  
Board Office  
301 Capitol Square Building  
550 Cedar Street  
St. Paul, Minnesota 55101

About \$120,000 has been budgeted for this project. Proposals are due by 4:30 p.m., June 30, 1984.

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

### **Request for Proposals for Regional Emergency Medical Services Maintenance Grants**

The Commissioner of Health is requesting proposals for one year regional emergency medical services (EMS) maintenance grants for the following Minnesota EMS regions: Northwest, Northeast, Central, Southwest. Regional EMS maintenance grants will provide funding for on-going EMS system maintenance for EMS regions that have substantially completed the regional EMS development process, at an annual rate of \$25,000.

This request for proposal (RFP) does not obligate the commissioner to fund the projects and the commissioner reserves the right to modify or cancel the solicitation if she considers it to be in the best interest of the state to do so.

#### **I. Scope of the Project.**

The purpose of these grants is to maintain regional EMS programs in the aforementioned regions of the state.

#### **II. Objective**

The ultimate objective of these grants is to reduce death and disability due to medical emergencies by promoting the prevention of medical emergencies and by improving the quality of emergency medical care. In particular, improvements are expected in the cost-effective care of trauma and out-of-hospital cardiac arrest patients.

# STATE CONTRACTS

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## III. Grantee Qualifications

Applications will be considered from not-for-profit corporations or governmental entities. Proprietary corporations are ineligible as the primary grantee under the federal block grant legislation which supports this program. The regional EMS project must provide services in all counties in the region, and will have demonstrated support of most local boards of health, CHS agencies and other organizations and agencies that are actively involved in EMS in the region.

## IV. Proposal Contents

Respondents must include the following minimum contents in proposals.

### A. 1. Project Administration/Management

- a. Administrative structure
- b. Qualifications of:
  - (1) Project Staff
  - (2) Medical Director
  - (3) Clinical Consultants (trauma, cardiac)
- c. Regional Advisory Committees

### B. Budget

1. Program Budget—task and line item breakdown
2. Budget narrative

### C. Updated Regional EMS Plan

1. Updated regional EMS plans should address the following EMS program components as identified in the State EMS Plan:

- a. Trained personnel (physicians, nurses, EMTs, EMT-Is, paramedics, first responders, dispatchers)
- b. Transportation
- c. Public safety coordination
- d. Communications
  - (1) Systems access (911)
  - (2) Regional EMS radio communications planning approach
  - (3) Regional medical control
  - (4) Medical control resource hospital
- e. Public involvement
- f. Facilities access (address critical care systems planning for trauma and cardiac illness)
- g. System management (including plans for on-going system operations)

The updated regional EMS plan should reference the most current version of a regional EMS plan, identifying those areas of the plan requiring maintenance level activities.

The updated regional EMS plan will become the basis and serve as the justification for developing a workplan by addressing the following elements: current status; desired status; needs/problems; steps in progress; objectives; and evaluation measures for the program components listed above.

Maintenance level grantees will not necessarily be expected to develop objectives for each program component listed above but should address each of them in the updated plan. Grantees will be expected to identify those program elements which require maintenance level activity.

## V. Submission of Proposals

Interested parties must submit proposals no later than June 1, 1984. Proposals should be addressed directly to Mr. Carr in the EMS Section. Three copies of the proposals should be submitted to the Minnesota Department of Health. Prices and terms of the proposal as stated must be valid for the length of the program.



**VI. Department Contacts**

Prospective responders who have questions regarding this RFP may call or write:

Peter Carr, Chief  
Emergency Medical Services Section  
Minnesota Department of Health  
717 Delaware S.E.  
P.O. Box 9441  
Minneapolis, Minnesota 55440  
612/623-5284

## **Department of Health Health Systems Division**

### **Request for Proposals for Consultant Physicians in Long-Term Care**

The Minnesota Department of Health (MDH) is requesting applications from qualified physicians as consultants to the Quality Assurance & Review Program Section of the Health Systems Division in matters related to the required inspection of care provided to patients/residents in Long Term Care Facilities throughout the State of Minnesota. All positions will be held by contract for the period of July 1, 1984 through June 30, 1985, and interested physicians will be required to submit formal proposals according to the procedures required by the Minnesota Department of Administration. Designated areas of consultation services in the State, maximum contract amounts, and hourly rates will be discussed in the "Request for Proposals" (RFPs) issued by the Minnesota Department of Health for each of the described positions.

**Long Term Care Medical Director:** The Quality Assurance and Review Program is seeking a physician to provide medical guidance on assessment of the quality of care provided to patients/residents in long term care facilities. The physician must have experience in the area of quality assurance. A part-time consulting service is needed throughout the year. The deadline of submission of applications is 4:00 p.m., May 31, 1984; budget is \$25,000.

**Long Term Care Review:** Consulting services by six to ten physicians for medical reviews are needed. Travel by each review physician is generally limited to the region in which they reside. A budget of \$73,000 has been allocated. The deadline for submission of applications is 4:00 p.m., May 31, 1984. To obtain a copy of the Request for Proposal for Professional Services, contact Marian E. Lewis at this address:

Marian E. Lewis, Chief  
Quality Assurance and Review Section  
Minnesota Department of Health  
717 Delaware Street S.E.,  
Minneapolis, Minnesota 55440

## **Housing Finance Agency Home Improvement Division**

### **Request for Proposals for Housing Inspections**

The Minnesota Housing Finance Agency intends to engage the services of a housing inspector to make inspections of single family houses improved through its home improvement loan program.

The Agency will identify properties which are to be inspected. The contractor will be expected to:

1. Review microfiche of selected loan files or the actual loan files to determine the location of the properties and which improvements were to be completed;
2. Contact individuals selected by the Agency to schedule inspections;
3. Inspect properties to determine compliance with program standards; and,
4. Complete a written inspection report in evidence of each inspection.

The contractor will provide the automobile to be used for the inspections and must be available to travel to all parts of the state. Travel reimbursement is allowed in accordance with state guidelines.

## **STATE CONTRACTS**

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The agency intends to conduct 100 inspections. It is probable that at least 50% of the inspections will be for properties located outside the seven-county metropolitan area. The inspections must be completed by November 1, 1984.

Proposals must be in writing and must be received by the agency no later than 4:30 p.m. on June 4, 1984. About \$4,000 is contemplated for this proposal.

General inquiries and proposals should be directed to:

Mr. James Cegla  
Coordinator, Home Improvement Loan Program  
Minnesota Housing Finance Agency  
333 Sibley Street, Suite 200  
St. Paul, MN 55101  
(612) 297-3121

### **Department of Natural Resources Division of Fish and Wildlife**

#### **Request for Proposals for Editorial Preparation of the "Rugged Ringneck" Booklet**

Notice is hereby given that the Department of Natural Resources, Section of Wildlife, intends to engage the professional editorial services of a consultant to update by writing, editing and layout preparation of an approximate 30 page booklet entitled the "Rugged Ringneck of Minnesota." About \$6,000 is contemplated for this project. A more detailed description of the project task may be obtained from:

Timothy Bremicker  
Section of Wildlife  
Department of Natural Resources  
Box 7, Centennial Bldg.  
St. Paul, Minnesota 55155  
612-296-3344

Proposal should be submitted no later than June 15th.

### **Department of Natural Resources Management Information Systems Bureau**

#### **Request for Proposals for Software Services**

The Department of Natural Resources is seeking professional services assistance to design and develop software systems for the Department's License Center and administrative operations. The services that will be required under the contract are outlined in detail in the Request for Proposals (RFP) statement of work. The successful contractor must have expertise in IBM System 38 programming and data base design. The contractor must also offer expertise in systems analysis, systems design, systems implementation and user training.

This request for proposals does not obligate the DNR to accept any one proposal and the DNR reserves the right to cancel the solicitation if it is considered to be in its best interest. Approximately \$100,000 is contemplated for this project.

Proposals may be submitted to the address below and must be received no later than May 31, 1984 at 4:00 p.m. Late proposals will not be accepted. Please submit three copies, each of which is signed by the authorized representative of the firm.

Copies of the detailed RFP proposal are available from the Department for review.

Contact:

Rodney W. Sando  
Land Administrator  
Minnesota DNR  
296-4097  
Box 31, Centennial Building  
St. Paul, MN 55155

## **State Planning Agency State Health Planning and Development Agency**

### **Request for Proposals for Estimation of the Health Insurance Coverage Status of Minnesotans**

The Minnesota State Health Planning and Development Agency announces that it is seeking proposals from public or private organizations with the interest and capacity to undertake the following:

1. To estimate the number and proportions of Minnesotans with health insurance coverage in 1980 and 1985.
2. To correlate health insurance coverage with demographic characteristics, income, economic conditions, and health status.

The study should be completed by October 15, 1984.

For further information and a complete copy of the request, contact:

Darrell R. Shreve  
Health Planning Office  
Minnesota State Planning Agency  
550 Cedar Street  
St. Paul, MN 55101  
(612) 296-7939

Proposals must be received by 4:00 p.m., Monday, June 11, 1984. Approximately \$15,000 is available for this study.

## **Department of Transportation**

### **Request for Proposals for Counseling Services**

The Minnesota Department of Transportation is accepting proposals for a professional psychologist to provide professional counseling service to employees. The contractor will conduct training courses for supervisors and managers in the appropriate techniques used in motivating recalcitrant employees as well as providing guidance to employees who may be suffering emotional trauma associated with potential layoffs or career changes necessitated by reduced program activity.

The contractor must possess:

1. A doctorate in psychology.
2. A license as a professional psychologist.
3. 4 years experience in the practice of clinical psychology.
4. Experience as a professional counselor with an employer of 1,000 or more employees ranging from managers and professionals to trade persons, technicians, and clerks.
5. Experience as a chemical dependency counselor.
6. Familiarity with State government regulations and operations.
7. Knowledge of and ability to conduct management training and development courses.

A contract for the requested services will commence July 1, 1984 and terminate on June 30, 1985. The compensation limit during the contract period is \$33,000.00 with payment not to exceed \$33.00 per hour. Payments will be made monthly for the hours listed on the monthly report. Services are to be rendered by the individual or persons possessing the doctorate in psychology. Services are to be provided to Mn/DOT employees at least 3 days in each work week. If two or more qualified applicants wish to submit a combined proposal they may do so provided that the total contract amount will not exceed \$33,000.00.

Qualified professionals should submit their resumes and work plan proposals not later than June 4, 1984.

Roger W. Durbahn  
Assistant Personnel Director  
Minnesota Department of Transportation  
315 Transportation Building  
Saint Paul, Minnesota 55155

R. P. Braun, Commissioner

# SUPREME COURT

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## Decisions of the Court of Appeals Filed Tuesday, May 1, 1984

### Compiled by Wayne O. Tschimperle, Clerk

**C6-83-1314** In Re the Marriage of: Rosalie V. Wilson, petitioner, v. Warren H. Wilson, Appellant. Pennington County.

The trial court's property division was not a clear abuse of discretion.

Affirmed. Popovich, C.J.

**C4-83-1781** In Re Marriage of: Carole Ann Halper, petitioner, v. David William Halper, Appellant.

The trial court correctly applied the child support guidelines of chapter 308, 1983 Laws of Minnesota where the decree establishing the right to permanent child support was issued after the effective date of legislation.

The trial court's award of child support has an acceptable basis in fact and equity.

The visitation schedule established by the trial court does not constitute an abuse of discretion.

Affirmed. Popovich, C.J.

**C6-83-1930** Douglas J. Mastley, Appellant, v. Commissioner of Economic Security. Department of Economic Security.

Relator's failure to apply for an available and suitable position, without good cause, rendered him ineligible to receive unemployment compensation benefits. Refusing employment at a reasonable rate of pay, at reasonable hours, waiting for a better opening, after five months of unemployment, rendered him unavailable for work and ineligible for unemployment compensation benefits.

Affirmed. Popovich, C.J.

**C6-83-1247** In the Matter of the Welfare of the C. Children, State of Minnesota v. Patrick J. C. and Bernice K. C., Appellants. Pipestone County.

Based primarily on the father's sexual improprieties with his adoptive daughters, the record supports the trial court's determination that four of the children were neglected under Minn. Stat. § 260.015, subd. 10. However, the record does not support the finding that the four boys still residing with their parents were neglected.

Excluding evidence of a witness' prior sexual conduct was not error, as it was a discretionary matter for the trial court.

The trial court did not abuse its discretion by transferring legal custody of four of the children to the welfare board and authorizing their placement.

Affirmed in part, reversed in part. Parker, J.

**C1-83-1415** State of Minnesota, v. Mark Pierce, Appellant. Lake County.

Appellant's confession was not the product of an unreasonable delay in presenting him before a magistrate and was admissible into evidence.

After a valid stop and observation by peace officers of facts constituting probable cause to believe an open bottle violation existed, the evidence obtained from searches of the auto was admissible.

Affirmed. Parker, J.

**C2-83-1519** Roberta Barnes and Charles Barnes, Appellants, v. Weis Management Company, Pam Smith. Ramsey County.

Under Minn. Stat. § 555.03, subd. 2, it is a defense to an unlawful detainer action for tenant to prove by a fair preponderance of the evidence that termination of the tenancy and eviction from the premises were intended as a penalty for tenants' good-faith activities in enforcing their right to lease premises without discrimination based on their race as provided in Minn. Stat. § 363.03, subd. 2(1) (a) and (b).

Under Minn. Stat. § 566.03, subd. 2, the burden of proving that the eviction was not served for a retaliatory purpose rests with the landlord.

The tenant then must be afforded the opportunity to show by a fair preponderance of the evidence that the alleged nonretaliatory purpose was a pretext for discrimination.

An Accumulation of evidence which causes a colorable claim that eviction may have been in retaliation for appellants' act of renting requires remand for taking of evidence on this issue.

Writ of restitution vacated and remanded. Parker, J.

**C8-83-1783** ACLI International Commodity Services, Inc., v. Gregory B. Lindwall, Appellant. Dakota County.

Trading in commodities futures does not constitute gambling as defined in Minn. Stat. § 609.75.

Insufficient evidence was produced to establish a genuine issue of material fact as to the claims of fraud in the inducement. No genuine issue of material fact was established to sustain the claim that respondent negligently handled appellant's account. The trial court did not abuse its discretion in refusing to compel respondent to answer certain interrogatories.

Affirmed. Parker, J.

**C9-83-1503 Jill Holland, et al., v. Dick Youngberg Chevrolet-Buick, Inc. Appellant. Wright County.**

Where a buyer purchases a truck recommended by seller as appropriate to haul the buyer's intended load and evidence at trial indicates the truck lacked adequate power to haul this load, the truck's lack of power constitutes "substantial impairment." The seller has no right to cure defects which substantially impair the good's value.

The jury's finding that buyer revoked acceptance of a truck within a reasonable time, where revocation occurred within 5 months of purchase, is supported by the evidence.

Affirmed. Foley, J.

**C8-83-1671 State of Minnesota v. David L. Thurmer, Appellant. Scott County.**

Where defendant was found alone in the front seat of a car in the ditch off a county road in an intoxicated state and defendant told the arresting officer he drove the car there, defendant was in physical control of a motor vehicle while under the influence of alcohol.

When brass knuckles were found in defendant's coat while he was being booked and defendant had been under the custody and control of the arresting officer the entire time since his arrest, defendant possessed a deadly weapon in violation of Minn. Stat. § 609.66 (1982).

Where marijuana was found alongside the chair defendant sat in while he was under the observation of two officers in a room with no other occupants, and the officers observed nothing on the floor prior to defendant's occupancy of the room, defendant may be found guilty of possessing marijuana.

Affirmed. Foley, J.

**C0-83-1180 In Re the Marriage of: David O. Filkins, petitioner, Appellant, v. Kathryn Filkins. Hennepin County.**

The trial court did not abuse its discretion by granting the wife use of the homestead and ordering the husband to pay most of the couple's debts.

Affirmed. Wozniak, J.

**C7-83-1905 State of Minnesota, Appellant, v. Karl Alphonse Pelovsky. Steele County.**

The State has not shown that any error in the trial court's suppression of evidence will have a critical impact on the outcome of the trial.

Affirmed. Wozniak, J.

**CX-83-1333 Richard Nordby, Appellant, v. The Austin Policeman's Benefit Association. Mower County.**

A police officer who retires from the police department because of a permanent disability is eligible for a disability pension from the police benefit association when the ordinary and plain meaning of the by-law provisions entitle the officer to such a pension.

Officer Nordby was "separated from the payroll," on February 2, 1982, the date he retired.

Reversed. Sedgwick, J.

**C9-83-1677 David Cyril Ostendorf, Appellant, v. Jenise Mary Kenyon, State of Minnesota, defendant and third party plaintiff, The Horseshoe Bar, third party defendant, and Mary Ellen Ostendorf, formerly Mary Ellen Klampe, Appellant, v. Jenise M. Kenyon defendant and third party plaintiff, State of Minnesota defendant and Hill, d.b.a. the Horseshoe Bar, Western Casualty & Surety Company. Waseca County.**

There is a material issue of fact as to whether the State had sufficient notice of an allegedly dangerous condition on one of its highways to create a duty to place additional warning signs on the highway.

Affirmed in part, and reversed and remanded in part. Sedgwick, J.

**C5-83-1322 State of Minnesota v. Gary John Heinzer, Appellant. Itasca County.**

The trial court properly instructed the jury that the State need not prove the complainant, a rape victim, resisted the actor.

Affirmed. Lansing, J.

## SUPREME COURT

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C6-83-1717 Harold Elmer Kolkin, Jr., Appellant, v. American Family Insurance Company. Beltrami County.

Injuries sustained by a snowmobile operator when he struck a stationary, unoccupied automobile which protruded into the traveled portion of the roadway, arose out of the use of the automobile as a motor vehicle within the meaning of Minn. Stat. § 65B.43 Subd. 3, and are compensable within the no-fault statute.

Reversed. Forsberg, J.

CX-83-1557 In Re the Marriage of: Donna Rae Kreidler, petitioner, v. David Donald Kreidler, Appellant. St. Louis County.

The trial court did not err in its division of real and personal property, in establishing the level of child support, or in dividing household goods and allocating indebtedness.

Affirmed. Huspeni, J.

## Decisions of the Supreme Court Filed Friday, May 4, 1984

Compiled by Wayne O. Tschimperle, Clerk

C9-84-524 State of Minnesota v. Gary Ronald Higginbotham, Appellant. Ramsey County.

Record fails to establish presence of aggravating circumstances justifying a durational sentencing departure, but trial court was free under Minn. Stat. § 609.15, subd. 2 (1982), and Minnesota Sentencing Guidelines and Commentary, II.F.1 (1982) to make sentence run consecutively to time remaining on previously imposed 40-year sentence.

Affirmed as modified. Amdahl, C.J.

CX-84-399 Minnesota Energy and Economic Development Authority v. David L. Printy, as Secretary of the Minnesota Energy and Economic Development Authority, Appellant. Hennepin County.

Affirmed; lower court decision adopted as opinion of this court, with one modification. Scott, J.

## TAX COURT

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

### State of Minnesota Tax Court County of Ramsey, Regular Division

**Segal Wholesale, Incorporated, Appellant, v. The Commissioner of Revenue, Appellee,  
Docket No. 3726**

#### Findings of Fact, Conclusions of Law, and Order for Judgement

This is an appeal from two Orders of the Commissioner of Revenue both dated August 26, 1982, covering the periods June, 1979, through January, 1980, and February, 1980, through September, 1980. The Order for the period June, 1979, through January, 1980, assessed an additional tax of \$13,036 plus interest of \$3,940.76 for a total of \$16,976.76, and the Order for the period February, 1980, through September of 1980, assessed an additional tax of \$1,112 plus interest in the amount of \$274.71 for a total of \$1,386.71.

The matter came on for trial before the Honorable John Knapp, Chief Judge of the Minnesota Tax Court, in the courtroom of the Minnesota Tax Court, 5th Floor, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota, on November 30, 1983. Briefs were subsequently submitted by both parties.

Don G. Paterick, Esquire, 175 Hanover Building, 480 Cedar Street, St. Paul, Minnesota 55101, appeared for the Appellant; and Amy Eisenstadt, Special Assistant Attorney General, appeared for the Appellee.

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

**FINDINGS OF FACT**

1. During the period of June, 1979 through September, 1980, Appellant Segal Wholesale, Inc., was licensed by the State of Minnesota as a distributor of cigarettes.
2. As a licensed distributor, Appellant was responsible for paying the cigarette tax on all cigarettes it handled during a reporting period.
3. The tax stamps are affixed by means of a Pitney-Bowes stamping machine. The cigarette packages are run through the machine and the tax stamps are imprinted on the packages. The machine has a meter that measures the number of stamps expended.
4. Cigarette distributors are required to file returns on or before the 18th of each month. On the return, the distributor must report the total number of cigarettes received during the reporting period and the number of tax stamps expended. The monthly returns are to be accompanied by a remittance for the full unpaid tax liability as shown on the return.
5. When the value of the stamps used does not equal the tax liability, the monthly distributor return will show either "overstamping" or "shortstamping".
6. According to the Commissioner's terminology the term "shortstamped" means that the distributor's return shows that it received more cigarettes during the month than tax stamps expended.
7. Shortstamping may result for the following reasons:
  - a. failure to affix stamps to delivered cigarettes;
  - b. invoices reported more than once;
  - c. delivery reported in wrong period;
  - d. theft;
  - e. received less than invoices show; or
  - f. unauthorized sale of unstamped cigarettes.
8. According to the Commissioner's terminology the term "overstamped" means that the distributor's monthly return shows that more tax stamps were expended than cigarettes received.
9. Overstamping may result for the following reasons:
  - a. Delivery not reported;
  - b. received more cigarettes than shown on invoices and excess not reported;
  - c. concealment of receipt of contraband cigarettes;
  - d. stamping packages twice; or
  - e. meter malfunction.
10. When a return shows shortstamping, the distributor may be liable for the amount of tax due on the cigarettes it received, but did not stamp.
11. When a return shows overstamping, the distributor may not be entitled to a refund or credit for the stamps expended, but not affixed to cigarette packages.
12. It is the administrative policy of the Department of Revenue to allow an overstamping and shortstamping in adjacent months to be offset against each other.
13. Each month, the cigarette manufacturing companies send reports to the Department of Revenue indicating all cigarette deliveries to distributors located in the State of Minnesota.
14. Monthly distributor returns are audited by comparing the reports from the manufacturers with the cigarette receipts schedule submitted by the distributors with their returns. Where the manufacturer reports show that a distributor received more cigarettes than he reported, an additional assessment is made for the tax on the unreported cigarettes.
15. During the months of July, August, September and October of 1979, Appellant received deliveries of sample cigarettes from R. J. Reynolds Manufacturing Company. The sample packages were delivered to Segal Wholesale, Inc., 531 Rice Street, St. Paul, Minnesota 55103, as consignee. The sample packages were to be held by the Appellant for distribution by an R. J. Reynolds Co. representative.
16. Appellant did not report the receipt of the sample cigarettes on its monthly returns.
17. The sample cigarettes were subject to the Minnesota cigarette tax.

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18. The R. J. Reynolds Co. gave the Appellant checks for the amount of Minnesota cigarette tax due on the sample cigarettes.

19. Appellant did not affix tax stamps to the sample cigarette packages, nor did it remit the tax due on these cigarettes with its monthly returns.

20. The Department of Revenue audited Appellant's returns for the period June, 1979 through January, 1980 and a Notice of Proposed Changes was sent to Appellant on February 9, 1981. Appellant's returns for the period of February, 1980 through September, 1980 were then audited and a Notice of Proposed Changes for this period was sent to Appellant on April 6, 1981.

21. In the audits, an offset of overstepping and shortstepping was allowed where such over- and shortstepping occurred in adjacent months but no offset was allowed for overstepping beyond the adjacent months.

22. The Commissioner admits that the Appellant over paid the taxes for the following months and in the following amounts:

<u>Month</u>		<u>Amount</u>
December	1978	\$169.40
January	1979	153.00
February	1979	313.20
March	1979	1,003.80
June/July	1980	71.60
October	1980	334.80
November/December	1980	1,267.20
	Total	\$3,313.00

23. On February 27, 1981, Appellant filed a protest to the Notice of Proposed Changes dated February 9, 1981.

24. Howard Anderson, Director of the Alcohol, Tobacco and Special Taxes Division of the Department of Revenue, or another representative of the Commissioner of Revenue, met with James Segal, President of Segal Wholesale, Inc., and his attorney, on January 5, 1982.

25. The proposed assessment for the period June, 1979 through January, 1980 was adjusted after Appellant produced evidence to substantiate that certain shipments of cigarettes had not been received, although the manufacturer did issue invoices for the undelivered cigarettes.

26. On August 26, 1982, the Commissioner of Revenue issued an Order for the period of June, 1979 through January, 1980 assessing \$13,036.00 and \$3,940.76 interest.

27. On August 26, 1982, the Commissioner of Revenue issued an Order for the period of February, 1980 through September, 1980 assessing \$1,112.00 tax and \$274.71 interest.

28. The attached Memorandum is hereby made a part of these findings.

## CONCLUSIONS OF LAW

1. The Order of the Commissioner of Revenue shall be amended by giving credit for the overpayments shown by the audit reports in the amount of \$3,313 and by recalculating the interest due on the balance.

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

April 25, 1984.

By the Court,  
John Knapp, Chief Judge  
Minnesota Tax Court

## State of Minnesota Tax Court

### SHARE, Appellant, v. The Commission of Revenue, Appellee, Docket No. 3547

#### Findings of Fact, Conclusions of Law, and Order for Judgment

The above matter was submitted to the Minnesota Tax Court, Judge Carl A. Jensen, without trial on the basis of a Stipulation of Facts and exhibits and briefs of the parties.

Mr. Bruce E. Hanson, attorney with Doherty, Rumble & Butler, represented Appellant.

Mr. James W. Neher, Special Assistant Attorney General, represented Appellee.



**SYLLABUS**

Minnesota Statutes providing an exemption from sales and use tax for a corporation or organization operated exclusively for charitable purposes will be strictly construed and where services are provided only to persons paying fees and the fees constitute practically all of the income of the corporation, the corporation will not be entitled to exemption.

**FINDINGS OF FACT**

1. SHARE is a Health Maintenance Organization (HMO) duly authorized by the State of Minnesota and incorporated on August 30, 1973, under the Minnesota Non-Profit Corporation Act (Minn. Stat., ch. 317).

2. SHARE is governed by a Board of Directors which has the authority to manage the property, funds, affairs and business of the corporation. Forty percent of the directors are elected by the enrollees from among the enrollees as required by Minn. Stat. § 62D.06.

3. SHARE owns and operates medical clinics throughout the Minneapolis-St. Paul area which offer health care services to the individuals who are enrolled in one of SHARE's health care plans. SHARE solicits group members in the metropolitan area, but only allows individuals to enroll in one of its health care plans during an annual enrollment period. Similarly, non-members may only obtain health care services at a SHARE clinic on a fee-for-service basis.

4. Each subscriber to a SHARE health plan is required to pay a fixed monthly fee to be eligible for the health care benefits. The amount of the monthly fee is determined by the particular health care plan to which the subscriber belongs. The health care plans offered by SHARE and the requisite monthly fees are as follows:

A. SHARE 3 is a plan offered to AFDC recipients in Hennepin and Ramsey Counties as a supplement to the health benefits provided by medicaid. The monthly fee is governed by the Minnesota Department of Welfare and is currently set at \$62.05 per member.

B. SHARE 5 is restricted to members of the Teamsters Local #120 through the Central States Health and Welfare Fund. The monthly fee for this plan is \$160.00 per member.

C. SHARE 8 is offered only to Federal employees.

D. SHARE 9 is a group plan offered to employees of companies in the Minneapolis-St. Paul area and is also available to individuals who enroll during the annual enrollment period. The monthly fees for this plan are \$60.00 for a single individual, \$130.00 for a married individual, and \$180.00 for dependent care.

E. Senior Care is a plan offered to those senior citizens eligible for medicare benefits. The plan is supplemental to medicare and only provides coverage in the event medicare coverage is inadequate. The monthly fee for this plan is \$194.75 per member, \$175.00 of which is paid by the Federal Health Care Financing Administration pursuant to a contract with SHARE.

5. In 1982, ninety-six percent (96%) of SHARE's income was generated from pre-paid member fees and member copayment fees. The remaining four percent (4%) of SHARE's \$38,622,490 income in 1982 was derived from investment income (2%), fees for services to non-members (1%), and other income and allowances (1%). SHARE's operating expenses for 1982 totalled \$36,292,582, which left a surplus of \$1.8 million at the end of the year. A similar distribution of income occurred in 1981.<sup>1</sup>

6. SHARE derives no income from private contributions or gifts, nor does SHARE receive grants from the Federal or State governments.

7. SHARE provides no free health care services to the indigent or disadvantaged, nor does SHARE provide health care services to the sick regardless of ability to pay.

8. SHARE offered a twelve week demonstration project which began April 21, 1983, in which employees of SHARE provided free or reduced-fee health care services one evening each week to certain unemployed persons. The program was restricted to individuals who were unemployed for over six months, who had lost all medical benefits, and who were no eligible for medical assistance (Welfare). The twelve-week program was administered by the Minnesota AFL-CIO which screened applicants and prepared the weekly appointment lists. SHARE did not accept walk-in patients or those who did not meet the program guidelines.<sup>2</sup>

9. By letter dated July 31, 1981, the Internal Revenue Service determined SHARE to be exempt from Federal income taxation under I.R.C. section 501(a) as a "corporation . . . organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes . . ." (I.R.C. section 501(c)(3)). The Minnesota Department of Revenue determined SHARE to be exempt from Minnesota income tax under Minn. Stat. § 290.05, subd. 1(i) on or about January 7, 1982.

<sup>1</sup> A complete table setting forth SHARE's income and operating expenses for 1981 and 1982 is found at page 3 of Exhibit D attached to the stipulation of facts.

<sup>2</sup> Pages five and six of Exhibit D attached to the stipulation of facts provide a description of the program.

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10. Minn. Stat. § 297A.25, subd. 1(p), exempts from the payment of sales tax and use tax any "corporation . . . organized and operated exclusively for charitable, religious or educational purposes . . ." The language of Minn. Stat. § 297A.25, subd. 1(i) is more restrictive than that of Minn. Stat. § 290.05, subd. 1(i) providing for an exemption from income tax.

11. The Commissioner denied Appellant's application for a certificate of sales and use tax exemption by Order dated December 31, 1981.

12. Appellant is not entitled to a certificate of exemption from the Minnesota sales and use tax.

### CONCLUSIONS OF LAW

1. Appellant SHARE is not exempt from the payment of sales and use tax on purchases of tangible personal property as a corporation organized and operated exclusively for charitable purposes within the meaning of Minn. Stat. § 297A.25, subd. 1(p).

2. The Commissioner's Order is affirmed in all respects.

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

April 25, 1984

Carl A. Jensen, Judge  
Minnesota Tax Court

## State of Minnesota Tax Court

### George W. and Elizabeth Lukovsky, Appellants, v. The Commissioner of Revenue, Appellee, Docket No. 3886

#### Findings of Fact, Conclusions of Law, and Order for Judgement

The above entitled matter was tried by the Minnesota Tax Court, Judge Carl A. Jensen presiding, at the Courthouse in the City of Duluth on October 25, 1983.

Briefs were subsequently filed by the parties.

George W. Lukovsky, one of the Appellants, appeared on his own behalf.

Thomas K. Overton, Special Assistant Attorney General for the State of Minnesota, appeared for Appellee.

#### SYLLABUS

1. There is no right to a jury trial in an appeal from an Order of the Commissioner of Revenue assessing additional income taxes.

2. Deductions for expenses will not be allowed without substantiation.

#### FINDINGS OF FACT

1. Appellant George Lukovsky is a chiropractor and Appellants own rental property.

2. The Appellants' demand for a jury trial was refused.

3. The issues in dispute are the assessments of the Minnesota Commissioner of Revenue for additional Minnesota income taxes for the years 1980 and 1981.

4. On an audit of the Appellants' income tax returns for the years 1980 and 1981, the Appellee requested substantiation of deductions claimed as business expenses by the Appellants. Appellants refused to provide any substantiation for the business deductions unless they were provided with grants of immunity from criminal prosecution by the appropriate federal and state authorities on the grounds that they might incriminate themselves by providing such information. Grants of immunity were not provided.

5. Appellants provided no substantiation for the business expense deductions that were disallowed by the Appellee. Under those circumstances, Appellee properly disallowed the deductions and assessed income taxes accordingly.

6. The Commissioner assessed additional income taxes of \$13,718.96 for 1980 and \$7,470.38 for 1981, plus interest. The order of assessment should be affirmed.

**CONCLUSIONS OF LAW**

1. The order of assessment of the Minnesota Commissioner of Revenue dated May 13, 1983, assessing additional income taxes for Appellants for the years ending December 31, 1980, and December 31, 1981, is hereby affirmed, and Appellants are ordered to pay such assessments together with interest.

IT IS SO ORDERED.

May 2, 1984

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

**ERRATA**

An error was made in the May 7 announcement requesting proposals for the services of a certified public accountant to perform an audit examination of the financial statements covering six (6) tourism regions established under Chapter 317

The correct dates are:

Proposals must be received by 4:00 p.m. May 25, 1984

Project to begin June 1, 1985 and will be completed June 27, 1984

Project cost not to exceed \$10,000.

Submitted by:

Department of Energy and Economic Development  
Minnesota Office of Tourism

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