

CHAPTER 16B

COMMISSIONER OF ADMINISTRATION

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ORGANIZATION

16B.01 DEFINITIONS.

Subdivision 1. **Applicability.** For purposes of this chapter, the following terms have the meanings given them, unless the context clearly indicates otherwise.

Subd. 2. **Agency.** "Agency" means any state officer, employee, board, commission, authority, department, or other agency of the executive branch of state government.

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of administration.

Subd. 4. **State contract.** "State contract" means any written instrument containing the elements of offer, acceptance and consideration to which a state agency is a party.

Subd. 5. **Supplies, materials, and equipment.** "Supplies," "materials," and "equipment" includes articles and things used by or furnished to an agency, including printing, binding, and publication of books and records, repairs, and improvements.

Subd. 6. **Utility services.** "Utility services" includes telephone, telegraph, postal, electric light, and power service, and all other services required for the maintenance, operation, and upkeep of buildings and offices.

History: 1984 c 544 s 6

16B.02 DEPARTMENT OF ADMINISTRATION.

The department of administration is under the supervision and control of the commissioner of administration, who is appointed by the governor under section 15.06.

History: 1984 c 544 s 7

16B.03 APPOINTMENTS.

The commissioner is authorized to appoint staff, including a deputy commissioner, in accordance with chapter 43A.

History: 1984 c 544 s 8

16B.04 AUTHORITY.

Subdivision 1. **Rulemaking authority.** Subject to chapter 14, the commissioner may adopt, amend, and rescind rules relating to any purpose, responsibility, or authorization in this chapter. Rules adopted must comply with any provisions in this chapter which specify or restrict the adoption of particular rules.

Subd. 2. **Powers and duties, general.** Subject to other provisions of this chapter, the commissioner is authorized to:

- (1) supervise, control, review, and approve all state contracts and purchasing;
- (2) provide agencies with supplies and equipment and operate all central store or supply rooms serving more than one agency;
- (3) approve all computer plans and contracts, and oversee the state's data processing system;
- (4) investigate and study the management and organization of agencies, and reorganize them when necessary to ensure their effective and efficient operation;
- (5) manage and control state property, real and personal;
- (6) maintain and operate all state buildings including the state capitol building and grounds;
- (7) supervise, control, review, and approve all capital improvements to state buildings and the capitol building and grounds;
- (8) provide central duplicating, printing, and mail facilities;
- (9) oversee publication of official documents and provide for their sale;
- (10) manage and operate parking facilities for state employees and a central motor pool for travel on state business;
- (11) establish and administer a state building code; and
- (12) provide rental space within the capitol complex for a private day care center for children of state employees. The commissioner shall contract for services as

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provided in this chapter. The commissioner shall report back to the legislature by October 1, 1984, with the recommendation to implement the private day care operation.

Subd. 3. Delegation from governor. The governor, unless otherwise provided by law, may delegate to the commissioner the administration of programs and projects of the office of the governor directed by either state or federal law, or which may be made available to the state under a grant of funds either public or private. Unless specifically prohibited by law, the governor may delegate to the commissioner general supervision of any program or activity of any agency the head of which is either appointed by the governor or by a gubernatorially appointed board. The provisions of this subdivision shall not be construed as authority to transfer programs or activities, or part of them, from one department to another.

History: 1984 c 485 s 1; 1984 c 544 s 9; 1984 c 655 art 2 s 13 subd 1

16B.05 DELEGATION BY COMMISSIONER.

Subdivision 1. Delegation of duties by commissioner. The commissioner may delegate duties imposed by this chapter to the head of an agency and to any subordinates of the head. Delegated duties are to be exercised in the name of the commissioner and under the commissioner's supervision and control.

Subd. 2. Facsimile signatures. When authorized by the commissioner, facsimile signatures may be used by personnel of the department of administration in accordance with the commissioner's delegated authority and instructions, copies of which shall be filed with the commissioner of finance, state treasurer, and the secretary of state. A facsimile signature, when used in accordance with the commissioner's delegated authority and instructions, is as effective as an original signature.

History: 1984 c 544 s 10; 1986 c 444

16B.052 AUTHORITY TO TRANSFER FUNDS.

The commissioner may, with the approval of the commissioner of finance, transfer from an internal service or enterprise fund account to another internal service or enterprise fund account, any contributed capital appropriated by the legislature. The transfer may be made only to provide working capital or positive cash flow in the account to which the money is transferred. The transfer must be repaid within 18 months.

History: 1988 c 613 s 3

CONTRACTS AND PURCHASES

16B.06 CONTRACT MANAGEMENT AND REVIEW.

Subdivision 1. Duties of commissioner. (a) **Contract management.** The commissioner shall perform all contract management and review functions for state contracts, except those functions performed by the contracting agency, the attorney general, or the commissioner of finance. All agencies shall fully cooperate with the commissioner in the management and review of state contracts. A delegation of the commissioner's duties under this section to the head of an agency must be filed with the secretary of state and may not, except with respect to delegations within the department of administration, exceed two years in duration.

(b) **Purchasing.** The commissioner shall purchase, rent, or otherwise provide for the furnishing of all supplies, materials, equipment, and utility services. The commissioner may lease, rent, or sell supplies, equipment, and services to agencies. The commissioner shall purchase from the state correctional institutions, the University of Minnesota, and other state institutions all articles manufactured by them which are usable by the state. All purchase orders must be made on a form prescribed by the attorney general.

Subd. 2. Validity of state contracts. A state contract or lease is not valid and the

state is not bound by it until it has first been executed by the head of the agency which is a party to the contract and has been approved in writing by the commissioner or a delegate, under this section, by the attorney general or a delegate as to form and execution, and by the commissioner of finance or a delegate who shall determine that the appropriation and allotment have been encumbered for the full amount of the contract liability. The head of the agency may delegate the execution of specific contracts or specific types of contracts to a deputy or assistant head within the agency if the delegation has been approved by the commissioner of administration and filed with the secretary of state. A copy of every contract or lease extending for a term longer than one year must be filed with the commissioner of finance.

Subd. 3. Contract administration. Upon entering into a state contract, an agency bears full responsibility for the diligent administration and monitoring of the contract. The commissioner may require an agency to report to the commissioner at any time on the status of any outstanding state contract to which the agency is a party.

Subd. 3a. Warranties. A contract for the purchase of a product covered by a manufacturer's warranty must provide for servicing of the product under the warranty by the vendor or a designated agent of the vendor.

Subd. 4. Subject to audit. A contract or any disbursement of public funds to a provider of services or a grantee, made by or under the supervision of the commissioner, an agency, or any county or unit of local government shall include, expressly or impliedly, an audit clause that provides that the books, records, documents, and accounting procedures and practices of the contractor or other party, relevant to the contract or transaction are subject to examination by the contracting agency, and either the legislative auditor or the state auditor as appropriate.

Subd. 5. Authority of attorney general. The attorney general may sue to avoid the obligation of an agency to pay under a state contract or to recover payments made if services performed under the contract are so unsatisfactory, incomplete, or inconsistent with the price that payment would involve unjust enrichment. The contrary opinion of the contracting agency does not affect the power of the attorney general under this subdivision.

Subd. 6. Contracts with Indian tribes and bands. Notwithstanding any other law, the state may not require an Indian tribe or band to deny their sovereignty as a requirement or condition of a contract with the state or an agency of the state.

History: 1984 c 544 s 11; 1985 c 296 s 1; 1986 c 444; 1987 c 365 s 5; 1988 c 627 s 1

16B.07 COMPETITIVE BIDS.

Subdivision 1. Application. Except as otherwise provided by this chapter, all contracts for construction or repairs and all purchases of and all contracts for supplies, materials, purchase or rental of equipment, and utility services must be based on competitive bids, and all sales of property must be to the highest responsible bidder after advertising for bids pursuant to this section.

Subd. 2. Requirement contracts. Standard requirement price contracts for supplies or services to be purchased by the state must be established by competitive bids as provided in subdivision 1. The standard requirement price contracts may contain escalation clauses and may provide for a negotiated price increase or decrease based upon a demonstrable industrywide or regional increase or decrease in the vendor's costs or for the addition of similar products or replacement items not significant to the total value of existing contracts. The term of these contracts may not exceed five years including all extensions.

Subd. 3. Publication of notice; expenditures over \$15,000 and requests for proposal. If the amount of an expenditure or sale is estimated to exceed \$15,000, sealed bids or requests for proposal as provided in section 16B.08, subdivision 4, clause (b), must be solicited by public notice inserted at least once in a newspaper or trade journal not less than seven days before the final date of submitting bids. The commissioner shall

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designate the newspaper or trade journal for that publication, and may designate different newspapers or journals according to the nature of the purchase or contract. The commissioner shall also solicit sealed bids by sending notices by mail to all prospective bidders known to the commissioner, and by posting notice on a public bulletin board in the commissioner's office at least five days before the final date of submitting bids. All bids must be sealed when they are received and must be opened in public at the hour stated in the notice. All original bids and all documents pertaining to the award of a contract must be retained and made a part of a permanent file or record and remain open to public inspection.

Subd. 4. Purchases, sales, or rentals; \$15,000 or less. All purchases or sales the amount of which is estimated to be \$15,000 or less may be made either upon competitive bids or in the open market, in the discretion of the commissioner. So far as practicable, however, they must be based on at least three competitive bids which must be permanently recorded.

Subd. 5. Standard specifications, security. Contracts and purchases must be based on the standard specifications prescribed and enforced by the commissioner under this chapter, unless otherwise expressly provided. Each bidder for a contract must furnish security approved by the commissioner to insure the making of the contract being bid for.

History: 1984 c 544 s 12; 1986 c 363 s 1,2; 1986 c 444; 1988 c 613 s 4,5

16B.08 BIDS NOT REQUIRED.

Subdivision 1. Utility services. Competitive bids are not required for utility services where no competition exists or where rates are fixed by law or ordinance.

Subd. 2. Single source of supply. Competitive bidding is not required for purchases clearly and legitimately limited to a single source of supply, and the purchase price may be best established by direct negotiation.

Subd. 3. Auction in lieu of bids. The commissioner, in lieu of advertising for bids, may sell buildings and other personal property owned by the state and not needed for public purposes at public auction to the highest responsible bidder. A sale under this subdivision may not be made until publication of notice of the sale in a newspaper of general circulation in the area where the property is located and any other advertising the commissioner directs. Any of the property may be withdrawn from the sale prior to the completion of the sale unless the auction has been announced to be without reserve. If the sale is made at public auction a duly licensed auctioneer must be retained to conduct the sale. The auctioneer's fees and other administrative costs of the auction must be paid from the proceeds from which an amount sufficient to pay them is appropriated.

Subd. 4. Negotiated contracts. (a) In lieu of any of the other requirements of this chapter, the commissioner may negotiate a contract for public work to be performed at a state-owned institution or installation if the cost does not exceed \$15,000 and if the head of the affected state agency requests the commissioner to do so. The commissioner shall have prepared whatever plans and specifications for the public work deemed necessary by the commissioner to protect the public interest. Contractor's bonds or security pursuant to chapter 574 are not required for contracts entered into pursuant to this subdivision.

(b) In lieu of the requirement for competitive bidding in section 16B.07, subdivision 1, purchases and contracts may be negotiated in those circumstances determined by the commissioner, and in any of those circumstances the commissioner shall advertise for a request for proposal as a basis for negotiation.

Subd. 5. Federal general services administration price schedules. Notwithstanding anything in this chapter to the contrary, the commissioner may, instead of soliciting bids, contract for purchases with suppliers who have published schedules of prices effective for sales to the General Services Administration of the United States. These contracts may be entered into, regardless of the amount of the purchase price, if the

commissioner considers them advantageous and if the purchase price of all the commodities purchased under the contract do not exceed the price specified by the schedule.

Subd. 6. Emergency purchases. In emergencies the commissioner may, without calling for bids, contract directly for the repair, rehabilitation, and improvement of a state-owned structure or may authorize an agency to do so, and may purchase or may authorize an agency to purchase directly supplies, materials, equipment, or utility services for immediate use. An emergency for the purposes of this subdivision is an unforeseen occurrence or combination of circumstances which calls for immediate action in the public interest.

Subd. 7. Specific purchases. (a) The following may be purchased without regard to the competitive bidding requirements of this chapter:

- (1) merchandise for resale at state park refectories or facility operations;
- (2) farm and garden products, which may be sold at the prevailing market price on the date of the sale;
- (3) meat for other state institutions from the technical institute maintained at Pipestone by independent school district No. 583; and
- (4) furniture from the Minnesota correctional facilities.

(b) Supplies, materials, equipment, and utility services for use by a community-based residential facility operated by the commissioner of human services may be purchased or rented without regard to the competitive bidding requirements of this chapter.

(c) Supplies, materials, or equipment to be used in the operation of a hospital licensed under sections 144.50 to 144.56 that are purchased under a shared service purchasing arrangement whereby more than one hospital purchases supplies, materials, or equipment with one or more other hospitals, either through one of the hospitals or through another entity, may be purchased without regard to the competitive bidding requirements of this chapter if the following conditions are met:

- (1) the hospital's governing authority authorizes the arrangement;
- (2) the shared services purchasing program purchases items available from more than one source on the basis of competitive bids or competitive quotations of prices; and
- (3) the arrangement authorizes the hospital's governing authority or its representatives to review the purchasing procedures to determine compliance with these requirements.

History: 1984 c 544 s 13; 1Sp1985 c 13 s 117; 1986 c 363 s 3; 1986 c 444; 1987 c 258 s 12; 1987 c 365 s 6,7; 1988 c 613 s 6; 1988 c 689 art 2 s 5

16B.089 [Renumbered 16B.189]

16B.09 CONTRACTS AND PURCHASES, AWARD.

Subdivision 1. Lowest responsible bidder. All state contracts and purchases made by or under the supervision of the commissioner or an agency for which competitive bids are required must be awarded to the lowest responsible bidder, taking into consideration conformity with the specifications, terms of delivery, the purpose for which the contract or purchase is intended, the status and capability of the vendor, and other considerations imposed in the call for bids. The commissioner may decide which is the lowest responsible bidder for all purchases and may use the principles of life cycle costing, where appropriate, in determining the lowest overall bid. As to contracts other than for purchases, the head of the interested agency shall make the decision, subject to the approval of the commissioner. Any or all bids may be rejected. In a case where competitive bids are required and where all bids are rejected, new bids, if solicited, must be called for as in the first instance, unless otherwise provided by law.

Subd. 2. Alterations and erasures. A bid containing an alteration or erasure of any price contained in the bid which is used in determining the lowest responsible bid

must be rejected unless the alteration or erasure is corrected pursuant to this subdivision. An alteration or erasure may be crossed out and the correction printed in ink or typewritten adjacent to it and initialed in ink by the person signing the bid.

Subd. 3. **Special circumstances.** The commissioner may reject the bid of any bidder who has failed to perform a previous contract with the state. In the case of identical low bids from two or more bidders, the commissioner may use negotiated procurement methods with the tied low bidders for that particular transaction, so long as the price paid does not exceed the low tied bid price. The commissioner may award contracts to more than one bidder in accordance with subdivision 1, if doing so does not decrease the service level or diminish the effect of competition.

Subd. 4. **Record.** A record must be kept of all bids, including names of bidders, amounts of bids, and each successful bid. This record is open to public inspection.

Subd. 5. **Cooperative agreements.** The commissioner may charge a fee to cover the commissioner's administrative expenses to government units that have joint or cooperative purchasing agreements with the state under section 471.59.

History: 1984 c 544 s 14; 1Sp1985 c 13 s 118; 1986 c 363 s 4; 1986 c 444; 1987 c 365 s 8; 1988 c 613 s 7,8

16B.10 [Repealed, 1984 c 544 s 88]

16B.101 PREFERENCE FOR AMERICAN-MADE MATERIALS.

Subdivision 1. **Definitions.** As used in this section, the following terms have the meanings given them:

(a) "Public agency" includes all state agencies, the University of Minnesota, the state university board, and the state board for community colleges, and any contractor acting pursuant to a contract with a public agency;

(b) "Materials" means any goods, supplies, equipment or any other tangible products or materials, including foods;

(c) "Manufactured" means mined, grown, produced, manufactured, fabricated or assembled;

(d) "Manufactured in the United States" means manufactured in whole or in substantial part within the United States or that the majority of the component parts thereof were manufactured in whole or in substantial part in the United States;

(e) "Purchase" means acquire by purchase or lease.

Subd. 2. **Purchase preference.** Notwithstanding the provisions of any other law to the contrary, no materials may be purchased by a public agency for use for governmental purposes which are not manufactured in the United States, except as may be provided in this section. When all other factors are substantially equal, preference must be given first to those products which are manufactured to the greatest extent in the United States. To the extent possible, specifications must be written so as to permit the public agency to purchase materials manufactured in the United States.

Subd. 3. **Exemptions.** Subdivision 2 does not apply if the person having contracting authority in respect to the purchase determines that (1) the materials are not manufactured in the United States in sufficient or reasonably available quantities, (2) the price or bid of the materials unreasonably exceeds the price or bid of available and comparable materials manufactured outside of the United States, (3) the quality of the materials is substantially less than the quality of comparably priced available materials manufactured outside of the United States, or (4) the purchase of the materials manufactured in the United States is otherwise not in the public interest. Subdivision 2 also does not apply if the materials are purchased with a view to commercial resale or with a view to use in the production of goods for commercial sale.

History: 1983 c 336 s 2; 1984 c 440 s 1; 1984 c 544 s 88; 1984 c 655 art 2 s 13 subd

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16B.102 RESIDENT PREFERENCE IN PUBLIC CONTRACTS.

Subdivision 1. **Other states with resident preference.** When a public contract for construction or repairs and all purchases of and all contracts for supplies, materials, and the purchase and rental of equipment is to be awarded to the lowest responsible bidder a resident bidder shall be allowed a preference as against a nonresident bidder from a state which gives or requires a preference to bidders from that state. The preference shall be equal to the preference given or required by the state of the nonresident bidder. If a state agency does not give the preference to the resident bidder, the finance department shall unallot from that agency's budget an amount equal to the specific bid.

Subd. 2. **Definition.** Resident bidder as used in this section means a person, firm or corporation authorized to engage in business in the state of Minnesota and having a bona fide establishment for the doing of business within the state of Minnesota on the date when any bid for a public contract is first advertised or announced, and includes a foreign corporation duly authorized to engage in business in Minnesota and having a bona fide establishment for the doing of business within the state.

Subd. 3. **Federally funded projects exempt.** The provisions of subdivisions 1 and 2 shall not apply to any contract for any project upon which federal funds are available for expenditure.

History: 1959 c 47 s 1; 1959 c 139 s 1; 1984 c 440 s 2; 1984 c 544 s 88; 1984 c 655 art 2 s 13 subd 1

MINNESOTA AGRICULTURAL PRODUCTS

16B.103 AGRICULTURAL FOOD PRODUCTS GROWN IN STATE.

Subdivision 1. **State contracts.** The commissioner shall encourage and make a reasonable attempt to identify and purchase food products that are grown in this state.

Subd. 2. **Report.** The commissioner shall prepare a report at the end of each biennium and submit it to the committees on agriculture of the house of representatives and senate on the total food products purchased or contracted for by agencies and the amounts of fruits, vegetables, grains, meats, poultry, and other food products purchased or contracted for that are grown in this state.

History: 1988 c 688 art 1 s 1

16B.11 [Repealed, 1984 c 544 s 88]

16B.12 [Repealed, 1984 c 544 s 88]

SPECIAL PURCHASING SITUATIONS

16B.13 ADVERTISEMENT OF HIGHWAY CONTRACTS.

Notwithstanding anything in this chapter to the contrary, all contracts for the repair, improvement, maintenance, or construction of highways or highway bridges must be advertised and let as provided by law for highway construction contracts.

History: 1984 c 544 s 18

16B.14 CERTAIN VEHICLES.

Upon the written request of the commissioner of public safety, motor vehicles for specific use by investigative and undercover agents of the department of public safety must be purchased by the brand make and model. All other provisions of this chapter relating to competitive bidding apply to purchases covered by this section.

History: 1984 c 544 s 19

16B.15 ELECTRONIC DATA PROCESSING EQUIPMENT.

Subdivision 1. **Commissioner may reject bids.** The commissioner may reject all bids for electronic data processing equipment, related equipment, and software and

may negotiate a contract for this equipment if the commissioner finds the bids to be unsatisfactory because of failure to fully comply with the specifications, terms, and conditions of the call for bids. The contract must be awarded to the vendor offering the lowest price to the state taking into consideration the specifications, terms, and conditions agreed upon pursuant to negotiation.

Subd. 2. Equipment. The commissioner may purchase, sell, repurchase or otherwise undertake the acquisition, rental or disposal of electronic data processing equipment as best serves the interests of the state, provided, however, the commissioner shall adhere to the competitive bidding requirements of chapter 16B.

History: 1984 c 544 s 20; 1985 c 248 s 68

16B.16 ENERGY EFFICIENCY INSTALLMENT PURCHASES.

Subdivision 1. Contract conditions. (a) The commissioner may contract to purchase by installment payments capital or other equipment or services intended to improve the energy efficiency of a state building or facility if:

- (1) the term of the contract does not exceed ten years;
- (2) the entire cost of the contract is a percentage of the resultant savings in energy costs;
- (3) the contract for purchase is competitive;
- (4) the commissioner has determined that the contract bidder is a responsible bidder under rules adopted by the commissioner, has adequately performed all previous contracts with the state, and has either established a record of promptly paying all its suppliers and subcontractors or has made secure provisions for doing so in connection with the current contract for goods delivered and services rendered;
- (5) the contract bidder can finance or obtain financing for the performance of the contract without state assistance or guarantee; and
- (6) the state may unilaterally cancel the agreement if the legislature fails to appropriate funds to continue the contract or if the contractor at any time during the term of the contract fails to provide or maintain the equipment to provide the services, or otherwise to meet specifications for performance.

The commissioner may spend money appropriated for energy costs in payment of a contract under this section.

(b) For purposes of clause (a), "contract bidder" means a sole proprietorship, firm, corporation, or other business entity submitting a bid or, if the entity submitting the bid is a new enterprise, a person having a ten percent or greater financial interest in the entity who has or has had a ten percent or greater financial interest in any other entity that has entered into past contracts with the state or other purchasers.

Subd. 2. Energy conservation incentives. Notwithstanding any other law to the contrary, fuel cost savings resulting from energy conservation actions shall be available at the managerial level at which the actions took place for expenditure for other purposes within the biennium in which the actions occur or in the case of a shared savings agreement for the contract period of the shared savings agreement. For purposes of this subdivision "shared savings agreement" means a contract meeting the terms and conditions of subdivision 1.

History: 1984 c 544 s 21; 1984 c 654 art 2 s 44; 1984 c 655 art 2 s 13 subd 1; 1987 c 77 s 1

16B.17 CONSULTANTS AND TECHNICAL SERVICES.

Subdivision 1. Terms. For purposes of this section, the following terms have the meanings given them:

(a) **Consultant services.** "Consultant services" means services which are intellectual in character; which do not involve the provision of supplies or materials; which include analysis, evaluation, prediction, planning, or recommendation; and which result in the production of a report.

(b) **Professional and technical services.** "Professional and technical services" means services which are predominantly intellectual in character; which do not involve the provision of supplies or materials; and in which the final result is the completion of a task rather than analysis, evaluation, prediction, planning, or recommendation.

Subd. 2. Procedure for consultant and professional and technical services contracts. Before approving a proposed state contract for consultant services or professional and technical services the commissioner must determine, at least, that:

(1) all provisions of section 16B.19 and subdivision 3 of this section have been verified or complied with;

(2) the work to be performed under the contract is necessary to the agency's achievement of its statutory responsibilities, and there is statutory authority to enter into the contract;

(3) the contract will not establish an employment relationship between the state or the agency and any persons performing under the contract;

(4) no current state employees will engage in the performance of the contract;

(5) no state agency has previously performed or contracted for the performance of tasks which would be substantially duplicated under the proposed contract; and

(6) the contracting agency has specified a satisfactory method of evaluating and using the results of the work to be performed.

Subd. 3. Duties of contracting agency. Before an agency may seek approval of a consultant or professional and technical services contract valued in excess of \$2,000, it must certify to the commissioner that:

(1) no state employee is able to perform the services called for by the contract;

(2) the normal competitive bidding mechanisms will not provide for adequate performance of the services;

(3) the services are not available as a product of a prior consultant or professional and technical services contract, and the contractor has certified that the product of the services will be original in character;

(4) reasonable efforts were made to publicize the availability of the contract;

(5) the agency has received, reviewed, and accepted a detailed work plan from the contractor for performance under the contract; and

(6) the agency has developed, and fully intends to implement, a written plan providing for the assignment of specific agency personnel to a monitoring and liaison function; the periodic review of interim reports or other indications of past performance, and the ultimate utilization of the final product of the services.

Subd. 4. Reports. After completion of performance under a consultant or professional and technical services contract, the agency shall evaluate the performance under the contract and the utility of the final product. This evaluation must be delivered to the commissioner, who shall retain all the evaluations for future reference. The commissioner shall submit to the governor and the legislature a monthly listing of all contracts for consultant services and for professional and technical services executed or disapproved in the preceding month. The report must identify the parties and the contract amount, duration, and tasks to be performed. The commissioner shall also issue quarterly reports summarizing the contract review activities of the department during the preceding quarter.

Subd. 5. Contract terms. A consultant or technical and professional services contract must by its terms permit the agency to unilaterally terminate the contract prior to completion, upon payment of just compensation, if the agency determines that further performance under the contract would not serve agency purposes. If the final product of the contract is to be a report, no more than three copies of the report, one in camera ready form, shall be submitted to the agency. One of the copies must be filed with the legislative reference library.

History: 1984 c 544 s 22; 1986 c 444

16B.18 SHELTERED WORKSHOPS; PROCUREMENT OF PRODUCTS AND SERVICES; WORK ACTIVITY PROGRAMS.

Subdivision 1. **Product and service list.** The commissioner in consultation with the commissioner of jobs and training shall prepare a list containing products and services of state certified sheltered workshops and work activity programs for procurement use by state agencies and institutions. The commissioner shall determine the fair market price for listed products and services. In determining the fair market price the commissioner shall consider (1) open market bid prices in previous years for similar products and services, and (2) cost increases for both labor and materials. The price paid may not exceed by more than five percent the fair market price. State agencies and institutions shall, after promulgation of the product and service list by the commissioner, procure listed products and services from sheltered workshops and work activity programs in preference to procurement from other suppliers or sources with the exceptions in this section. The provisions of this chapter relating to competitive bidding do not apply to purchases made in accordance with this section.

Subd. 2. **Products and services available elsewhere.** When any listed products or services are available for procurement from any state agency or institution and procurement from the agency or institution is required by law, the procurement must be made in accordance with that law.

Subd. 3. **Rules.** Rules under this section may provide a procedure by which the commissioner shall determine product specifications, quality standards, and timing of delivery to be complied with by the sheltered workshop and work activity program boards on purchases made under this section. The list to be prepared pursuant to subdivision 1 shall not be promulgated as a rule.

Subd. 4. **Selection of nonprofit corporation.** The commissioner may select a nonprofit corporation organized under chapter 317 to facilitate distribution of orders among sheltered workshops and work activity programs. The corporation shall distribute orders so as to afford each sheltered workshop and work activity program an equal opportunity to obtain orders.

History: 1984 c 544 s 23; 1Sp1985 c 14 art 9 s 75

16B.189 CITATION AND PURPOSE.

Sections 16B.19 to 16B.22 may be cited as the "Minnesota small business procurement act." These sections prescribe procurement practices and procedures to assist in the economic development of small businesses and small businesses owned and operated by socially or economically disadvantaged persons.

History: 1975 c 383 s 1; 1984 c 654 art 2 s 47; 1984 c 655 art 2 s 13 subd 1

16B.19 DESIGNATION OF PROCUREMENTS FROM SMALL BUSINESSES.

Subdivision 1. **Small business procurements.** The commissioner shall for each fiscal year ensure that small businesses receive at least 25 percent of the value of anticipated total state procurement of goods and services, including printing and construction. The commissioner shall divide the procurements so designated into contract award units of economically feasible production runs in order to facilitate offers or bids from small businesses. In making the annual designation of such procurements the commissioner shall attempt (1) to vary the included procurements so that a variety of goods and services produced by different small businesses are obtained each year, and (2) to designate small business procurements in a manner that will encourage proportional distribution of such awards among the geographical regions of the state. To promote the geographical distribution of set-aside awards, the commissioner may designate a portion of the small business set-aside procurement for award to bidders from a specified congressional district or other geographical region specified by the commissioner. The failure of the commissioner to designate particular procurements shall not be deemed to prohibit or discourage small businesses from seeking the procurement award through the normal solicitation and bidding processes.

Subd. 2. Consultant, professional and technical procurements. Every state agency shall for each fiscal year designate for awarding to small businesses with their principal place of business in Minnesota at least 25 percent of the value of anticipated procurements of that agency for consultant services or professional and technical services. The set-aside under this subdivision is in addition to that provided by subdivision 1, but shall otherwise comply with section 16B.17. At least six percent of all these procurements for consultant services or professional or technical services shall be set aside for small businesses owned and operated by socially or economically disadvantaged persons.

Subd. 3. Negotiated price or bid contract. The commissioner may elect to use either a negotiated price or bid contract procedure as may be appropriate in the awarding of a procurement contract under the set-aside or preference program established in sections 16B.19 to 16B.22. The amount of an award may not exceed by more than five percent the commissioner's estimated price for the goods or services, if they were to be purchased on the open market and not under this set-aside program. Surety bonds guaranteed by the federal Small Business Administration and second party bonds are acceptable security for a construction award under this section. "Second party bond" means a bond which designates as principal, guarantor, or both, a person or persons in addition to the person to whom the contract is proposed for award.

Subd. 4. Determination of ability to perform. Before making an award under the set-aside or preference programs for small businesses owned and operated by socially or economically disadvantaged persons, the commissioner shall evaluate whether the small business scheduled to receive the award is able to perform the contract. This determination shall include consideration of production and financial capacity and technical competence.

Subd. 5. Certain small business preferences and set-asides. At least nine percent of the value of all procurements shall be awarded, if possible, for award to businesses owned and operated by socially or economically disadvantaged persons as defined in section 645.445 with their principal place of business in Minnesota. The commissioner shall designate set-aside procurements in a manner that will encourage proportional distribution of set-aside awards among the geographical regions of the state. To promote the geographical distribution of set-aside awards, the commissioner may designate a portion of the set-aside for small businesses owned and operated by socially or economically disadvantaged persons for award to bidders from a specified congressional district or other geographical region specified by the commissioner and shall report annually to the governmental operations committees of the house of representatives and the senate on the use and impact of this provision. To reach a goal of nine percent, the commissioner must set aside at least three percent of all procurements for bidding only by small businesses owned and operated by socially or economically disadvantaged persons, may award a five percent preference in the amount bid on selected state procurements to small businesses owned and operated by socially or economically disadvantaged persons, or may utilize any other bidding process authorized by this chapter. In the event small businesses owned and operated by socially or economically disadvantaged persons are unable to perform at least nine percent of the value of all procurements, the commissioner shall award the remainder to other small businesses. At least 50 percent of the value of the procurements awarded to businesses owned and operated by socially or economically disadvantaged persons shall actually be performed by the business to which the award is made or another business owned and operated by a socially or economically disadvantaged person or persons. The commissioner may not designate more than 20 percent of any commodity class for set-aside or preference awards to businesses owned and operated by socially or economically disadvantaged persons. A business owned and operated by socially or economically disadvantaged persons that has been awarded more than three-tenths of one percent of the value of the total anticipated procurements for a fiscal year under this subdivision is disqualified from receiving further set-aside or preference advantages for that fiscal year.

Subd. 6. Contracts in excess of \$200,000; set-aside. The commissioner as a condition of awarding state procurements for construction contracts or approving contracts for consultant, professional, or technical services pursuant to section 16B.17 in excess of \$200,000 shall require that at least ten percent of the contract award to a prime contractor be subcontracted to a business owned and operated by a socially or economically disadvantaged person or persons or that at least ten percent of the contract award be expended in purchasing materials or supplies from said person or persons. If there is no socially or economically disadvantaged person or persons or other small businesses able to perform the subcontract or to provide the supplies or materials, the construction contract or contract for consultant, professional, or technical services may be awarded notwithstanding the ten percent requirement provided that the ten percent requirement is made up in other such contracts awarded or to be awarded by the same agency. Any subcontracting or purchasing of supplies and materials pursuant to this subdivision may not be included in determining the total amount of awards required by subdivisions 1, 2, and 5: In the event small businesses owned and operated by socially and economically disadvantaged persons are unable to perform ten percent of the prime contract award, the commissioner shall require that other small businesses perform at least ten percent of the prime contract award. The commissioner may determine that small businesses owned and operated by socially and economically disadvantaged persons are unable to perform at least ten percent of the prime contract award prior to the advertising for bids. Each construction contractor bidding on a project over \$200,000 shall submit with the bid a list of the businesses owned and operated by socially or economically disadvantaged persons that are proposed to be utilized on the project with a statement indicating the portion of the total bid to be performed by each business. The commissioner shall reject any bid to which this subdivision applies that does not contain this information. Prime contractors receiving construction contract awards in excess of \$200,000 shall furnish to the commissioner the name of each business owned and operated by a socially or economically disadvantaged person or persons or other small business that is performing work or supplying supplies and materials on the prime contract and the dollar amount of the work performed or to be performed or the supplies and materials to be supplied. Once the contract has been awarded, the prime contractor must use the socially and economically disadvantaged subcontractors proposed to be utilized on the project, unless the subcontractors are unable to perform in accordance with the award.

This subdivision does not apply to prime contractors that are themselves small businesses owned and operated by socially or economically disadvantaged persons, as duly certified pursuant to section 16B.22.

Subd. 7. [Repealed, 1984 c 654 art 2 s 48]

Subd. 8. Recourse to other businesses. In the event that subdivisions 1 to 6 do not operate to extend a contract award to a small business the award must be placed pursuant to the normal solicitation and award provisions in this chapter. The commissioner shall then designate for small businesses additional state procurements corresponding in approximate value to the contract unable to be awarded pursuant to subdivisions 1 to 6.

Subd. 9. Procurement procedures. All laws and rules pertaining to solicitations, bid evaluations, contract awards, and other procurement matters apply equally to procurements designated for small businesses. In the event of conflict with other rules, section 16B.18 and rules adopted under it govern if section 16B.18 applies. If it does not apply, sections 16B.19 to 16B.22 and rules adopted under those sections govern.

Subd. 10. Applicability. This section does not apply to construction contracts or contracts for consultant, professional, or technical services pursuant to section 16B.17 which are financed in whole or in part with federal funds and which are subject to federal disadvantaged business enterprise regulations.

History: 1984 c 544 s 24; 1984 c 654 art 2 s 48; 1984 c 655 art 2 s 13 subd 1; 1985 c 296 s 2-5; 1987 c 365 s 9; 1988 c 644 s 1

16B.20 ENCOURAGEMENT OF PARTICIPATION; ADVISORY COUNCIL.

Subdivision 1. Commissioner of administration. The commissioners of administration and trade and economic development shall publicize the provisions of the set-aside program, attempt to locate small businesses able to perform set-aside procurement awards, and encourage participation. When the commissioner of administration determines that a small business is unable to perform under a set-aside contract, the commissioner shall inform the commissioner of trade and economic development who shall assist the small business in attempting to remedy the causes of the inability to perform a set-aside award. In assisting the small business, the commissioner of trade and economic development in cooperation with the commissioner of administration shall use management or financial assistance programs made available by or through the department of trade and economic development, other state or governmental agencies, or private sources.

Subd. 2. Advisory council. A small business procurement advisory council is created. The council consists of 13 members appointed by the commissioner of administration. A chair of the advisory council shall be elected from among the members. The appointments are subject to the appointments program provided by section 15.0597. The terms and removal of members are as provided in section 15.059, but members do not receive per diem. The council expires as provided in section 15.059, subdivision 5.

Subd. 3. Duties. The small business procurement advisory council shall:

- (1) advise the commissioner of administration on matters relating to the small business procurement program;
- (2) review complaints or grievances from small business vendors or contractors who are doing or attempting to do business under the program; and
- (3) review the reports of the commissioners of administration and trade and economic development provided by section 16B.21 to ensure compliance with the goals of the program.

History: 1984 c 544 s 25; 1985 c 285 s 4; 1986 c 444; 1987 c 312 art 1 s 26 subd 2; 1987 c 404 s 79; 1988 c 629 s 11

16B.21 REPORTS.

Subdivision 1. Commissioner of administration. The commissioner shall submit an annual report pursuant to section 3.195 to the governor and the legislature with a copy to the commissioner of trade and economic development indicating the progress being made toward the objectives and goals of sections 16B.19 to 16B.22 during the preceding fiscal year. The commissioner shall also submit a quarterly report to the small business procurement advisory council. These reports shall include the following information:

- (1) the total dollar value and number of potential set-aside awards identified during this period and the percentage of total state procurement this figure reflects;
- (2) the number of small businesses identified by and responding to the set-aside program, the total dollar value and number of set-aside contracts actually awarded to small businesses with appropriate designation as to the total number and value of set-aside contracts awarded to each small business, and the total number of small businesses that were awarded set-aside contracts;
- (3) the total dollar value and number of contracts awarded to small businesses owned and operated by economically or socially disadvantaged persons pursuant to each bidding process authorized by section 16B.19, subdivision 5; the total number and value of these contracts awarded to each small business and to each category of economically or socially disadvantaged persons as defined by section 645.445 and agency rules, and the percentages of the total state procurements the figures of total dollar value and the number of contracts awarded by each bidding process;
- (4) for each set-aside or preference contract awarded to a small business, the estimated additional cost to the state of awarding the contract; and

(5) the number of contracts which were designated and set aside pursuant to section 16B.19 but which were not awarded to a small business, the estimated total dollar value of these awards, the lowest offer or bid on each of these awards made by the small business, and the price at which these contracts were awarded pursuant to the normal procurement procedures.

The information required by paragraphs (1) and (2) must be presented on a statewide basis and also broken down by geographic regions within the state.

Subd. 2. Commissioner of trade and economic development. The commissioner of trade and economic development shall submit an annual report to the governor and the legislature pursuant to section 3.195 with a copy to the commissioner of administration. This report shall include the following information:

(1) the efforts undertaken to publicize the provisions of the set-aside program during the preceding fiscal year;

(2) the efforts undertaken to identify small businesses including those owned and operated by socially or economically disadvantaged persons, and the efforts undertaken to encourage participation in the set-aside program;

(3) the efforts undertaken by the commissioner to remedy the inability of small businesses to perform on potential set-aside awards; and

(4) the commissioner's recommendations for strengthening the set-aside program and delivery of services to small businesses.

History: 1984 c 544 s 26; 1985 c 296 s 6; 1Sp1985 c 13 s 119; 1987 c 312 art 1 s 26 subd 2

16B.22 ELIGIBILITY; RULES.

Subdivision 1. Eligibility. A small business owned and operated by socially or economically disadvantaged persons is eligible to participate under the requirements of sections 16B.19 to 16B.22 for a maximum of five years from the date of receipt of the first set-aside award and after that period is not eligible to participate for another five years. A small business that received its first set-aside award more than five years before July 1, 1985 is not eligible to participate for five years after July 1, 1985. The five-year maximum does not apply to sheltered workshops and work activity programs.

Subd. 2. Rules. (a) The commissioner shall adopt by rule additional standards and procedures for certifying that small businesses and small businesses owned and operated by socially or economically disadvantaged persons are eligible to participate under the requirements of sections 16B.19 to 16B.22. The commissioner shall adopt by rule standards and procedures for hearing appeals and grievances and other rules necessary to carry out the duties set forth in sections 16B.19 to 16B.22.

(b) The commissioner may make rules which exclude or limit the participation of nonmanufacturing business, including third-party lessors, jobbers, manufacturers' representatives, and others from eligibility under sections 16B.19 to 16B.22.

History: 1984 c 544 s 27; 1985 c 296 s 7; 1Sp1985 c 13 s 120

16B.23 DISTRICT HEATING.

Notwithstanding any other law, general or special, the commissioner of administration is authorized to enter into or approve a written agreement not to exceed 31 years with a district heating utility that will specify, but not be limited to, the appropriate terms and conditions for the interchange of district heating services.

History: 1984 c 544 s 28

MANAGEMENT OF STATE PROPERTY

16B.24 GENERAL AUTHORITY.

Subdivision 1. Operation and maintenance of buildings. The commissioner is authorized to maintain and operate the state capitol building and grounds, subject to

whatever standards and policies are set for its appearance and cleanliness by the capitol area architectural and planning board and the commissioner pursuant to section 15.50, subdivision 2, clause (h), and the state office building, the historical society building, the Normandale, Anoka-Ramsey, North Hennepin, Lakewood, Metropolitan, and South East Metropolitan Community Colleges, the economic security buildings in Minneapolis and St. Paul, the state department of health building, and the surplus property building, and their grounds, and, when the commissioner considers it advisable and practicable, any other building or premises owned or rented by the state for the use of a state agency. The commissioner shall assign and reassign office space in the capitol and state buildings to make an equitable division of available space among agencies. The power granted in this subdivision does not apply to state hospitals or to educational, penal, correctional, or other institutions not enumerated in this subdivision the control of which is vested by law in some other agency.

Subd. 2. Repairs. The commissioner shall supervise and control the making of necessary repairs to all state buildings and structures, except structures, other than buildings, under the control of the state transportation department; provided that all repairs to the public and ceremonial areas and the exterior of the state capitol building shall be carried out subject to the standards and policies of the capitol area architectural and planning board and the commissioner of administration adopted pursuant to section 15.50, subdivision 2, clause (h).

Subd. 3. Disposal of old buildings. The commissioner, upon request of the head of an agency which has control of a state owned building which is no longer used or which is a fire or safety hazard, shall, after obtaining approval of the chairs of the senate finance committee and house of representatives appropriations committee, sell, wreck, or otherwise dispose of the building. In the event a sale is made the proceeds shall be deposited in the proper account or in the general fund.

Subd. 4. Inspections; appraisals; inventories. The commissioner shall provide for the periodic inspection and appraisal of all state property, real and personal, and for current and perpetual inventories of all state property. The commissioner shall require agencies to make reports of the real and personal property in their custody at the intervals and in the form the commissioner considers necessary.

Subd. 5. Renting out state property. (a) **Authority.** The commissioner may rent out state property, real or personal, that is not needed for public use, if the rental is not otherwise provided for or prohibited by law. The property may not be rented out for more than five years at a time without the approval of the state executive council and may never be rented out for more than 25 years.

(b) **Restrictions.** Paragraph (a) does not apply to state trust fund lands, other state lands under the jurisdiction of the department of natural resources, lands forfeited for delinquent taxes, lands acquired under section 298.22, or lands acquired under section 41.56 which are under the jurisdiction of the department of agriculture.

(c) **Fort Snelling Chapel; rental.** The Fort Snelling Chapel, located within the boundaries of Fort Snelling State Park, is available for use only on payment of a rental fee. The commissioner shall establish rental fees for both public and private use. The rental fee for private use by an organization or individual must reflect the reasonable value of equivalent rental space. Rental fees collected under this section must be deposited in the general fund.

(d) **Rental of living accommodations.** The commissioner shall establish rental rates for all living accommodations provided by the state for its employees. Money collected as rent by state agencies pursuant to this paragraph must be deposited in the state treasury and credited to the general fund.

(e) **Lease of space in certain state buildings to state agencies.** The commissioner may lease portions of the state owned buildings in the capitol complex, the capitol square building, the health building, and the building at 1246 University Avenue, St. Paul, Minnesota, to state agencies and charge rent on the basis of space occupied. Notwithstanding any law to the contrary, all money collected as rent pursuant to the terms of this section shall be deposited in the state treasury. Money collected as rent

to recover the depreciation cost of a building built with state dedicated funds shall be credited to the dedicated fund which funded the original acquisition or construction. All other money received shall be credited to the general services revolving fund.

Subd. 6. Property rental. (a) **Leases.** The commissioner shall rent land and other premises when necessary for state purposes. The commissioner may lease land or premises for five years or less, subject to cancellation upon 30 days written notice by the state for any reason except rental of other land or premises for the same use. The commissioner may not rent non-state-owned land and buildings or substantial portions of land or buildings within the capitol area as defined in section 15.50 unless the commissioner first consults with the capitol area architectural and planning board. Lands needed by the department of transportation for storage of vehicles or road materials may be rented for five years or less, such leases for terms over two years being subject to cancellation upon 30 days written notice by the state for any reason except rental of other land or premises for the same use.

(b) **Use vacant public space.** No agency may initiate or renew a lease for space for its own use in a private building unless the commissioner has thoroughly investigated presently vacant space in public buildings, such as closed school buildings, and found that none is available.

(c) **Preference for certain buildings.** For needs beyond those which can be accommodated in state-owned buildings, the commissioner shall acquire and utilize space in suitable buildings of historical, architectural, or cultural significance for the purposes of this subdivision unless use of that space is not feasible, prudent and cost effective compared with available alternatives. Buildings are of historical, architectural, or cultural significance if they are listed on the national register of historic places, designated by a state or county historical society, or designated by a municipal preservation commission.

(d) **Recycling space.** Leases for space of 30 days or more for 5,000 square feet or more must require that space be provided for recyclable materials.

Subd. 7. Power, heating, and lighting plants. The commissioner shall inspect all state power, heating, and lighting plants, make rules governing their operation, and recommend improvements in the plants which will promote their economical and efficient operation.

Subd. 8. Regional service center. The commissioner may establish a regional service center on a demonstration basis. The commissioner shall select agencies to participate in the demonstration service center and determine equitable methods of sharing space, personnel and equipment. The commissioner may enter into a lease for a base term of five years with a five year leasehold renewal option to acquire suitable space for the service center.

Subd. 9. Smoking in state buildings. (a) To protect the public health, comfort, and environment and to protect the nonsmoker's right to a smoke-free environment, smoking in all buildings managed or leased by the commissioner under subdivisions 1 and 6 is prohibited except where smoking areas have been designated under a policy adopted in accordance with paragraph (b).

(b) Except as provided in paragraph (c), each state agency shall adopt a smoking policy for the space it occupies. Before placing a policy in effect, the agency shall submit the policy and a plan for implementing it to the commissioner of employee relations. The policy must:

(1) prohibit smoking entirely; or

(2) permit smoking only in designated areas, providing that existing physical barriers and ventilation systems can be used to prevent the presence of smoke in adjacent nonsmoking areas.

(c) An agency need not adopt a new policy governing an area in which smoking is prohibited under a policy in effect on January 1, 1989.

No employee complaining of a smoke-induced discomfort to a lessor, lessee, manager, or supervisor may be subjected to any disciplinary action as a result of making the complaint.

Subd. 10. **Child care services space.** For state office space that is leased, purchased, or substantially remodeled after August 1, 1988, the commissioner shall consider including space usable for child care services. Child care space must be included if the commissioner determines that it is needed and that it could be provided at reasonable cost. The commissioner may prepare a day care site as a common usage space for the capitol complex.

History: 1983 c 216 art 1 s 87; 1984 c 544 s 29; 1Sp1985 c 13 s 121; 1986 c 444; 1987 c 98 s 1; 1988 c 613 s 9,10; 1988 c 685 s 1; 1988 c 686 art 1 s 44,45

16B.25 LOST PROPERTY ON STATE LANDS.

Subdivision 1. **Permits.** The commissioner may grant a permit to search upon lands, highways, or in buildings owned by the state for lost or abandoned property. Conditions of a permit may include a formula for dividing between the state and the finder the proceeds of any property found and unclaimed.

Subd. 2. **Notice.** Lost or abandoned property found on state lands is placed in the custody of the commissioner. If the rightful owner is known, the owner must be notified by certified mail and may reclaim the property on paying the expenses of the search. If the owner is unknown, the commissioner must give two weeks' published notice in the county where the property was found. Within six months following publication, the rightful owner may receive the property on paying the search expenses.

Subd. 3. **Disposal.** Unclaimed property may be sold at public sale, disposed of as state surplus property, or destroyed, based on the commissioner's judgment of its value.

Subd. 4. **Money.** All lost or abandoned money found under a permit granted pursuant to this section, and the proceeds from the sale of other abandoned or lost property found under a permit, must be deposited in the general fund.

History: 1984 c 544 s 30

16B.26 UTILITY COMPANIES, PERMITS TO CROSS STATE-OWNED LANDS.

Subdivision 1. **Easements.** (a) **Authority.** Except where the authority conferred by this section has been imposed on some other state or county office, the commissioner may grant an easement or permit over, under, or across any land owned by the state for the purpose of constructing roads, streets, telephone, telegraph, and electric power lines, cables or conduits, underground or otherwise, or mains or pipe lines for gas, liquids, or solids in suspension. This authority does not apply to land under the jurisdiction of the commissioner of natural resources or land obtained for trunk highway purposes.

(b) **Notice of revocation.** An easement or permit is revocable by written notice given by the commissioner if at any time its continuance will conflict with a public use of the land over, under, or upon which it is granted, or for any other reason. The notice must be in writing and is effective 90 days after the notice is sent by certified mail to the last known address of the record holder of the easement. If the address of the holder of the easement or permit is not known, it expires 90 days after the notice is recorded in the office of the county recorder of the county in which the land is located. Upon revocation of an easement, the commissioner may allow a reasonable time to vacate the premises affected.

(c) **Easement runs with land.** State land subject to an easement or permit granted by the commissioner remains subject to sale or lease, and the sale or lease does not revoke the permit or easement granted.

Subd. 2. **Land controlled by other agencies.** If the easement or permit involves land under the jurisdiction of an agency other than the department of administration, it is subject to the approval of the head of the agency and is subject to revocation by the commissioner as provided in this section, on request of the head of the agency.

Subd. 3. **Application.** An application for easement or permit under this section must be in quadruplicate and must include: a legal description of the land affected; a

map showing the area affected by the easement or permit; and a detailed design of any structures to be placed on the land. The commissioner may require that the application be in another form and include other descriptions, maps, or designs. The commissioner may at any time order changes or modifications respecting construction or maintenance of structures or other conditions of the easement which the commissioner finds necessary to protect the public health and safety.

Subd. 4. Form; duration. The easement or permit must be in a form prescribed by the attorney general and must describe the location of the easement granted. The easement or permit continues until revoked by the commissioner, subject to change or modification as provided in this section.

Subd. 5. Consideration; terms. The commissioner may prescribe consideration and conditions for granting an easement or permit. Money received by the state under this section must be credited to the fund to which income or proceeds of sale from the land would be credited, if provision for the sale is made by law. Otherwise, it must be credited to the general fund.

History: 1984 c 544 s 31

16B.27 GOVERNOR'S RESIDENCE.

Subdivision 1. Use. The governor's residence must be used for official ceremonial functions of the state, and to provide suitable living quarters for the governor of the state.

Subd. 2. Maintenance. The commissioner shall maintain the governor's residence in the same way as other state buildings are maintained and shall rehabilitate, decorate, and furnish the building. The decoration and furnishing shall be guided by the governor's residence council.

Subd. 3. Council. The governor's residence council consists of the following 15 members: the commissioner; the spouse, or a designee of the governor; the executive director of the Minnesota state arts board; the director of the Minnesota historical society; a member of the senate appointed pursuant to the rules of the senate; a member of the house of representatives appointed pursuant to the rules of the house of representatives; seven persons appointed by the governor including one in the field of higher education, one member of the American Society of Interior Designers, Minnesota Chapter, one member of the American Institute of Architects, Minnesota chapter, one member of the American Society of Landscape Architects, Minnesota Chapter, one member of the family that donated the governor's residence to the state, if available, and four public members. Members of the council serve without compensation. Membership terms, removal, and filling of vacancies for members appointed by the governor are governed by section 15.0575. The council shall elect a chair and a secretary from among its members. The council expires on June 30, 1993.

Subd. 4. Duties. The council shall develop an overall restoration plan for the governor's residence and surrounding grounds and approve alterations in the existing structure.

Subd. 5. Gifts. (a) To maintain and improve the quality of furnishings for the public areas of the building, the council may solicit and accept donated money, furnishings, objects of art and other items the council determines may have historical value in keeping with the building's period and purpose. The gift acceptance procedures of sections 7.09 to 7.12 do not apply to this subdivision.

(b) Notwithstanding sections 7.09 to 7.12, the council may solicit contributions for the renovation of and capital improvements to the governor's residence.

(c) Gifts for the benefit of the governor's residence and surrounding grounds are not accepted by the state unless accepted by the council. The council shall maintain a complete inventory of all gifts and articles received.

History: 1984 c 544 s 32; 1984 c 655 art 1 s 5; art 2 s 13 subd 1; 1986 c 444; 1988 c 629 s 12

16B.28 MATERIALS DISTRIBUTION.

Subdivision 1. **Definitions.** For purposes of this section the following terms have the meanings given them:

(a) "Surplus property" means commodities, equipment, materials, supplies, books, printed matter, and other property made available by a governmental unit or nonprofit organization to another governmental unit or nonprofit organization.

(b) "Governmental unit or nonprofit organization" means a governmental unit as defined in section 471.59, subdivision 1, an Indian tribal government, and any nonprofit and tax-exempt medical institution, hospital, clinic, health center, school, school system, college, university, or other institution organized and existing for any purpose authorized by federal law to accept surplus federal property.

Subd. 2. **Authorization.** (a) The commissioner is the state agency designated to purchase, accept or dispose of federal surplus property for the state and for the benefit of any other governmental unit or nonprofit organization for any purpose authorized by state and federal law and in accordance with federal rules and regulations. Any governmental unit or nonprofit organization may designate the commissioner to purchase or accept surplus property for it upon mutually agreeable terms and conditions. The commissioner may acquire, accept, warehouse, and distribute surplus property until it is needed and any expenses incurred in connection with any of these acts shall be paid from the materials distribution revolving fund.

(b) To dispose of surplus property or other property that is obsolete or unused that belongs to the state or any other governmental unit or nonprofit organization, the commissioner may transfer or sell it to a governmental unit or nonprofit organization or sell it to any other person. Federal surplus property that has been transferred to the state for donation to public agencies and nonprofit organizations must be transferred or sold in accordance with the plan developed under paragraph (d). Expenses incurred in connection with the disposal of surplus property or other property that is obsolete or unused must be paid from the materials distribution revolving fund. If the commissioner sells the property, the proceeds of the sale, minus any expenses of providing the service set by the commissioner, are appropriated to the governmental unit or nonprofit organization for whose account the sale was made, to be used and expended by the organization for the purposes it determines.

(c) The commissioner may centrally acquire, warehouse, and distribute supplies, materials, and equipment for governmental units or nonprofit organizations. Expenses incurred in connection with acquiring, warehousing, and distributing must be paid from the materials distribution revolving fund.

(d) The commissioner shall develop a detailed plan for disposal of donated federal property in conformance with state law and federal regulations. The plan must be submitted to the governor for certification and submission to the federal administrator of general services.

Subd. 3. **Revolving fund.** (a) **Creation.** The materials distribution revolving fund is a separate fund in the state treasury. All money relating to the resource recovery program established under section 115A.15, subdivision 1, all money resulting from the acquisition, acceptance, warehousing, distribution, and public sale of surplus property, all money resulting from the sale of centrally acquired, warehoused, and distributed supplies, materials, and equipment, and all money relating to the cooperative purchasing venture established under section 421.59 must be deposited in the fund. Money paid into the materials distribution revolving fund is appropriated to the commissioner for the purposes of the programs and services referred to in this section.

(b) **Transfer or sale to state agency.** When the state or an agency operating under a legislative appropriation obtains surplus property from the commissioner, the commissioner of finance must, at the commissioner's request, transfer the cost of the surplus property, including any expenses of acquiring, accepting, warehousing, and distributing the surplus property, from the appropriation of the state agency receiving the surplus property to the materials distribution revolving fund. The determination

of the commissioner is final as to the cost of the surplus property to the state agency receiving the property.

(c) **Transfer or sale to other governmental units or nonprofit organizations.** When any governmental unit or nonprofit organization other than a state agency receives surplus property, supplies, materials, or equipment from the commissioner, the governmental unit or nonprofit organization must reimburse the materials distribution revolving fund for the cost of the property, including the expenses of acquiring, accepting, warehousing, and distributing it, in an amount the commissioner sets. The commissioner may, however, require the governmental unit or nonprofit organization to deposit in advance in the materials distribution revolving fund the cost of the surplus property, supplies, materials, and equipment upon mutually agreeable terms and conditions. The commissioner may charge a fee to political subdivisions and nonprofit organizations to establish their eligibility for receiving the property and to pay for costs of storage and distribution.

History: 1984 c 544 s 33; 1988 c 613 s 11

16B.29 STATE SURPLUS PROPERTY; DISPOSAL.

The commissioner may do any of the following to dispose of supplies, materials, and equipment which are surplus, obsolete, or unused: (1) transfer it to or between state agencies; (2) transfer it to local government units in Minnesota and other institutions and organizations in Minnesota authorized by federal law to accept surplus property and charge a fee to cover expenses incurred by the commissioner in making the property available to these units; or (3) sell it. The commissioner must make proper adjustments in the accounts and appropriations of the agencies concerned. When the commissioner sells the supplies, materials and equipment, the proceeds of the sale are appropriated to the agency for whose account the sale was made, to be used and expended by the agency to purchase similar needed supplies, materials, and equipment.

History: 1984 c 544 s 34; 1Sp1985 c 13 s 122; 1986 c 363 s 5; 1987 c 365 s 10

16B.295 NOTICE OF DOCUMENTS TO LIBRARIES.

The commissioner of administration shall make available to educational institution libraries and public libraries documents the department of administration receives, does not need, and would otherwise discard. For purposes of this section, "documents" has the meaning given in section 3.302, subdivision 3.

History: 1986 c 320 s 1

CAPITAL IMPROVEMENTS

16B.30 GENERAL AUTHORITY.

Subject to other provisions in this chapter, the commissioner shall supervise and control the making of all contracts for the construction of buildings and for other capital improvements to state buildings and structures.

History: 1984 c 544 s 35

16B.31 COMMISSIONER MUST APPROVE PLANS.

Subdivision 1. Construction plans and specifications. The commissioner shall (1) have plans and specifications prepared for the construction, alteration, or enlargement of all state buildings, structures, and other improvements except highways and bridges; (2) approve those plans and specifications; (3) advertise for bids and award all contracts in connection with the improvements; (4) supervise and inspect all work relating to the improvements; (5) approve all lawful changes in plans and specifications after the contract for an improvement is let; and (6) approve estimates for payment. This subdivision does not apply to the construction of the zoological gardens.

Subd. 2. Appropriations. Plans must be paid for out of money appropriated for

the purpose of improving or constructing the building. No part of the balance may be expended until the commissioner has secured suitable plans and specifications, prepared by a competent architect or engineer, and accompanied by a detailed statement of the cost, quality, and description of all material and labor required for the completion of the work. No plan may be adopted, and no improvement made or building constructed, that contemplates the expenditure for its completion of more money than the appropriation for it, unless otherwise provided in this section or the act making the appropriation. The commissioner may not direct or permit any expenditure beyond that appropriated, and any agent of the commissioner violating this provision is guilty of a gross misdemeanor.

Subd. 3. Federal aid. (a) Acceptance of aid. The commissioner is the state agency empowered to accept money provided for or made available to this state by the United States of America or any federal department or agency for the construction and equipping of any building for state purposes not otherwise provided for by law, other than University of Minnesota buildings, in accordance with the provisions of federal law and any rules or regulations promulgated under federal law. The commissioner may do whatever is required of this state by federal law, rules, and regulations in order to obtain the federal money.

(b) Federal funds considered part of appropriation. The commissioner may after consultation with the chairs of the senate finance committee and house of representatives appropriations committee, adopt a plan, provide for an improvement, or construct a building that contemplates expenditure for its completion of more money than the appropriation for it, if the excess money is provided by the United States government and granted to the state of Minnesota under federal law or any rule or regulation promulgated under federal law. This federal money, for the purpose of this section, is a part of the appropriation for the project.

(c) Delayed federal money. If an amount is payable to a creditor of the state from a project account which is financed partly with federal money and the project is included in appropriations made to the commissioner for public buildings and equipment, and the amount cannot be paid on time because of a deficiency of money in the project account caused by a delay in the receipt of federal money, the commissioner may provide money needed to pay the amount by temporarily transferring the sum to the project account from any other appropriation made to the commissioner in the same act. Required money for a payment is appropriated for that purpose. When the delayed federal money is received, the commissioner shall have the amount of money transferred returned to the account from which it came.

Subd. 4. Capitol area architectural and planning board. (a) Comprehensive use plan; competitions. Notwithstanding any provision of this section to the contrary, plans for proposed new buildings and for features of existing public buildings in the capitol area which the capitol area architectural and planning board consider to possess architectural significance are subject to section 15.50, subdivision 2, clauses (c) and (e).

(b) Approval required. The preparation of plans and specifications for the capitol area, as defined in section 15.50, may not be initiated, contracted for, or conducted without consultation with the capitol area architectural and planning board to the extent the plans and specifications involve the public and ceremonial areas and the exterior of the capitol building and the lobbies, public concourses, and other features of other public buildings in the capitol area which the capitol area architectural and planning board considers to have architectural significance. The commissioner may not approve or adopt plans or specifications for the capitol area unless they have been approved by the capitol area architectural and planning board. The capitol area architectural and planning board must also be advised of and approve changes in plans and specifications which affect projects within the capitol area.

History: 1984 c 544 s 36; 1986 c 444

16B.32 ALTERNATIVE ENERGY SOURCES.

Plans prepared by the commissioner for a new building or for a renovation of 50

percent or more of an existing building or its energy systems must include designs which use active and passive solar energy systems, earth sheltered construction, and other alternative energy sources where feasible.

History: 1984 c 544 s 37

16B.33 DESIGNER SELECTION BOARD.

Subdivision 1. Definitions. As used in this section, the following terms have the meanings given them:

(a) "Agency" has the meaning given in section 16B.01, and also includes the University of Minnesota.

(b) "Architect" means an architect or landscape architect registered to practice under sections 326.02 to 326.15.

(c) "Board" means the state designer selection board.

(d) "Designer" means an architect or engineer, or a partnership, association, or corporation comprised primarily of architects or engineers or of both architects and engineers.

(e) "Engineer" means an engineer registered to practice under sections 326.02 to 326.15.

(f) "Person" includes an individual, corporation, partnership, association, or any other legal entity.

(g) "Primary designer" means the designer who is to have primary design responsibility for a project, and does not include designers who are merely consulted by the user agency and do not have substantial design responsibility, or designers who will or may be employed or consulted by the primary designer.

(h) "Project" means an undertaking to construct, erect, or remodel a building by or for the state or an agency.

(i) "User agency" means the agency undertaking a specific project.

Subd. 2. Organization of board. (a) **Membership.** The state designer selection board consists of five individuals, the majority of whom must be Minnesota residents. Each of the following three organizations shall nominate one individual whose name and qualifications shall be submitted to the commissioner of administration for consideration: the consulting engineers council of Minnesota after consultation with other professional engineering societies in the state; the Minnesota society of architects; and the Minnesota board of the arts. The commissioner may appoint the three named individuals to the board but may reject a nominated individual and request another nomination. The remaining two members shall also be appointed by the commissioner.

(b) **Nonvoting members.** In addition to the five members of the board, two nonvoting members shall participate in the interviewing and selection of designers pursuant to this section. One shall be a representative of the commissioner and shall participate in the interviewing and selection of designers for all projects. The other shall be a representative of the user agency, who shall participate in the interviewing and selection of the designers for the project being undertaken by the user agency. The commissioner shall appoint the representative of the user agency in consultation with the user agency.

(c) **Terms; compensation; removal; vacancies.** The membership terms, compensation, removal of members, and filling of vacancies on the board are as provided in section 15.0575. No individual may serve for more than two consecutive terms.

(d) **Officers, rules.** At its first meeting, the board shall elect a voting member of the board as chair. The board shall also elect other officers necessary for the conduct of its affairs. The board shall adopt rules governing its operations and the conduct of its meetings. The rules shall provide for the terms of the chair and other officers.

(e) **Meetings.** The board shall meet as often as is necessary, not less than twice annually, in order to act expeditiously on requests submitted to it for selection of primary designers.

(f) **Office, staff, records.** The department of administration shall provide the board with suitable quarters to maintain an office, hold meetings, and keep records. The commissioner shall designate an employee of the department of administration to serve as executive secretary to the board and shall furnish a secretarial staff to the board as necessary for the expeditious conduct of the board's duties and responsibilities.

Subd. 3. Agencies must request designer. (a) **Application.** Upon undertaking a project with an estimated cost greater than \$400,000 or a planning project with estimated fees greater than \$35,000, every user agency, except the capitol area architectural and planning board, shall submit a written request for a primary designer for its project to the commissioner, who shall forward the request to the board. The written request must include a description of the project, the estimated cost of completing the project, a description of any special requirements or unique features of the proposed project, and other information which will assist the board in carrying out its duties and responsibilities set forth in this section.

(b) **Reactivated project.** If a project for which a designer has been selected by the board becomes inactive, lapses, or changes as a result of project phasing, insufficient appropriations, or other reasons, the commissioner or the University of Minnesota may, if the project is reactivated, retain the same designer to complete the project.

(c) **Fee limit reached after designer selected.** If a project initially estimated to be below the cost and planning fee limits of this subdivision has its cost or planning fees revised so that the limits are exceeded, the project must be referred to the board for designer selection even if a primary designer has already been selected. In this event, the board may, without conducting interviews, elect to retain the previously selected designer if it determines that the interests of the state are best served by that decision and shall notify the commissioner of its determination.

Subd. 4. Designer selection process. (a) **Publicity.** Upon receipt of a request from a user agency for a primary designer, the board shall publicize the proposed project in order to determine the identity of designers interested in the design work on the project. The board shall establish criteria for the selection process and make this information public, and shall compile data on and conduct interviews of designers. The board's selection criteria must include consideration of each interested designer's performance on previous projects for the state or any other person. Upon completing the process, the board shall select the primary designer and shall state its reasons in writing. Notification to the commissioner of the selection shall be made not more than 60 days after receipt from a user agency of a request for a primary designer. The commissioner shall promptly notify the designer and the user agency. The commissioner shall negotiate the designer's fee and prepare the contract to be entered into between the designer and the user agency.

(b) **Conflict of interest.** The board may not select a designer or firm in which a member of the designer selection board has a current financial interest.

(c) **Selection by commissioner.** In the event the board receives a request for a primary designer on a project, the estimated cost of which is less than the limit established by subdivision 3, or a planning project with estimated fees of less than the limit established by subdivision 3, the board may submit the request to the commissioner of administration, with or without recommendations, and the commissioner shall thereupon select the primary designer for the project.

(d) **Second selection.** If the designer selected for a project declines the appointment or is unable to reach agreement with the commissioner on the fee or the terms of the contract, the commissioner shall, within 60 days after the first appointment, request the board to make another selection.

(e) **Sixty days to select.** If the board fails to make a selection and forward its recommendation to the commissioner within 60 days of the user agency's request for a designer, the commissioner may appoint a designer to the project without the recommendation of the board.

(f) **Less than satisfactory performance.** The commissioner, or the University of

Minnesota for projects under its supervision, shall forward to the board a written report describing each instance in which the performance of a designer selected by the board or the commissioner has been less than satisfactory. Criteria for determining satisfaction include the ability of the designer to complete design work on time, to provide a design responsive to program needs within the constraints of the budget, to solve design problems and achieve a design consistent with the proposed function of the building, to avoid costly design errors or omissions, and to observe the construction work. These reports are public data and are available for inspection under section 13.03.

History: 1984 c 544 s 38; 1985 c 285 s 5; 1986 c 444

16B.34 INMATE LABOR.

At a state institution or state park or in the maintenance of a state armory, an appropriation for construction, improvements, or maintenance may be expended through the use of inmate or project labor when authorized by the commissioner with the concurrence of the head of the interested state department.

History: 1984 c 544 s 39

16B.35 ART IN STATE BUILDINGS.

Subdivision 1. Percent of appropriations for art. An appropriation for the construction or alteration of any state building may contain an amount not to exceed one percent of the total appropriation for the building for the acquisition of works of art, excluding landscaping, which may be an integral part of the building or its grounds, attached to the building or grounds or capable of being displayed in other state buildings. Money used for this purpose is available only for the acquisition of works of art to be exhibited in areas of a building or its grounds accessible, on a regular basis, to members of the public. For the purposes of this section "state building" means a building the construction or alteration of which is paid for wholly or in part by the state.

Subd. 2. Exempt buildings. A building for which the appropriation is less than \$500,000 for construction or alteration or a building for which the commissioner of administration has determined that this section is inappropriate is exempt from the requirements of this section.

Subd. 3. Unused funds. If an amount made available under subdivision 1 is not expended for works of art for the building, the unexpended portion is available to the Minnesota board of the arts for the commission or purchase of works of art for state buildings existing or for which an appropriation was made prior to June 15, 1983, and is not available to pay construction costs of the building.

History: 1984 c 544 s 40

SERVICES TO STATE AGENCIES

16B.36 INVESTIGATIONS.

Subdivision 1. Authority. The commissioner may examine, investigate, or make a survey of the organization, administration, and management of state agencies and institutions under their control, and may assist state agencies by providing analytical, statistical, and organizational development services to them in order to secure greater efficiency and economy through reorganization or consolidation of agencies or functions and to eliminate duplication of function, effort, or activity, so far as possible.

Subd. 2. Hearings. The commissioner shall recommend to the legislature any necessary changes in the laws of the state as a result of a survey or investigation, or otherwise, in order to secure a better organization of the state government or greater efficiency and economy in administration. For this purpose, the commissioner may hold hearings, and issue subpoenas for and compel the attendance of witnesses, the giving of testimony, and the production of books, records, accounts, documents, and papers, as provided in section 15.08.

History: 1984 c 544 s 41; 1Sp1985 c 13 s 123

16B.37 REORGANIZATION OF AGENCIES.

Subdivision 1. **Commissioner's authority.** To improve efficiency and avoid duplication, the commissioner may transfer personnel, powers, or duties, or any combination of them, from a state agency to another state agency that has been in existence for at least one year prior to the date of transfer. A transfer must have received the prior approval of the governor. The commissioner shall no later than January 15 of each year submit to the legislature a bill making all statutory changes required by reorganization orders issued by the commissioner during the preceding calendar year.

Subd. 2. **Reorganization order.** A transfer made pursuant to subdivision 1 must be in the form of a reorganization order. A reorganization order must be filed with the secretary of state, be uniform in format, and be numbered consecutively. An order is effective upon filing with the secretary of state and remains in effect until amended or superseded. Copies of the filed order must be delivered promptly by the commissioner to the secretary of the senate, the chief clerk of the house, and the chairs of the governmental operations committees in the senate and house of representatives. A reorganization order which transfers all or substantially all of the powers or duties or personnel of a department, the housing finance agency, or the pollution control agency is not effective until it is ratified by concurrent resolution or enacted into law.

Subd. 3. **Appropriation.** The commissioner of finance shall determine the fractional part of the appropriation to the transferor agency that is represented by the transferred personnel, power, or duty, and that part of the appropriation is reappropriated to the transferee agency.

Subd. 4. **Work of department for another.** To avoid duplication and improve efficiency, the commissioner may direct an agency to do work for another agency or may direct a division or section of an agency to do work for another division or section within the same agency and shall require reimbursement for the work. Reimbursements received by an agency are reappropriated to the account making the original expenditure in accordance with the transfer warrant procedure established by the commissioner of finance.

Subd. 5. **Employees assigned.** With the approval of the governor and by agreement of the heads of the departments or agencies concerned, any appointive subordinate officer or employee of a department or agency may be employed by or assigned to perform duties under another department or agency.

History: 1984 c 544 s 42; 1986 c 444

16B.38 DISSOLVED OR SUSPENDED AGENCIES.

The commissioner shall undertake all necessary administrative functions of an agency which has been temporarily or permanently dissolved or suspended. These functions may include but are not limited to: authorizing payment of all obligations of the dissolved or suspended agency including payroll certifications; serving as custodian for and disposing of all property of the agency; and, in the event that the agency is only temporarily dissolved or suspended, serving as its chief administrative officer with all necessary powers until the agency is reconstituted. To implement these responsibilities the commissioner may spend any necessary money from a dissolved or suspended agency's appropriation.

History: 1984 c 544 s 43

16B.39 PROGRAMS FOR STATE EMPLOYEES.

Subdivision 1. [Repealed, 1987 c 365 s 25]

Subd. 1a. **Endowment fund.** The commissioner of administration may establish an endowment fund to reward state agencies and their employees for improving productivity and service quality. The commissioner shall use gift money to establish the fund. The interest earnings are appropriated to the commissioner to make agency and employee awards. The commissioner shall establish an advisory task force of state

employees and private individuals to recommend criteria for granting rewards and to recommend award recipients.

Subd. 2. Employee assistance program; advisory committee. The commissioner shall provide an employee assistance program of training, diagnostic, and referral services for state employees and their dependents. The commissioner shall appoint an advisory committee on state employee assistance of not more than 15 members to advise the commissioner on the program. The committee is subject to the provisions of section 15.059.

History: 1984 c 531 s 3; 1984 c 544 s 44; 1984 c 655 art 2 s 13 subd 1; 1986 c 444; 1987 c 365 s 11

16B.40 ADMINISTRATION OF STATE COMPUTER FACILITIES.

Subdivision 1. Definitions. For the purposes of sections 16B.40 to 16B.45, the following terms have the meanings given them.

(a) "Computer activity" means the development or acquisition of a data processing device or system.

(b) "Data processing device or system" means any equipment or computer programs, including computer hardware, firmware, software, and communication protocol, used in connection with the processing of information via electronic data processing means, and includes data communication devices used in connection with computer facilities for the transmission of data.

Subd. 2. Commissioner's responsibility. The commissioner is charged with integrating and operating the state's computer facilities to serve the needs of the state government. Except as otherwise provided by law, all plans and programs for systems and procedures analysis, information systems, and related computer efforts of agencies must be submitted to the commissioner prior to implementation for review and approval, modification, or rejection. The commissioner, after consulting the inter-governmental information systems advisory council, shall:

(1) design and maintain a master plan for information systems in the state and its political subdivisions and shall report on the plan to the governor and legislature at the beginning of each regular session;

(2) establish standards for information systems;

(3) maintain a library of systems and programs developed by the state and its political subdivisions for use by agencies of government; and

(4) administer the communications for the state information system.

Subd. 3. Evaluation procedure. The commissioner shall establish and, as necessary, update and modify procedures to evaluate computer activities proposed by state agencies. The evaluation must include the necessity, design and plan for development, ability to meet user requirements, feasibility, and flexibility, of the proposed data processing device or system, its relationship to other state data processing devices or systems, and its costs and benefits when considered by itself and when compared with alternative solutions.

Subd. 4. Evaluation and approval requirements. A state agency may not undertake a computer activity until the activity has been evaluated according to the procedures developed under subdivision 3 and the commissioners of administration and finance have given written approval of the proposed activity. If a proposed computer activity is not approved, the commissioner of finance shall cancel the unencumbered balance of any appropriation allotted for the activity. The commissioners of administration and finance may delegate their respective approval powers regarding computer activities to the head of another agency including the agency seeking approval if delegation is deemed appropriate.

Subd. 5. Report to legislature. If a proposed computer activity is approved, the commissioners of administration and finance shall submit to the legislature a concise narrative explanation of the computer activity and a request for any additional appropriation necessary to complete the activity.

Subd. 6. System development methodology. The commissioner shall establish and, as necessary, update and modify a methodology for the development of approved data processing systems by state agencies. The development methodology shall be used to define the design, programming, and implementation of approved data processing systems. The development methodology shall also enable and require a data processing system to be defined in terms of its computer programs, input requirements, output formats, administrative procedures, and processing frequencies.

Subd. 7. System development methodology requirements. A state agency may not develop, improve, or modify a data processing system using any methodology other than that established by the commissioner.

Subd. 8. Data security systems. In consultation with the attorney general and appropriate agency heads, the commissioner shall develop, install, and administer state data security systems consistent with state law to assure the integrity of computer based and all other data and to assure confidentiality of the data, consistent with the public's right to know.

Subd. 9. Joint actions. The commissioner may, within available funding, join with the federal government, other states, local governments, and organizations representing those groups either jointly or severally in the development and implementation of systems analysis, information services, and computerization projects.

History: 1984 c 544 s 45

16B.405 SOFTWARE SALES.

Subdivision 1. Authorization. To offset the department of administration's software development costs through the sale of products developed, the commissioner may sell or license computer software products or services developed by the commissioner or custom developed by a vendor, through whatever sales method the commissioner considers appropriate. Prices for the software products or services may be based on market considerations.

Subd. 2. Software sale fund. Proceeds of the sale or licensing of software products or services by the commissioner must be credited to the computer services revolving fund. If a state agency other than the department of administration has contributed to the development of software sold or licensed under this section, the commissioner may reimburse the agency by discounting computer services provided to that agency.

History: 1987 c 365 s 12

16B.41 STATE INFORMATION SYSTEMS MANAGEMENT OFFICE.

Subdivision 1. Establishment and purpose. An office of information systems management is created. The office shall develop and establish a policy and standards for state agencies to follow for the development, purchase, and training for information systems. The purpose of the office is to develop, promote, and coordinate a state technology, architecture, standards and guidelines, information needs analysis techniques, contracts for the purchase of equipment and services, and training of state agency personnel on these issues.

Subd. 2. Responsibilities. The office has the following duties:

(a) The office must develop and establish a state information architecture to ensure that further state agency development and purchase of information systems equipment and software is directed in such a manner that individual agency information systems complement and do not needlessly duplicate or needlessly conflict with the systems of other agencies. The development of this information architecture must include the establishment of standards and guidelines to be followed by state agencies. The commissioner of administration must establish interim standards and guidelines by August 1, 1987. The office must establish permanent standards and guidelines by July 1, 1988. On January 1, 1988, and every six months thereafter, any state agency that has purchased information systems equipment or software in the past six months, or that is contemplating purchasing this equipment or software in the next six months,

must report to the office and to the chairs of the house appropriations committee and the senate finance committee on how the purchases or proposed purchases comply with the applicable standards and guidelines.

(b) The office shall assist state agencies in the planning and management of information systems so that an individual information system reflects and supports the state agency's and the state's mission, requirements, and functions.

(c) Beginning July 1, 1988, the office must review and approve all agency requests for legislative appropriations for the development or purchase of information systems equipment or software. Requests may not be included in the governor's budget submitted to the legislature, beginning with the budget submitted in January 1989, unless the office has approved the request.

(d) Each biennium the office must rank in order of priority agency requests for new appropriations for development or purchase of information systems equipment or software. The office must submit this ranking to the legislature at the same time, or no later than 14 days after, the governor submits the budget message to the legislature.

(e) Beginning July 1, 1989, the office must define, review, and approve major purchases of information systems equipment to (1) ensure that the equipment follows the standards and guidelines of the state information architecture; (2) ensure that the equipment is consistent with the information management principles adopted by the information policy council; (3) evaluate whether or not the agency's proposed purchase reflects a cost-effective policy regarding volume purchasing; and (4) ensure the equipment is consistent with other systems in other state agencies so that data can be shared among agencies, unless the office determines that the agency purchasing the equipment has special needs justifying the inconsistency. The commissioner of finance may not allot funds appropriated for major purchases of information systems equipment until the office reviews and approves the proposed purchase.

(f) The office shall review the operation of information systems by state agencies and provide advice and assistance so that these systems are operated efficiently and continually meet the standards and guidelines established by the office.

Subd. 3. The office shall function as a division of the department of administration. The commissioner of administration shall appoint an interim office director and other interim staff and provide the necessary administrative support to the office. The employees and director shall serve in the unclassified service through June 30, 1988. On July 1, 1988, the employee positions established by this section, except the position of director, shall be placed in the classified service. The position of director shall remain in the unclassified service.

Subd. 4. **Advisory task force.** The commissioner must appoint a state information systems advisory task force to help develop and coordinate a state information architecture that is consistent with the information management direction developed by the information policy council, and make recommendations to the commissioner concerning the progress, direction, and needs of the state's information systems. The task force must include representatives of state agencies, the supreme court, higher education systems, librarians, and private industry. The task force must also have two members of the house of representatives appointed by the speaker of the house and two members of the senate appointed by the senate committee on committees. No more than one member from the house of representatives and one from the senate shall be chosen from the same political party. The task force expires and the terms, compensation, and removal of nonlegislative members are as provided in section 15.059.

History: 1984 c 544 s 46; 1987 c 404 s 80

16B.42 INTERGOVERNMENTAL INFORMATION SYSTEMS ADVISORY COUNCIL.

Subdivision 1. **Composition.** The commissioner of administration shall appoint an intergovernmental information systems advisory council, to serve at the pleasure of the commissioner of administration, consisting of 25 members. Fourteen members

shall be appointed or elected officials of local governments, seven shall be representatives of state agencies, and four shall be selected from the community at large. Further, the council shall be composed of (1) two members from each of the following groups: counties outside of the seven county metropolitan area, cities of the second and third class outside the metropolitan area, cities of the second and third class within the metropolitan area, and cities of the fourth class; (2) one member from each of the following groups: the metropolitan council, an outstate regional body, counties within the metropolitan area, cities of the first class, school districts in the metropolitan area, and school districts outside the metropolitan area; (3) one member each from the state departments of administration, education, human services, revenue, planning and the legislative auditor; (4) one member from the office of the state auditor; and (5) four members from the state community at large. To the extent permitted by available resources the commissioner shall furnish staff and other assistance as requested by the council. The terms, compensation, and removal of members of the advisory council shall be as provided in section 15.059, but the council does not expire until June 30, 1993.

Subd. 2. Duties. The council shall assist the commissioner in developing and updating intergovernmental information systems, including data definitions, format, and retention standards; recommend to the commissioner policies and procedures governing the collection, security, and confidentiality of data; review intergovernmental information and computer systems involving intergovernmental funding; encourage cooperative efforts among local governments in developing information systems to meet individual and collective, operational, and external needs; bring about the necessary degree of standardization consistent with local prerogatives; yield fiscal and other information required by state and federal laws and regulations in readily usable form; foster the efficient use of available federal, state, local, and private resources for the development of systems; keep local governments abreast of the state of the art in information systems, and prepare guidelines for intergovernmental systems.

Subd. 3. Other duties. The intergovernmental informations systems advisory council shall (1) recommend to the commissioners of state departments, the legislative auditor, and the state auditor a method for the expeditious gathering and reporting of information and data between agencies and units of local government in accordance with cooperatively developed standards; (2) elect an executive committee, not to exceed seven members from its membership; (3) develop an annual plan, to include administration and evaluation of grants, in compliance with applicable rules; (4) provide technical information systems assistance or guidance to local governments for development, implementation, and modification of automated systems, including formation of consortiums for those systems.

Subd. 4. Funding. Appropriations and other funds made available to the council for staff, operational expenses, and grants must be administered through the department of administration. Fees charged to local units of government for the administrative costs of the council and revenues derived from royalties, reimbursements, or other fees from software programs, systems, or technical services arising out of activities funded by current or prior state appropriations must be credited to an account in the special revenue fund and are appropriated to the council for the purposes enumerated in subdivision 2. General fund appropriations for the council may also be credited by the commissioner of administration to the account in the special revenue fund. The unencumbered balance of an appropriation for grants in the first year of a biennium does not cancel but is available for the second year of the biennium.

History: 1984 c 531 s 4; 1984 c 544 s 47; 1984 c 654 art 5 s 58; 1984 c 655 art 2 s 13 subd 1; 1Sp1985 c 13 s 124; 1986 c 363 s 6; 1987 c 404 s 81; 1988 c 613 s 12

16B.43 EDUCATION MANAGEMENT INFORMATION SYSTEMS.

Subdivision 1. Application. The authority of the commissioner under sections 16B.40 to 16B.42, 16B.44, and 16B.45 does not apply to ESV-IS, but applies to SDE-IS and computer-related services provided to the department of education by the depart-

ment of administration's information services bureau. For purposes of this section, "ESV-IS" and "SDE-IS" have the meanings given them in section 121.93.

Subd. 2. Furnishing staff and assistance. To the extent permitted by available resources, the commissioner may furnish staff and other assistance to the department, the state board, the ESV computer council, and the Minnesota educational computing consortium in conjunction with their performance of the duties imposed by sections 121.931 to 121.937.

History: 1984 c 544 s 48; 1987 c 384 art 2 s 1

16B.44 MODIFICATION OF OPERATING AND MANAGEMENT PROCEDURES.

When improved program effectiveness, better use of services, and greater efficiency and economy in state government can be demonstrated, the commissioner with the approval of the governor may require a state agency to adjust its operating and management procedures to take advantage of improved systems, procedures, and methods resulting from systems analysis and information science technology.

History: 1984 c 544 s 49

16B.45 FUNCTION OF LEGISLATIVE AUDITOR.

The legislative auditor may conduct performance evaluations of all systems analysis, information services, and computerization efforts of agencies, the University of Minnesota, and metropolitan boards, agencies, and commissions. Upon request of the governing body or the state information systems advisory council, the legislative auditor shall conduct the same services for political subdivisions of the state and report the findings to the governor and the legislature. The cost of these evaluations must be paid by the agencies being evaluated.

History: 1984 c 544 s 50

16B.46 TELECOMMUNICATION; POWERS.

The commissioner shall supervise and control all state telecommunication facilities including any transmission, emission, or reception of signs, signals, writing, images, and sounds or intelligence of any nature by wire, radio, optical, or other electromagnetic systems. Nothing in this section modifies, amends, or abridges any powers and duties presently vested in or imposed upon the commissioner of transportation or the commissioner of public safety relating to telecommunications facilities or the commissioner of transportation relating only to radio air navigation facilities or other air navigation facilities.

History: 1984 c 544 s 51

16B.47 MICROGRAPHICS.

The commissioner shall provide micrographics services and products to meet agency needs. Within available resources, the commissioner may also provide micrographic services to political subdivisions. Agency plans and programs for micrographics must be submitted to and receive the approval of the commissioner prior to implementation. Upon the commissioner's approval, subsidiary or independent microfilm operations may be implemented in other state agencies. The commissioner may direct that copies of official state documents be distributed to official state depositories on microfilm.

History: 1984 c 544 s 52

16B.48 GENERAL SERVICES AND COMPUTER SERVICES REVOLVING FUNDS.

Subdivision 1. Reimbursements. Fees prescribed pursuant to section 16B.51, for the rendering of the services provided in that section are deposited in the state treasury by the collecting agency and credited to the general services revolving fund.

Subd. 2. **Purpose of funds.** Money in the state treasury credited to the general services revolving fund and money which is deposited in the fund is appropriated annually to the commissioner for the following purposes:

- (1) to operate a central store and equipment service;
- (2) to operate a central duplication and printing service;
- (3) to purchase postage and related items and to refund postage deposits as necessary to operate the central mailing service;
- (4) to operate a documents service as prescribed by section 16B.51;
- (5) to provide advice and other services to political subdivisions for the management of their records, information, and telecommunication systems;
- (6) to provide services for the maintenance, operation, and upkeep of buildings and grounds managed by the commissioner of administration;
- (7) to provide analytical, statistical, and organizational development services to state agencies, local units of government, metropolitan and regional agencies, and school districts;
- (8) to provide capitol security services through the department of public safety; and

(9) to perform services for any other agency. Money shall be expended for this purpose only when directed by the governor. The agency receiving the services shall reimburse the fund for their cost, and the commissioner shall make the appropriate transfers when requested. The term "services" as used in this clause means compensation paid officers and employees of the state government; supplies, materials, equipment, and other articles and things used by or furnished to an agency; and utility services, and other services for the maintenance, operation, and upkeep of buildings and offices of the state government.

Subd. 3. **Computer services revolving fund.** Money in the computer services revolving fund is appropriated annually to the commissioner to operate the division of computer services.

Subd. 4. **Reimbursements.** Except as specifically provided otherwise by law, each agency shall reimburse the computer services and general services revolving funds for the cost of all services, supplies, materials, labor and depreciation of equipment including reasonable overhead costs which the commissioner is authorized and directed to furnish an agency. The cost of all publications or other materials produced by the commissioner and financed from the general services revolving fund shall include reasonable overhead costs. The commissioner of finance shall make appropriate transfers to the revolving funds described in this section when requested by the commissioner of administration. The commissioner of administration may make allotments, encumbrances, and, with the approval of the commissioner of finance, disbursements in anticipation of such transfers. In addition, the commissioner of administration, with the approval of the commissioner of finance, may require an agency to make advance payments to the revolving funds in this section sufficient to cover the agency's estimated obligation for a period of at least 60 days. All such reimbursements and other money received by the commissioner of administration under this section shall be deposited in the appropriate revolving fund. Any earnings remaining in the fund established to account for the documents service prescribed by section 16B.51 at the end of each fiscal year not otherwise needed for present or future operations, as determined by the commissioners of administration and finance, shall be transferred to the general fund.

Subd. 5. **Liquidation.** If the computer services or general services revolving fund is abolished or liquidated, the total net profit from the operation of each fund shall be distributed to the various funds from which purchases were made. The amount to be distributed to each fund shall bear to such net profit the same ratio as the total purchases from each fund bears to the total purchases from all the funds during such period of time as shall fairly reflect the amount of net profit each fund is entitled to receive under the distribution required by this section.

History: 1984 c 544 s 53; 1984 c 654 art 2 s 50; 1984 c 655 art 2 s 13 subd 1; 1Sp1985 c 13 s 125; 1986 c 363 s 7; 1988 c 613 s 13

16B.481 FEES FOR TRAINING AND MAINTENANCE.

The commissioner may charge state agencies and political subdivisions a fee for the cost of energy conservation training and preventive maintenance programs. Fees collected by the commissioner must be deposited in the state treasury and are appropriated to the commissioner to pay the cost of the training and maintenance programs.

History: 1987 c 365 s 13

CENTRAL SERVICES**16B.49 CENTRAL MAILING SYSTEM.**

The commissioner shall maintain and operate for agencies a central mailing system. Official mail of an agency occupying quarters either in the capitol or in adjoining state buildings must be delivered unstamped to the central mailing station. Account must be kept of the postage required on that mail, which is then a proper charge against the agency delivering the mail. To provide funds for the payment of postage, each agency shall make advance payments to the commissioner sufficient to cover its postage obligations for at least 60 days.

History: 1984 c 544 s 54

16B.50 CENTRAL DUPLICATING AND PRINTING DIVISION.

The commissioner shall maintain and operate for agencies a central duplicating and printing division which is responsible for all duplicating and printing. The commissioner shall prescribe and designate classes of state printing. The duplicating and printing work to be done by the division is restricted to producing any form, booklet or pamphlet to the extent the commissioner deems appropriate.

History: 1984 c 544 s 55

16B.51 AGENCY REPORTS.

Subdivision 1. Supervision by commissioner. The commissioner shall supervise and control the making and distribution of all reports and other publications of all kinds issued by the state and state agencies when not otherwise prescribed by law. The commissioner shall also prescribe the manner and form of issuing reports required by sections 8.08; 16A.50; 35.03; 139.08, subdivision 5; 256.01; 268.12, subdivision 2; 299C.18; and 360.015, subdivision 17.

Subd. 2. Prescribe fees. The commissioner may prescribe fees to be charged for services rendered by the state or an agency in furnishing to those who request them certified copies of records or other documents, certifying that records or documents do not exist and furnishing other reports, publications, or related material which is requested. The fees, unless otherwise prescribed by law, may be fixed at the market rate. The commissioner of finance is authorized to approve the prescribed rates for the purpose of assuring that they, in total, will result in receipts greater than costs in the fund. Fees prescribed under this subdivision are deposited in the state treasury by the collecting agency and credited to the general services revolving fund. Nothing in this subdivision permits the commissioner of administration to furnish any service which is now prohibited or unauthorized by law.

Subd. 3. Sale of publications. The commissioner may sell official reports, documents, and other publications of all kinds, may delegate their sale to state agencies, and may establish facilities for their sale within the department of administration and elsewhere within the state service. The commissioner may remit a portion of the price of any publication to the agency producing the publication.

Subd. 4. Exceptions. This section does not apply to the Regents of the University of Minnesota or to the state agricultural society.

Subd. 5. Limitations on subject matter prohibited. The commissioner may not adopt rules to prescribe the fees permitted by subdivision 2 or which limit in any way

the subject matter of a report or publication which the law requires or authorizes an agency to produce.

History: 1984 c 544 s 56; 1984 c 654 art 2 s 45,46; 1984 c 655 art 2 s 13 subd 1; 1987 c 365 s 14; 1987 c 394 s 1

16B.52 MISUSE OF STATE PUBLICATIONS.

Subdivision 1. Permissible publications; pictures. No elected, administrative, or executive state officer, may have printed, nor may the commissioner authorize the printing of, at government expense, official reports and other publications intended for general public circulation except those authorized by law or included in the intent of the appropriation out of which the cost will be defrayed. Executive officers shall, before presenting their annual reports and other publications to the commissioner, examine them and exclude from them pictures of elected and administrative officials, and any other pictorial device calculated to or tending to attribute the publication to an individual instead of the department of state government from which it emanates. All other engravings, maps, drawings and illustrations must be excluded from the reports and publications, except those the executive officers certify when they present the reports for printing to be necessary and to relate entirely to the transaction of the state's business, or to be reasonably required to present for clear understanding the substance of the report.

Subd. 2. Attribution of publications. A report or publication authorized by law and paid for from public funds must carry the imprimatur of the agency under whose authority it is issued, but it may not carry the name of an official in any way that might imply attributing the publication to any person, except where certification of the officer is required for authenticity of the document.

Subd. 3. Distribution. No report or publication distributed by or from an administrative or executive officer may contain any notice that it is sent with "the compliments" and may not carry letters of personal greeting from an official.

Subd. 4. Exception. This section does not apply to the legislative manuals provided for in chapter 5.

Subd. 5. Publications by department of administration. Notwithstanding the provisions of this section or any other law relating to the subject matter of this section, the department of administration may continue to publish reports, documents, and related materials of the same manner described in its catalogs of Minnesota state publications.

History: 1984 c 544 s 57

16B.53 SALE OF LAWS AND RESOLUTIONS.

Subdivision 1. Authority. The commissioner shall provide for the sale and distribution of copies of laws and resolutions on file in the office of the secretary of state in accordance with this section. The secretary of state shall cooperate with the commissioner in furnishing the services provided for in this section.

Subd. 2. Charges. The commissioner shall establish charges for those laws and resolutions sufficient to cover their cost. Fees established for the sale and distribution of laws and resolutions, including mailing and postage charges, may be accepted by the commissioner in advance, and any unused portions amounting to \$1 or more may be returned to the person entitled to them upon request, notwithstanding the provision of any other law prohibiting refunds.

Subd. 3. Revolving fund. Money collected by the commissioner under this section must be deposited in the central services revolving fund in the state treasury. Money in that fund is annually appropriated to the commissioner for the purposes of carrying out this section.

History: 1984 c 480 s 15; 1984 c 544 s 58; 1984 c 655 art 2 s 13 subd 1

16B.531 TRAVEL SERVICES.

The commissioner may offer a centralized travel service to all state departments and agencies and may, in connection with that service, accept payments from travel agencies under contracts for the provision of travel services. The payments must be deposited in the motor pool revolving account established by section 16B.54, subdivision 8, and must be used for the expenses of managing the centralized travel service. Revenues in excess of the management costs of the centralized service must be returned to the general fund.

History: 1987 c 365 s 15

TRAVEL MANAGEMENT**16B.54 CENTRAL MOTOR POOL; ESTABLISHMENT.**

Subdivision 1. Motor pools. The commissioner shall manage a central motor pool of passenger motor vehicles and trucks used by state agencies with principal offices in the city of St. Paul and may provide for branch central motor pools at other places within the state. For purposes of this section, "truck" means a pickup or panel truck up to one ton carrying capacity.

Subd. 2. Vehicles. (a) Acquisition from agency; appropriation. The commissioner may direct an agency to make a transfer of a passenger motor vehicle or truck presently assigned to it. The transfer must be made to the commissioner for use in the central motor pool. The commissioner shall reimburse an agency whose motor vehicles have been paid for with funds dedicated by the constitution for a special purpose and which are assigned to the central motor pool. The amount of reimbursement for a motor vehicle is its average wholesale price as determined from the midwest edition of the national automobile dealers association official used car guide.

(b) Purchase. To the extent that funds are available for the purpose, the commissioner may purchase or otherwise acquire additional passenger motor vehicles and trucks necessary for the central motor pool. The title to all motor vehicles assigned to or purchased or acquired for the central motor pool is in the name of the department of administration.

(c) Transfer at agency request. On the request of an agency, the commissioner may transfer to the central motor pool any passenger motor vehicle or truck for the purpose of disposing of it. The department or agency transferring the vehicle or truck shall be paid for it from the motor pool revolving account established by this section in an amount equal to two-thirds of the average wholesale price of the vehicle or truck as determined from the midwest edition of the National Automobile Dealers Association official used car guide.

(d) Vehicles; marking. The commissioner shall provide for the uniform marking of all motor vehicles. Motor vehicle colors must be selected from the regular color chart provided by the manufacturer each year. The commissioner may further provide by rule for the use of motor vehicles without uniform coloring or marking by the governor, the lieutenant governor, the division of criminal apprehension, arson investigators of the division of fire marshal in the department of public safety, financial institutions division of the department of commerce, and the office of the attorney general.

Subd. 3. Responsible person; personnel. The commissioner is responsible for the control, regulation, acquisition, operation, maintenance, repair, and disposal of all motor vehicles of the central motor pool. The commissioner may employ a director and other necessary classified employees for the operation of the central motor pool in accordance with chapter 43A.

Subd. 4. Maintenance, repair, and storage; appropriation. (a) Maintenance, repair, storage. The commissioner may contract with the head of an agency or another person operating facilities for the maintenance, repair, and storage of motor vehicles to provide for maintenance, repair, and storage of motor vehicles of the central motor pool.

(b) **Appropriation.** Money received by the head of an agency under a contract with the commissioner under this subdivision is annually appropriated to the agency for the same purposes as money expended by the agency head for the operation of state-owned facilities for the maintenance, repair, and storage of motor pool vehicles.

Subd. 5. **Use of motor vehicles.** The motor vehicles in the central motor pool are for official state business only. An agency requiring the services of a motor vehicle shall request it from the central motor pool on either a temporary or permanent basis. No privately owned motor vehicle may be used for official state business except when authorized by the commissioner.

Subd. 6. **Schedule of charges.** An agency using the facilities of the central motor pool shall periodically reimburse the commissioner for the services, in accordance with the schedule of charges the commissioner establishes. This schedule of charges must be based on the costs incurred in operating the central motor pool, including reasonable overhead costs, vehicle depreciation, insurance for public liability and property damage, and other costs. The commissioner must retain records and reports and all schedules used as a basis for charging state agencies for the services furnished.

Subd. 7. **Exceptions.** This section does not apply to motor vehicles of the state patrol or the University of Minnesota, or to motor vehicles of any other agency which are specially equipped for the needs of that agency.

Subd. 8. **Motor pool revolving account.** (a) **Account established.** Money or reimbursements the commissioner receives from the operation of the central motor pool is deposited in the state treasury and credited to a motor pool revolving account. Money in the account is annually appropriated to the commissioner to carry out this section. The motor pool revolving account may be used to provide material transfer services to agencies.

(b) **Unobligated excess transferred.** When the unobligated amount of money in the state treasury credited to the motor pool revolving account exceeds the sum of \$438,000 at the end of any fiscal year, the unobligated amount in excess of \$438,000 must be transferred to the general fund in the state treasury.

History: 1984 c 544 s 59; 1Sp1985 c 13 s 126; 1986 c 444

16B.55 USE OF STATE VEHICLES; COMPENSATION FOR USE OF PERSONAL VEHICLES.

Subdivision 1. **Definition.** For purposes of this section, "state vehicle" means a vehicle owned or leased by the state or loaned to the state.

Subd. 2. **Prohibited uses.** A state vehicle may be used only for authorized state business. A state vehicle may not be used for transportation to or from the residence of a state employee, except as provided in subdivision 3.

Subd. 3. **Permitted uses.** A state vehicle may be used by a state employee to travel to or from the employee's residence:

(1) on a day on which it may be necessary for the employee to respond to a work-related emergency during hours when the employee is not normally working;

(2) if the employee has been assigned the use of a state vehicle for authorized state business on an extended basis, and the employee's primary place of work is not the state work station to which the employee is permanently assigned;

(3) if the employee has been assigned the use of a state vehicle for authorized state business away from the work station to which the employee is permanently assigned, and the number of miles traveled, or the time needed to conduct the business, will be minimized if the employee uses a state vehicle to travel to the employee's residence before or after traveling to the place of state business; or

(4) if the employee is authorized to participate in a ridesharing program established by the commissioner pursuant to section 174.257.

Use of a state vehicle under this subdivision requires the prior approval of the agency head or the designee of the agency head.

Subd. 4. **Personal vehicles.** No state employee shall be compensated by the state for use of a personal vehicle for travel between the employee's residence and the state work station to which the employee is permanently assigned, except pursuant to a collective bargaining agreement negotiated under chapter 179 or a compensation plan adopted by the commissioner of employee relations under section 43A.05. A collective bargaining agreement or compensation plan may only provide for this compensation in cases in which an employee is called back to work during hours when the employee is not normally working.

Subd. 5. **Exclusions.** Subdivisions 2 to 4 do not apply to the van pooling program established in section 16B.56, to a ridesharing program established by the department of transportation, to a trooper employed by the state patrol, or to use of a state vehicle by the governor or lieutenant governor.

Subd. 6. **Vehicle operating procedures.** The commissioner shall set operating procedures for use of state vehicles. These operating procedures are not subject to the administrative procedure act.

History: 1984 c 544 s 60; 1986 c 444; 1988 c 613 s 14,15

16B.56 COMMUTER VANS; USE BY STATE EMPLOYEES AND SPOUSES AND OTHERS.

Subdivision 1. **Employee transportation program.** (a) **Establishment.** To conserve energy and alleviate traffic congestion around state offices, the commissioner shall, in cooperation with the director of public service, the commissioner of transportation, and interested nonprofit agencies, establish and operate an employee transportation program using commuter vans with a capacity of not less than seven nor more than 16 passengers. Commuter vans may be used by state employees and others to travel between their homes and their work locations. However, only state employee drivers may use the van for personal purposes after working hours, not including partisan political activity. The commissioner shall acquire or lease commuter vans, or otherwise contract for the provision of commuter vans, and shall make the vans available for the use of state employees and others in accordance with standards and procedures adopted by the commissioner. The commissioner shall promote the maximum participation of state employees and others in the use of the vans.

(b) **Administrative policies.** The commissioner shall adopt standards and procedures under this section without regard to chapter 14. The commissioner shall provide for the recovery by the state of vehicle acquisition, lease, operation, and insurance costs through efficient and convenient assignment of vans, and for the billing of costs and collection of fees. A state employee using a van for personal use shall pay, pursuant to the standards and procedures adopted by the commissioner, for operating and routine maintenance costs incurred as a result of the personal use. Fees collected under this subdivision shall be deposited in the accounts from which the costs of operating, maintaining, and leasing or amortization for the specific vehicle are paid.

Subd. 2. **Eligible participants.** State employees and their spouses and other people are eligible for the employee transportation program established by this section, if the driver and substitute driver of every van pool are state employees and if state employees constitute a majority of the members of every van pool. Available space in van pools must, whenever possible, be filled by state employees.

Subd. 3. **Areas of use.** Use of the vans pursuant to this section is limited to areas not having adequate public transportation between the residences of state employees and others and their places of employment.

Subd. 4. **Evaluation.** The commissioner shall at least semiannually inform the metropolitan council and the capitol area architectural and planning board on the operation of the program.

Subd. 5. **Insurance; limitations.** Notwithstanding section 15.31 or any other law to the contrary, the commissioner may purchase, pursuant to this chapter, collision insurance coverage for the commuter vans. Notwithstanding sections 16B.54, subdivi-

sion 2, and 168.012, the vans may not be marked. The vans may not be equipped with tax-exempt motor vehicle number plates.

Subd. 6. [Repealed, 1984 c 408 s 4]

History: 1984 c 408 s 1-3; 1984 c 544 s 61; 1984 c 655 art 2 s 13 subd 1; 1987 c 312 art 1 s 10 subd 2

16B.57 GASOLINE AND PETROLEUM PRODUCTS, SOURCE OF SUPPLY FOR AGENCIES.

Subdivision 1. Petroleum products facilities. The commissioner may require a state agency which has facilities for the storage and distribution of gasoline and other petroleum products to furnish gasoline and other petroleum products to any other state agency and shall require payment to compensate for the cost of those products. The commissioner shall prescribe all procedures for the guidance of state agencies in carrying out the requirements of this section.

Subd. 2. Appropriation. Money paid by one state agency to another to compensate for the cost of products furnished under subdivision 1 is annually appropriated to the state agency which furnishes those products.

History: 1984 c 544 s 62

16B.58 STATE PARKING FACILITIES.

Subdivision 1. Powers and duties of the commissioner. No person may park a motor vehicle, either privately or publicly owned, upon any parking lot or facility owned or operated by the state except as authorized by this section. The commissioner shall operate and supervise all state parking lots and facilities. The commissioner may fix and collect rents, charges, or fees in connection with and for the use of any state parking lot or facility within the cities of St. Paul and Minneapolis except for any state lot or facility the control of which is vested by law in a state agency other than the department of administration.

Subd. 2. Rules. Copies of the commissioner's rules under this section must be provided to all contract parkers. Each parking lot or facility must be posted with notice of who is entitled to park there.

Subd. 3. Removal and impounding of vehicles. A motor vehicle parked on a state parking lot or facility in violation of the rules of the commissioner is a public nuisance and the commissioner shall provide for the abatement of the nuisance by rules, including provision for the removal and impounding of the motor vehicle. The cost of the removal and impounding is a lien against the motor vehicle until paid.

Subd. 4. Violations. A person, elective or appointed state official, firm, association, or corporation which violates any of the provisions of this section or any rule made by the commissioner under this section is guilty of a misdemeanor.

Subd. 5. Money collected. Money collected by the commissioner as rents, charges, or fees in connection with and for the use of a parking lot or facility is appropriated to the commissioner for the purpose of operating, maintaining, and improving parking lots or facilities owned or operated by the state, including providing necessary and suitable uniforms for employees, and to carry out the purposes of this section, except as provided in subdivision 7.

Subd. 6. Legislative parking resolutions. The provisions of this section do not affect rules of parking adopted by resolution of the legislature during legislative sessions.

Subd. 7. Surcharge for vehicles occupied by one person. The commissioner shall impose a surcharge of 25 percent for vehicles occupied by only one person parking in a state parking facility in the capitol area, as described by section 15.50, subdivision 2. The revenue from this additional charge shall be placed by the commissioner in a special account. For the benefit of employees employed in the capitol area, the money in the account is appropriated to the commissioner and shall be used by the commissioner in the following order of priority: (1) to acquire or lease commuter vans pursuant

to section 16B.56; (2) within limits and upon conditions the commissioner determines to be necessary, to reimburse state agencies for costs resulting from agreements with the metropolitan transit commission or other operators pursuant to section 473.409; and (3) to be used for maintaining and improving parking lots or facilities owned or operated by the state. The commissioner may adopt rules necessary to administer the provisions of this subdivision, subdivision 5, and section 473.409. The rules may exempt from the surcharge vehicles operated by persons whom the commissioner determines have job requirements that make car pooling impractical.

Subd. 8. Fees charged state employees. Notwithstanding any other law to the contrary, the commissioner shall charge state employees for parking facilities which are used by them and furnished for their use pursuant to any lease entered into between the state of Minnesota and the lessor of any privately owned property situated in the seven county metropolitan area.

History: 1984 c 544 s 63; 1984 c 597 s 30; 1984 c 655 art 2 s 13 subd 1; 1986 c 444

STATE BUILDING CODE

16B.59 STATE BUILDING CODE; POLICY AND PURPOSE.

The state building code governs the construction, reconstruction, alteration, and repair of state-owned buildings and other structures to which the code is applicable. The commissioner shall administer and amend a state code of building construction which will provide basic and uniform performance standards, establish reasonable safeguards for health, safety, welfare, comfort, and security of the residents of this state and provide for the use of modern methods, devices, materials, and techniques which will in part tend to lower construction costs. The construction of buildings should be permitted at the least possible cost consistent with recognized standards of health and safety.

History: 1984 c 544 s 64

16B.60 DEFINITIONS, STATE BUILDING CODE.

Subdivision 1. Scope. For the purposes of sections 16B.59 to 16B.73, the terms defined in this section have the meanings given them.

Subd. 2. City. "City" means a home rule charter or statutory city.

Subd. 3. Municipality. "Municipality" means a city, county, or town meeting the requirements of section 368.01, subdivision 1, the University of Minnesota, or the state for public buildings.

Subd. 4. Code. "Code" means the state building code adopted by the commissioner in accordance with sections 16B.59 to 16B.73.

Subd. 5. Agricultural building. "Agricultural building" means a structure on agricultural land as defined in section 273.13, subdivision 23, designed, constructed, and used to house farm implements, livestock, or agricultural produce or products used by the owner, lessee, and sublessee of the building and members of their immediate families, their employees, and persons engaged in the pickup or delivery of agricultural produce or products.

Subd. 6. Public building. "Public building" means a building and its grounds, the cost of which is paid for by the state, a state agency, or a school district.

Subd. 7. Physically handicapped. "Physically handicapped" means having sight disabilities, hearing disabilities, disabilities of incoordination, disabilities of aging, or other disabilities that significantly reduce mobility, flexibility, coordination, or perceptiveness.

Subd. 8. Remodeling. "Remodeling" means deliberate reconstruction of an existing public building in whole or in part in order to bring it up to date in conformity with present uses of the structure and to which other rules on the upgrading of health and safety provisions are applicable.

History: 1984 c 544 s 65; 1Sp1985 c 14 art 4 s 3; 1987 c 387 s 1,2

16B.61 GENERAL POWERS OF COMMISSIONER; STATE BUILDING CODE.

Subdivision 1. Adoption of code. Subject to sections 16B.59 to 16B.73, the commissioner shall by rule establish a code of standards for the construction, reconstruction, alteration, and repair of state-owned buildings, governing matters of structural materials, design and construction, fire protection, health, sanitation, and safety. The code must conform insofar as practicable to model building codes generally accepted and in use throughout the United States. In the preparation of the code, consideration must be given to the existing statewide specialty codes presently in use in the state. Model codes with necessary modifications and statewide specialty codes may be adopted by reference. The code must be based on the application of scientific principles, approved tests, and professional judgment. To the extent possible, the code must be adopted in terms of desired results instead of the means of achieving those results, avoiding wherever possible the incorporation of specifications of particular methods or materials. To that end the code must encourage the use of new methods and new materials. Except as otherwise provided in sections 16B.59 to 16B.73, the commissioner shall administer and enforce the provisions of those sections.

Subd. 1a. Administration by commissioner. The commissioner shall administer and enforce the state building code as a municipality with respect to public buildings in the state. The commissioner shall establish appropriate permit, plan review, and inspection fees for public buildings. Fees and surcharges for public buildings must be remitted to the commissioner, who shall deposit them in the state treasury for credit to the special revenue fund.

Municipalities other than the state having a contractual agreement with the commissioner for code administration and enforcement service for public buildings shall charge their customary fees, including surcharge, to be paid directly to the contractual jurisdiction by the applicant seeking authorization to construct a public building. The commissioner shall contract with a municipality other than the state for plan review, code administration, and code enforcement service for public buildings in the contractual jurisdiction if the building officials of the municipality meet the requirements of section 16B.65 and wish to provide those services and if the commissioner determines that the municipality has enough adequately trained and qualified building inspectors to provide those services for the construction project.

Subd. 2. Enforcement by certain bodies. Under the direction and supervision of the commissioner, the provisions of the code relating to electrical installations shall be enforced by the state board of electricity, pursuant to the Minnesota electrical act, the provisions relating to plumbing shall be enforced by the commissioner of health, the provisions relating to fire protection shall be enforced by the state fire marshal, the provisions relating to high pressure steam piping and appurtenances and elevators shall be enforced by the department of labor and industry, and the code as applied to public school buildings shall be enforced by the state board of education. Fees for inspections conducted by the state board of electricity shall be paid in accordance with the rules of the state board of electricity.

Subd. 3. Special requirements. (a) **Space for commuter vans.** The code must require that any parking ramp or other parking facility constructed in accordance with the code include an appropriate number of spaces suitable for the parking of motor vehicles having a capacity of seven to 16 persons and which are principally used to provide prearranged commuter transportation of employees to or from their place of employment or to or from a transit stop authorized by a local transit authority.

(b) **Smoke detection devices.** The code must require that all dwellings, lodging houses, apartment houses, and hotels as defined in section 299F.362 comply with the provisions of section 299F.362.

(c) **Doors in nursing homes and hospitals.** The state building code may not require that each door entering a sleeping or patient's room from a corridor in a nursing home or hospital with an approved complete standard automatic fire extinguishing system be constructed or maintained as self-closing or automatically closing.

(d) **Child care facilities in churches.** A licensed day care center serving fewer than

30 preschool age persons and which is located in a below ground space in a church building is exempt from the state building code requirement for a ground level exit when the center has more than two stairways to the ground level and its exit.

(e) **Family and group family day care.** The commissioner of administration shall establish a task force to determine occupancy standards specific and appropriate to family and group family day care homes and to examine hindrances to establishing day care facilities in rural Minnesota. The task force must include representatives from rural and urban building code inspectors, rural and urban fire code inspectors, rural and urban county day care licensing units, rural and urban family and group family day care providers and consumers, child care advocacy groups, and the departments of administration, human services, and public safety.

By January 1, 1989, the commissioner of administration shall report the task force findings and recommendations to the appropriate legislative committees together with proposals for legislative action on the recommendations.

Until the legislature enacts legislation specifying appropriate standards, the definition of Group R-3 occupancies in the state building code applies to family and group family day care homes licensed by the department of human services under Minnesota Rules, chapter 9502.

(f) **Mined underground space.** Nothing in the state building codes shall prevent cities from adopting rules governing the excavation, construction, reconstruction, alteration, and repair of mined underground space pursuant to sections 469.135 to 469.141, or of associated facilities in the space once the space has been created, provided the intent of the building code to establish reasonable safeguards for health, safety, welfare, comfort, and security is maintained.

(g) **Enclosed stairways.** No provision of the code or any appendix chapter of the code may require stairways of existing multiple dwelling buildings of two stories or less to be enclosed.

(h) No provision of the code or appendix chapter of the code may prohibit double cylinder dead bolt locks in existing single-family homes, townhouses, and first floor duplexes used exclusively as a residential dwelling. Any recommendation or promotion of double cylinder dead bolt locks must include a warning about their potential fire danger and procedures to minimize the danger.

Subd. 3a. **Recycling space.** The code must require suitable space for the separation, collection, and temporary storage of recyclable materials within or adjacent to new or significantly remodeled structures that contain 1,000 square feet or more. Residential structures with less than 12 dwelling units are exempt from this subdivision.

Subd. 4. **Review of plans for public buildings.** Construction or remodeling may not begin on any public building owned by the state until the plans and specifications of the public building have been approved by the commissioner. In the case of any other public building, the plans and specifications must be submitted to the commissioner for review, and within 30 days after receipt of the plans and specifications, the commissioner shall notify the submitting authority of any recommendations.

Subd. 5. **Accessibility.** (a) **Public buildings.** The code must provide for making public buildings constructed or remodeled after July 1, 1963, accessible to and usable by physically handicapped persons, although this does not require the remodeling of public buildings solely to provide accessibility and usability to the physically handicapped when remodeling would not otherwise be undertaken.

(b) **Leased space.** No agency of the state may lease space for agency operations in a non-state-owned building unless the building satisfies the requirements of the state building code for accessibility by the physically handicapped, or is eligible to display the state symbol of accessibility. This limitation applies to leases of 30 days or more for space of at least 1,000 square feet.

(c) **Meetings or conferences.** Meetings or conferences for the public or for state employees which are sponsored in whole or in part by a state agency must be held in

buildings that meet the state building code requirements relating to accessibility for physically handicapped persons. This subdivision does not apply to any classes, seminars, or training programs offered by a state university, the University of Minnesota, or a state community college. Meetings or conferences intended for specific individuals none of whom need the accessibility features for handicapped persons specified in the state building code need not comply with this subdivision unless a handicapped person gives reasonable advance notice of an intent to attend the meeting or conference. When sign language interpreters will be provided, meetings or conference sites must be chosen which allow hearing impaired participants to see their signing clearly.

(d) **Exemptions.** The commissioner may grant an exemption from the requirements of paragraphs (b) and (c) in advance if an agency has demonstrated that reasonable efforts were made to secure facilities which complied with those requirements and if the selected facilities are the best available for access for handicapped persons. Exemptions shall be granted using criteria developed by the commissioner in consultation with the council on disability.

(e) **Symbol indicating access.** The wheelchair symbol adopted by Rehabilitation International's Eleventh World Congress is the state symbol indicating buildings, facilities, and grounds which are accessible to and usable by handicapped persons. In the interests of uniformity, this symbol in its white on blue format is the sole symbol for display in or on all public or private buildings, facilities, and grounds which qualify for its use. The secretary of state shall obtain the symbol and keep it on file. No building, facility, or grounds may display the symbol unless it is in compliance with the rules adopted by the commissioner under subdivision 1. Before any rules are proposed for adoption under this paragraph, the commissioner shall consult with the council on disability. Rules adopted under this paragraph must be enforced in the same way as other accessibility rules of the state building code.

(f) **Municipal enforcement.** Municipalities which have not adopted the state building code may enforce the building code requirements for handicapped persons by either entering into a joint powers agreement for enforcement with another municipality which has adopted the state building code; or contracting for enforcement with an individual certified under section 16B.65, subdivision 3, to enforce the state building code.

History: 1984 c 544 s 66; 1984 c 655 art 2 s 13 subd 1; 1984 c 658 s 1; 1985 c 194 s 30; 1985 c 248 s 70; 1986 c 444; 1Sp1986 c 3 art 4 s 2; 1987 c 291 s 192; 1987 c 354 s 8; 1987 c 387 s 3; 1988 c 608 s 1; 1988 c 685 s 2

16B.62 STATE BUILDING CODE; APPLICATION.

Subdivision 1. Municipal enforcement. The state building code applies statewide and supersedes the building code of any municipality. The state building code does not apply to agricultural buildings except with respect to state inspections required or rulemaking authorized by sections 104.05, 326.244, and 216C.19, subdivision 8. All municipalities shall adopt and enforce the state building code with respect to new construction within their respective jurisdictions.

If a city has adopted or is enforcing the state building code on June 3, 1977, or determines by ordinance after that date to undertake enforcement, it shall enforce the code within the city. A city may by ordinance extend the enforcement of the code to contiguous unincorporated territory not more than two miles distant from its corporate limits in any direction. Where two or more noncontiguous cities which have elected to enforce the code have boundaries less than four miles apart, each is authorized to enforce the code on its side of a line equidistant between them. Once enforcement authority is extended extraterritorially by ordinance, the authority may continue to be exercised in the designated territory even though another city less than four miles distant later elects to enforce the code. After the extension, the city may enforce the code in the designated area to the same extent as if the property were situated within its corporate limits.

A city which, on June 3, 1977, had not adopted the code may not commence enforcement of the code within or outside of its jurisdiction until it has provided written notice to the commissioner, the county auditor, and the town clerk of each town in which it intends to enforce the code. A public hearing on the proposed enforcement must be held not less than 30 days after the notice has been provided. Enforcement of the code by the city commences on the first day of January in the year following the notice and hearing.

Municipalities may provide for the issuance of permits, inspection, and enforcement within their jurisdictions by means which are convenient, and lawful, including by means of contracts with other municipalities pursuant to section 471.59, and with qualified individuals. In areas outside of the enforcement authority of a city, the fee charged for the issuance of permits and inspections for single family dwellings may not exceed the greater of \$100 or .005 times the value of the structure, addition, or alteration. The other municipalities or qualified individuals may be reimbursed by retention or remission of some or all of the building permit fee collected or by other means. In areas of the state where inspection and enforcement is unavailable from qualified employees of municipalities, the commissioner shall train and designate individuals available to carry out inspection and enforcement on a fee basis.

Subd. 2. Enforcement by state building inspector. If the commissioner determines that a municipality is not properly administering and enforcing the state building code as provided in section 16B.71, the commissioner may have the administration and enforcement in the involved municipality undertaken by the state building inspector. The commissioner shall notify the affected municipality in writing immediately upon making the determination, and the municipality may challenge the determination as a contested case before the commissioner pursuant to the administrative procedure act. In municipalities not properly administering and enforcing the state building code, and in municipalities who determine not to administer and enforce the state building code, the commissioner shall have administration and enforcement undertaken by the state building inspector or by another inspector certified by the state. The commissioner shall determine appropriate fees to be charged for the administration and enforcement service rendered. Any cost to the state arising from the state administration and enforcement of the state building code shall be borne by the subject municipality.

History: 1984 c 544 s 67; 1987 c 312 art 1 s 10 subd 1

16B.63 STATE BUILDING INSPECTOR.

Subdivision 1. Appointment. The commissioner shall appoint a state building inspector who under the direction and supervision of the commissioner shall administer the code.

Subd. 2. Qualifications. To be eligible for appointment as state building inspector an individual must be competent in the field of administration and shall have the experience in building design, construction, and supervision which the commissioner considers necessary.

Subd. 3. Powers and duties. The state building inspector may, with the approval of the commissioner, employ personnel necessary to carry out the inspector's function under sections 16B.59 to 16B.73. The state building inspector shall distribute without charge one copy of the code to each municipality within the state. Additional copies shall be made available to municipalities and interested parties for a fee prescribed by the commissioner. The state building inspector shall perform other duties in administering the code assigned by the commissioner.

History: 1984 c 544 s 68; 1986 c 444

16B.64 APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.

Subdivision 1. Applicability. Subject to this section, the adoption of the code and amendment is subject to the administrative procedure act.

Subd. 2. Distribution of incorporations by reference. The commissioner need not

publish or distribute those parts of the code which are adopted by reference pursuant to section 14.07, subdivision 4.

Subd. 3. Filing. The commissioner shall file one copy of the complete code with the secretary of state, except that all standards referred to in any model or statewide specialty code or any of the modifications of a code need not be filed. All standards referred to in the code must be kept on file and available for inspection in the office of the commissioner.

Subd. 4. Hearings. The commissioner, except in the case of energy conservation standards promulgated or amended pursuant to section 216C.19, subdivision 8, shall hold all state hearings and make all determinations regarding any subject matter dealt with in the code including those in which another state agency proposes to adopt or amend rules which are incorporated by reference into the code or whenever the commissioner proposes to incorporate those rules into the state building code. In no event shall a state agency subsequently authorized to adopt rules involving state building code subject matter proceed to adopt the rules without prior consultation with the commissioner.

Subd. 5. Proposed amendments; hearings. Any interested person may propose amendments to the code which may be either applicable to all municipalities or, where it is alleged and established that conditions exist within a municipality which are not generally found within other municipalities, amendments may be restricted in application to that municipality. Notice of public hearings on proposed amendments shall be given to the governing bodies of all municipalities in addition to those persons entitled to notice under the administrative procedure act.

Subd. 6. Adoption. The commissioner shall approve any proposed amendments deemed by the commissioner to be reasonable in conformity with the policy and purpose of the code and justified under the particular circumstances involved. Upon adoption, a copy of each amendment must be distributed to the governing bodies of all affected municipalities.

Subd. 7. Investigation and research. With the approval of the commissioner the state building inspector shall investigate or provide for investigations, or may accept authenticated reports from authoritative sources, concerning new materials or modes of construction intended for use in the construction of buildings or structures, and shall propose amendments to the code setting forth the conditions under which the new materials or modes may be used.

History: 1984 c 544 s 69; 1985 c 248 s 8; 1986 c 444; 1987 c 312 art 1 s 10 subd 1

16B.65 BUILDING OFFICIALS.

Subdivision 1. Appointments. The governing body of each municipality shall, unless other means are already provided, appoint a person to administer the code who shall be known as a building official. Two or more municipalities may combine in the appointment of a single building official for the purpose of administering the provisions of the code within their communities. In those municipalities for which no building officials have been appointed, the state building inspector, with the approval of the commissioner, may appoint building officials to serve until the municipalities have made an appointment. If unable to make an appointment, the state building inspector may use whichever state employees or state agencies are necessary to perform the duties of the building official. All costs incurred by virtue of an appointment by the state building inspector or services rendered by state employees must be borne by the involved municipality. Receipts arising from the appointment must be paid into the state treasury and credited to the general fund.

Subd. 2. Qualifications. A building official, to be eligible for appointment, must have the experience in design, construction, and supervision which the commissioner deems necessary and must be generally informed on the quality and strength of building materials, accepted building construction requirements, and the nature of equipment and needs conducive to the safety, comfort, and convenience of building occupants.

Each building official must be certified under this section, except that the qualifications outlined in this section are not mandatory regarding any building official in any municipality engaged in the administration of a building code on May 27, 1971, and continuing that function through July 1, 1972.

Subd. 3. Certification. The commissioner shall:

(1) prepare and conduct written and practical examinations to determine if a person is qualified pursuant to subdivision 2 to be a building official;

(2) accept documentation of successful completion of testing programs developed by nationally recognized testing agencies, as proof of qualification pursuant to subdivision 2; or

(3) determine qualifications by both clauses (1) and (2).

Upon a determination of qualification under clause (1), (2), or both of them, the commissioner shall issue a certificate to the building official stating that the official is certified. Each person applying for examination and certification pursuant to this section shall pay a fee of \$70. The commissioner or a designee may establish classes of certification that will recognize the varying complexities of code enforcement in the municipalities within the state. Except as provided by subdivision 2, no person may act as a building official for a municipality unless the commissioner determines that the official is qualified. The commissioner shall provide educational programs designed to train and assist building officials in carrying out their responsibilities.

The department of employee relations may, at the request of the commissioner, provide statewide testing services.

Subd. 4. Duties. Building officials shall, in the municipality for which they are appointed, attend to all aspects of code administration, including the issuance of all building permits and the inspection of all manufactured home installations. The commissioner may direct a municipality with a building official to perform services for another municipality, and in that event the municipality being served shall pay the municipality rendering the services the reasonable costs of the services. The costs may be subject to approval by the commissioner.

Subd. 5. Removal from office. Except as otherwise provided for by law the commissioner may, upon notice and hearing, direct the dismissal of a building official when it appears to the commissioner by competent evidence that the building official has consistently failed to act in the public interest in the performance of duties. Notice must be provided and the hearing conducted in accordance with the provisions of chapter 14 governing contested case proceedings. Nothing in this subdivision limits or otherwise affects the authority of a municipality to dismiss or suspend a building official at its discretion, except as otherwise provided for by law.

Subd. 6. Vacancies. In the event that a certified building official vacates that position within a municipality, that municipality shall appoint a certified building official to fill the vacancy as soon as possible. If the municipality fails to appoint a certified building official within 90 days of the occurrence of the vacancy, the state building inspector may make the appointment or provide state employees to serve that function as provided in subdivision 1.

Subd. 7. Continuing education. Subject to sections 16B.59 to 16B.73, the commissioner may by rule establish or approve continuing education programs for municipal building officials dealing with matters of building code administration, inspection, and enforcement.

Effective January 1, 1985, each person certified as a building official for the state must satisfactorily complete applicable educational programs established or approved by the commissioner every three calendar years to retain certification.

Each person certified as a state building official must submit in writing to the commissioner an application for renewal of certification within 60 days of the last day of the third calendar year following the last certificate issued. Each application for renewal must be accompanied by proof of satisfactory completion of minimum continuing education requirements and the certification renewal fee established by the commissioner.

For persons certified prior to January 1, 1985, the first three-year period commences January 1, 1985.

History: 1984 c 544 s 70; 1984 c 578 s 1; 1984 c 655 art 2 s 13 subd 1; 1Sp1985 c 17 s 6; 1986 c 444; 1988 c 613 s 16

16B.66 CERTAIN INSPECTIONS.

The state building inspector may, upon an application setting forth a set of plans and specifications that will be used in more than one municipality to acquire building permits, review and approve the application for the construction or erection of any building or structure designed to provide dwelling space for no more than two families if the set of plans meets the requirements of the state building code. All costs incurred by the state building inspector by virtue of the examination of the set of plans and specifications must be paid by the applicant. The plans and specifications or any plans and specifications required to be submitted to a state agency must be submitted to the state building inspector who shall examine them and if necessary distribute them to the appropriate state agencies for scrutiny regarding adequacy as to electrical, fire safety, and all other appropriate features. These state agencies shall examine and promptly return the plans and specifications together with their certified statement as to the adequacy of the instruments regarding that agency's area of concern. A building official shall issue a building permit upon application and presentation to the official of a set of plans and specifications bearing the approval of the state building inspector if the requirements of all other local ordinances are satisfied.

History: 1984 c 544 s 71; 1986 c 444

16B.67 APPEALS.

A person aggrieved by the final decision of any municipality as to the application of the code, including any rules adopted under sections 471.465 to 471.469, may, within 180 days of the decision, appeal to the commissioner. Appellant shall submit a fee of \$70, payable to the commissioner, with the request for appeal. An appeal must be heard as a contested case under chapter 14. The commissioner shall submit written findings to the parties. The party not prevailing shall pay the costs of the contested case hearing, including fees charged by the office of administrative hearings and the expense of transcript preparation. Costs under this section do not include attorney fees. Any person aggrieved by a ruling of the commissioner may appeal in accordance with chapter 14. For the purpose of this section "any person aggrieved" includes the council on disability. No fee or costs shall be required when the council on disability is the appellant.

History: 1984 c 544 s 72; 1986 c 444; 1987 c 354 s 4; 1988 c 613 s 17

16B.68 CERTAIN PERMITS.

Building permits or certificates of occupancy validly issued before July 1, 1972, regarding buildings or structures being constructed or altered according to the permits or certificates, are valid after that date. The construction may be completed according to the building permit, unless the building official determines that life or property is in jeopardy.

History: 1984 c 544 s 73

16B.69 VIOLATION, PENALTY.

A violation of the code is a misdemeanor.

History: 1984 c 544 s 74

16B.70 SURCHARGE.

Subdivision 1. Computation. To defray the costs of administering sections 16B.59 to 16B.73, a surcharge is imposed on all permits issued by municipalities in connection

with the construction of or addition or alteration to buildings and equipment or appurtenances after June 30, 1971, as follows:

If the fee for the permit issued is fixed in amount the surcharge is equivalent to one-half mill (.0005) of the fee or 50 cents, whichever amount is greater. For all other permits, the surcharge is as follows: (a) if the valuation of the structure, addition, or alteration is \$1,000,000 or less, the surcharge is equivalent to one-half mill (.0005) of the valuation of the structure, addition, or alteration; (b) if the valuation is greater than \$1,000,000, the surcharge is \$500 plus two-fifths mill (.0004) of the value between \$1,000,000 and \$2,000,000; (c) if the valuation is greater than \$2,000,000 the surcharge is \$900 plus three-tenths mill (.0003) of the value between \$2,000,000 and \$3,000,000; (d) if the valuation is greater than \$3,000,000 the surcharge is \$1,200 plus one-fifth mill (.0002) of the value between \$3,000,000 and \$4,000,000; (e) if the valuation is greater than \$4,000,000 the surcharge is \$1,400 plus one-tenth mill (.0001) of the value between \$4,000,000 and \$5,000,000; and (f) if the valuation exceeds \$5,000,000 the surcharge is \$1,500 plus one-twentieth mill (.00005) of the value which exceeds \$5,000,000.

By September 1 of each odd-numbered year, the commissioner shall rebate to municipalities any money received under this section and section 16B.62 in the previous biennium in excess of the cost to the building code division and the passenger elevator inspector in the department of labor and industry in that biennium of carrying out their duties under sections 16B.59 to 16B.73. The rebate to each municipality must be in proportion to the amount of the surcharges collected by that municipality and remitted to the state. The amount necessary to meet the commissioner's rebate obligations under this subdivision is appropriated to the commissioner from the special revenue fund.

Subd. 2. Collection and reports. All permit surcharges must be collected by each municipality and a portion of them remitted to the state. Each municipality having a population greater than 20,000 people shall prepare and submit to the commissioner once a month a report of fees and surcharges on fees collected during the previous month, but shall retain two percent of the surcharges collected to apply against the administrative expenses the municipality incurs in collecting the surcharges. All other municipalities shall submit the report and surcharges on fees once a quarter, but shall retain four percent of the surcharges collected to apply against the administrative expenses the municipalities incur in collecting the surcharges. The report, which must be in a form prescribed by the commissioner, must be submitted together with a remittance covering the surcharges collected by the 15th day following the month or quarter in which the surcharges are collected. All surcharges and other fees prescribed by sections 16B.59 to 16B.71, which are payable to the state, must be paid to the commissioner who shall deposit them in the state treasury for credit to the special revenue fund.

History: 1984 c 544 s 75; 1Sp1985 c 13 s 127

16B.71 PERMIT FEES, TO WHOM APPLICABLE.

Municipal building officials shall administer and enforce the state building code with respect to all subject structures constructed within their jurisdiction, including all buildings constructed by municipalities other than the state, as defined in section 16B.60, and the University of Minnesota. These governmental bodies shall pay the building permit fees and surcharges that the inspecting municipality customarily imposes for its administration and enforcement of the code.

History: 1984 c 544 s 76; 1987 c 387 s 4

16B.72 REFERENDA ON STATE BUILDING CODE IN NONMETROPOLITAN COUNTIES.

Notwithstanding any other provision of law to the contrary, a county that is not a metropolitan county as defined by section 473.121, subdivision 4, may provide, by a vote of the majority of its electors residing outside of municipalities that have adopted

the state building code before January 1, 1977, that no part of the state building code except the building requirements for handicapped persons applies within its jurisdiction.

The county board may submit to the voters at a regular or special election the question of adopting the building code. The county board shall submit the question to the voters if it receives a petition for the question signed by a number of voters equal to at least five percent of those voting in the last general election. The question on the ballot must be stated substantially as follows:

"Shall the state building code be adopted in County?"

If the majority of the votes cast on the proposition is in the negative, the state building code does not apply in the subject county, outside home rule charter or statutory cities or towns that adopted the building code before January 1, 1977, except the building requirements for handicapped persons do apply.

Nothing in this section precludes a home rule charter or statutory city or town that did not adopt the state building code before January 1, 1977, from adopting and enforcing the state building code within its jurisdiction.

History: 1984 c 544 s 77

16B.73 STATE BUILDING CODE IN MUNICIPALITIES UNDER 2,500; LOCAL OPTION.

The governing body of a municipality whose population is less than 2,500 may provide that the state building code, except the requirements for handicapped persons, will not apply within the jurisdiction of the municipality, if the municipality is located in whole or in part within a county exempted from its application under section 16B.72. If more than one municipality has jurisdiction over an area, the state building code continues to apply unless all municipalities having jurisdiction over the area have provided that the state building code, except the requirements for handicapped persons, does not apply within their respective jurisdictions.

History: 1984 c 544 s 78

ALTERNATIVES TO CONVENTIONAL INSURANCE

16B.85 RISK MANAGEMENT.

Subdivision 1. Alternatives to conventional insurance. The commissioner may implement programs of insurance or alternatives to the purchase of conventional insurance for areas of risk not subject to collective bargaining agreements, plans established under section 43A.18, or programs established under sections 176.540 to 176.611. The mechanism for implementing possible alternatives to conventional insurance is the risk management fund created in subdivision 2.

Subd. 2. Risk management fund. (a) All state agencies may, in cooperation with the commissioner, participate in insurance programs and other funding alternative programs provided by the risk management fund.

(b) When an agency or agencies enter into an insurance or self-insurance program, each agency shall contribute the appropriate share of its costs as determined by the commissioner.

(c) The money in the fund to pay claims arising from state activities and for administrative costs, including costs for the adjustment and defense of the claims, is appropriated to the commissioner.

(d) Interest earned from the investment of money in the fund shall be credited to the fund and be available to the commissioner for the expenditures authorized in this subdivision.

(e) The fund is exempt from the provisions of section 16A.15, subdivision 1. In the event that proceeds in the fund are insufficient to pay outstanding claims and associated administrative costs, the commissioner, in consultation with the commis-

sioner of finance, may assess state agencies participating in the fund amounts sufficient to pay the costs. The commissioner shall determine the proportionate share of the assessment of each agency.

Subd. 3. Responsibilities. The commissioner shall:

(1) review the state's exposure to various types of potential risks in consultation with affected agencies and advise state agencies as to the reduction of risk and fiscal management of those losses;

(2) be responsible for statewide risk management coordination, evaluation of funding and insuring alternatives, and the approval of all insurance purchases in consultation with affected agencies;

(3) identify ways to eliminate redundant efforts in the management of state risk management and insurance programs;

(4) maintain the state risk management information system; and

(5) administer and maintain the state risk management fund.

Subd. 4. Competitive bidding. The commissioner may request bids from insurance carriers or negotiate with insurance carriers and may enter into contracts of insurance carriers that in the judgment of the division are best qualified to underwrite and service the insurance programs.

Subd. 5. Risk management fund not considered insurance. A state agency, including an entity defined as a part of the state in section 3.732, subdivision 1, clause (1), may procure insurance against liability of the agency and its employees for damages resulting from the torts of the agency and its employees. The procurement of this insurance constitutes a waiver of the limits or governmental liability to the extent of the liability stated in the policy but has no effect on the liability of the agency and its employees beyond the coverage as provided. Procurement of commercial insurance, participation in the risk management fund under this section, or provisions of an individual self-insurance plan with or without a reserve fund or reinsurance does not constitute a waiver of any of the governmental immunities or exclusions under section 3.736.

History: 1986 c 455 s 3; 1988 c 613 s 18

16B.86 PRODUCTIVITY LOAN ACCOUNT.

The productivity loan account is a special account in the state treasury. Money in the account is appropriated to the commissioner of administration to make loans to finance agency projects that will result in either reduced operating costs or increased revenues, or both, for a state agency.

History: 1987 c 365 s 16

PRODUCTIVITY LOANS

16B.87 AWARD AND REPAYMENT OF PRODUCTIVITY LOANS.

Subdivision 1. Committee. The productivity loan committee consists of the commissioners of administration, finance, revenue, and employee relations, and the state planning director. The commissioner of administration serves as chair of the committee. The members serve without compensation or reimbursement for expenses.

Subd. 2. Award and terms of loans. An agency shall apply for a loan on a form provided by the commissioner of administration. The committee shall review applications for loans and shall award a loan based upon criteria adopted by the committee. The committee shall determine the amount, interest, and other terms of the loan. The time for repayment of a loan may not exceed five years.

Subd. 3. Repayment. An agency receiving a loan under this section shall repay the loan according to the terms of the loan agreement. The principal and interest must be paid to the commissioner of administration who shall deposit it in the productivity loan fund.

Subd. 4. **Report.** The commissioner of administration shall submit a report to the governor and the chairs of the house appropriations and senate finance committees by January 15 each year, reporting the amount and conditions of any loan and other matters concerning the operation of the committee.

History: 1987 c 365 s 17

OFFICE OF VOLUNTEER SERVICES

16B.88 OFFICE ON VOLUNTEER SERVICES.

Subdivision 1. **Information center for volunteer programs.** There is created in the office of the commissioner the office on volunteer services, hereafter referred to as "the office." The office shall be under the supervision and administration of an executive director to be appointed by the commissioner and hereinafter referred to as "director." The director shall remain in the unclassified service. The office shall operate as a state information center for volunteer programs and needed services that could be delivered by volunteer programs. Any person or public or private agency may request information on the availability of volunteer programs relating to specific services and may report to the director whenever a volunteer program is needed or desired.

Subd. 2. **Cooperation with other groups.** The director shall cooperate with national, state, and local volunteer groups in collecting information on federal, state, and private resources which may encourage and improve volunteer projects within the state.

Subd. 3. **Money.** The director may accept and disburse public or private funds and gifts made available for the promotion of volunteer programs.

Subd. 3a. **Fee for services.** The director may charge a fee for services provided to state agencies, political subdivisions, private and nonprofit organizations, and individuals. Fees collected by the office must be deposited in the state treasury and are appropriated to the director for the purposes of this section.

Subd. 4. **Research and information.** The director shall conduct research to identify needs of volunteer programs and to assess community needs for volunteer services. The director may issue informational materials relating to volunteer programs in Minnesota.

Subd. 5. **Advisory committee.** The commissioner of administration shall appoint an advisory committee of not more than 21 members, at least one member from each economic development region, to advise and make recommendations to the commissioner and the director of volunteer services. Membership terms, compensation, removal, and filling of vacancies of members and expiration of the advisory committee shall be as provided in section 15.059; provided, that members shall not be eligible for a per diem.

History: 1977 c 389 s 1; 1983 c 260 s 3; 1985 c 285 s 1; 1986 c 444; 1987 c 365 s 1-3,24; 1988 c 613 s 30