

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION

In the Matter of the proposed adoption of rules relating to construction and reconstruction of bridges in the State of Minnesota

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before the Commissioner of Transportation of the State of Minnesota on 30th day of September, 1976, at 9:00 A.M. in Room 57, State Office Building, Park Avenue, between Aurora and Fuller, Saint Paul, Minnesota 55155 after proper notice required by Minn. Stat. 1975 (Supp), Section 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

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

NOW, THEREFORE, IT IS ORDERED that these rules identified as Hwy. 40-Rules for the Construction and Reconstruction of Bridges in the State of Minnesota are adopted this 14th day of January, 1977, pursuant to authority vested in me by Minnesota Statutes, Chapter 15, and Laws of Minnesota 1976, Chapter 339.

STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION

Jim Harrington

Jim Harrington
Commissioner

Hwy. 40 Rules for the Construction and
Reconstruction of Bridges in the State of Minnesota

A. Purpose. The purpose of these rules is to carry out the mandate of the legislature and to implement that mandate as set forth in Laws of Minnesota, 1976, Chapter 339.

B. Scope. The scope of these rules is intended to be confined within the framework of and consistent with ~~Minnesota Statutes, Chapter 161 and~~ Laws of Minnesota, 1976, Chapter 339.

C. Definitions.

1. Commissioner. The Commissioner of Transportation.

2. Agency. A county, municipality or township.

3. Urban Municipality. Any City having 5,000 or more population determined in accordance with the provisions of law.

4. Regional Development Commission. A commission established by the State Planning Officer in accordance with Minnesota Statutes, Chapter 462.

5. Metropolitan Council. A commission established in accordance with Minnesota Statutes, Chapter 473.

6. Bridge. A structure including supports erected over a depression or an obstruction as water, highway, or railway and having a track or passageway for carrying traffic or other moving loads. ~~and having an opening measured horizontally along the center of the roadway of more then 20 feet between undercopings of abutments, or more than 20 feet between spring line of arches, or extreme ends of openings for multiple boxes; it also includes multiple pipes where the clear distance between openings is less than half of the smaller contiguous opening.~~

This definition of a bridge describes all railroad bridges, but for application of these rules all railroad bridges are excluded except for railroad bridges over or under a public highway or street.

7. Construction. The construction of a bridge to replace an existing deficient bridge or a bridge that has been destroyed. ~~to the design standards and specifications required by these rules, Minnesota Rule Hwy. 40, G.~~

8. Reconstruction. The reconstruction of an existing deficient bridge. ~~to the design standard and specifications required by these rules. Minnesota Rule Hwy. 40, G.~~

9. Road Systems.

a. Trunk Highway. The system of routes established by law, the location of which has been established by the commissioner under the jurisdiction of the State of Minnesota.

b. State-Aid. The system of roads and streets established and designated by the commissioner under the jurisdiction of a county or urban municipality.

c. Other Roads or Streets. Those local roads and streets under the jurisdiction of the counties, municipalities and townships.

~~10. "Off System" Bridge Replacement Program. A program using federal monies to replace deficient bridges not on any road system supported by federal aid.~~

D. Application by Agency.

1. Counties

a. The county board in cooperation with other local units of government within the county, other than urban municipalities, shall determine a proposed program for the construction and/or reconstruction of key bridges within the county <u>other than urban municipal or trunk highway bridges.</u>

b. The county board by resolution shall request of the commissioner authorization to construct or reconstruct specific bridges within the county and request funding ~~from available bridge funding programs~~.

c. In the event that local units of government can not reach agreement with the County Board, the local units of government may make applications independently. Then and in that event the local unit of government by resolution shall request of the commissioner authorization to construct or reconstruct specific bridges and request funding.

2. Urban Municipalities. The City Council by resolution shall request of the commissioner authorization to construct or reconstruct specific bridges within the municipality and request funding. ~~from available bridge funding programming.~~

3. State Highway System. The commissioner shall establish the bridge construction and/or reconstruction program for the trunk highway system.

E. Review by Regional Development Council or Metropolitan Council.

1. The commissioner shall submit the application of the agencies to the proper Regional Development Commission or Metropolitan Council, as the case may be, for review of consistency with long term comprehensive development plans and guides for which the agencies are responsible. In any case, the Regional Development Commission or the Metropolitan Council will have thirty (30) days after receipt of the application(s) to inform the commissioner that there is or is not an interest in the application(s). No response within the specified period shall be construed to mean approval of the application(s).

~~2. The Regional Development Commission or the Metropolitan Council, whichever is appropriate, shall review the availability of other financing capabilities of the agency.~~

F. Establishment of Priority.

1. The commissioner ~~shall establish a statewide priority of bridge construction and/or reconstruction based on criteria as established in Laws of Minnesota, 1976, Chapter 339~~ using information furnished by the local units of governments from the statewide bridge inventory, shall establish a statewide priority of bridge construction and/or reconstruction. This priority shall be based on the relative seriousness of each bridge's deficiencies as determined from the inventory and appraisal after considering the following criteria established in Laws of Minnesota, 1976, Chapter 339:

a. Effectiveness of the project in eliminating a deficiency in the transportation system;

b. Number of persons affected by the deficiency;

c. Economic feasibility;

d. Effect on optimum land use and other concerns of state and regional planning;

e. Availability of other financing capability; and

f. Adequacy of provision for proper operation and maintenance after construction.

2. Upon establishment of priorities, the commissioner shall notify the local units of government as to priority rank and funding availability for those bridges submitted for approval.

3. The local unit of government shall be resolution agree to the terms and conditions as specified in the notification by the commissioner consistent with Laws of Minnesota, 1976, Chapter 339.

C. ~~Design Standards and Specifications.~~

~~1. Trunk Highway. The approved standards currently in effect for design and construction of bridges as identified in the Department of Transporation Bridge Design Manual.~~

2.--State Aid System.--The approved standards currently in effect for design and construction of bridges as identified in the State Aid Manual.

3.--Other Road or Street Systems.--The approved standards currently in effect for design and construction of bridges as identified in the "Off System" Bridge Program.

4.--Specifications for Bridge Construction.--Construction shall be in accordance with the current construction specifications as identified in the Minnesota Standard Specifications for Highway Construction.

5.--Specifications for Bridge Design.--Design shall be in accordance with the current Specifications for Highway Bridges of the American Association of State Highway and Transportation Officials and the Minnesota Department of Transportation.

APPROVED AS TO FORM AND LEGALITY
FEB 18 1977 19
WARREN SPANNAUS, ATTORNEY GENERAL
BY /s/ Michael G. Miller
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
FEB 18 1977 - 1:45 pm
Joan Anderson Growe
Secretary of State

290

February 22, 1977

Eric B. Schultz
Deputy Attorney General
Department of Transportation

- Hwy. 40

Auth. MS 142.50 ch. 339 Laws '76

A + B OK

No justification in record for 1 set of rules for 4 purposes

finding 6 p.4 — § B of proposed rules should delete words "MS § 161"

#7 p.4 § C of rule § 6 - M. over 30' long - stat. w/ call for
- no justification/misconception

#8 p.5 § D - must add § 1(c) to allow local units of gov't
who disagree w/ co. to submit separate applications

" § D - 1a add. as sugg. Same clarification w/ #2

#9 p.5 § E - add time limit + delete § 2 → univ. criticized

#10 p.7-8 p.8! § F - w/ set out req'ts as stat. calls for
contra to stat.

#11 p.9 § G - should be w/ dra[illegible] [illegible]scorp. 1000 pp. of stds

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Deputy Attorney General Eric B. Schultz, do hereby declare that I have examined the proposed rules being Hwy. 40 and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed. Any exceptions are noted below.

NONE

Eric B. Schultz

Deputy Attorney General

Dated this 14th Day of January, 1977.

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF TRANSPORTATION

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF HIGHWAYS (NOW TRANSPORTATION) RELATING TO CONSTRUCTION AND RECONSTRUCTION OF BRIDGES IN THE STATE OF MINNESOTA.

REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on September 30, 1976, before Howard L. Kaibel, Jr., a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. §15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. §15.052, Subd. 3, was issued to the Department of Transportation on December 22, 1976; and

WHEREAS, the Department of Transportation has now determined to adopt rules pursuant to Minn. Stat. §15.0412, Subd. 4; and

WHEREAS, the Department of Transportation has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. §15.052, Subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Department of Transportation has met all requirements of Minn. Stat. §15.0412, Subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Department of Transportation has the responsibility of submitting the complete hearing record and the rules as adopted by the Department to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. §15.0412, Subd. 4.

Dated this 13th day
of January, 1977.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF TRANSPORTATION

In the Matter of the proposed adoption of rules of the Department of Highways (now Transportation) relating to construction and reconstruction of bridges in the State of Minnesota.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Howard L. Kaibel, Jr. of the Minnesota Office of Hearing Examiners on September 30, 1976 at 9:00 a.m. in the State Office Building, Room 57, Saint Paul, Minnesota.

Eric Schultz, Deputy Attorney General, 420 Highway (Transportation) Building, John Ireland Boulevard, Saint Paul, Minnesota 55155, appeared as counsel for the Department of Transportation (hereinafter "Department"). The hearing continued until all interested groups or persons had an opportunity to be heard concerning the adoption of the proposed rules.

Pursuant to Minn. Stat. § 15.052, subd. 3 (1975 Supp.), this Report will include Findings of Fact, Conclusions and Recommendations. The Department and the Office of Hearing Examiners will make a copy of this Report available for review to any interested person upon request. Copies of the Report will be furnished at a nominal cost.

The Department shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record to the Chief Hearing Examiner, pursuant to HE 108, no earlier than ten days subsequent to the receipt of this Report. It shall include the rules as originally proposed, and the rules as proposed for adoption in final form. The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his report to the Department on the issue of substantial changes in the rule within ten calendar days. The Department will be responsible for filing the rules with the Attorney General.

Based upon the proceedings herein, the Examiner makes the following Findings of Fact.

RULINGS ON MOTIONS

Comments of Senator Laufenburger (J) and Senator Frederick (K) were requested withdrawn in a proper and timely fashion. This motion is GRANTED and the comments have not been considered by the Hearing Examiner in preparing this Report. These comments should not be considered by the Department or any reviewing authority and have been preserved in the record solely for the purpose of judicial economy in the event that the Department or other reviewing authority should disagree with this ruling. The substance of comments made at the hearing on their behalf cannot, of course, be withdrawn as other persons present at the hearing may have refrained from making the same points to avoid repetitious testimony. They are consequently part of the record and must be considered.

FINDINGS OF FACT

1. On August 9, 1976, the Department filed the following documents with the Chief Hearing Examiner:

(a) A proposed Order for Hearing;

(b) a proposed Notice of Hearing with the proposed rules attached; and

(c) a statement of the number of persons expected to attend and estimated length of hearing.

2. On August 31, 1976, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

3. On September 3, 1976, the Department filed with the Office of Hearing Examiners the following documents:

(a) The Order for Hearing;

(b) the Notice of Hearing as mailed;

(c) the affidavit of receipt of the Secretary of State's list;

(d) the Affidavit of Mailing;

(e) the Statement of Need;

(f) the affidavit of mailing of a notice pursuant to Minn. Stat. § 15.0412, subd. 6, a copy of the Notice and material received pursuant to the Notice;

(g) the names of Department personnel who will represent

the Department;

(h) a summary of evidence; and

(i) Department of Finance approval.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

4. The record was closed after allowing 20 days for submission of written comments at the end of the day on October 20, 1976. The transcript was completed November 2, 1976.

5. Statutory authority to promulgate the proposed rule is found in Minnesota Statutes Section 147.50 (hereinafter generally referred to as "Chapter 339" of the 1976 Session Laws).

6. That sections (A) and (B) of the proposed rule are needed and reasonable insofar as they are restricted to Chapter 339. Although most of the statement of need is devoted to justifying promulgation of a single uniform set of rules to govern four different bridge funding programs, an affirmative presentation of facts has not been presented to document the need for or reasonableness of this approach. The closest thing to such documentation in the record is a paragraph in a response letter from State Aid engineer Gordon Fay to the Executive Director of the Southeastern Regional Development Commission (hereinafter "RDC'S") attached to comment G:

> "It takes several months to complete the process of developing rules. We are charged with that responsibility by the legislature. It also cost (sic) many thousands of dollars to accomplish the same task, therefore, it is intended to develop rules which will provide for the use of funds from all four sources of funding under rules established rather than develop four sets of rules to accomplish this task extending the time period by several months and many thousands of dollars."

This basic assumption is factually incorrect in that there is nothing to prevent a single consolidated proceeding involving four separate rule provisions at no increase in time or expense. In fact, the Department utilized such consolidation recently in combining changes in state aid rules with a temporary rule governing Chapter 339 allocations.

The attempt to achieve uniformity produces a proposed rule which fails to recognize and further the fundamental differences in

the legislative intent and the varying conditions attached to the separate authorizing legislation. The so-called "turnback account" township bridge program for example (Minn. Stat. § 161.082, subd. 2a) is an adjustment in the allocation of constitutionally dedicated gas tax receipts revising the "county" accounts. It is a permanent, county by county, annual, cumulative funding of township bridges of over 20 feet in length on a matching basis to ensure local effort of 50% of the total cost. It contains no limitation on use of funds to restrict spending for maintenance or prohibiting non-replacement new construction. While there are other differences discussed later in this Report with respect to specific sections of the proposed rule, in general, Chapter 339 (the law that this proposed rule is supposed to implement) is a "one shot" appropriation of general funds and (if those are used up) receipts from bonded obligations (with a strong prohibition against any mingling with constitutionally dedicated gas tax receipts) to fund federal, state, county, municipal and township bridges without any length limitation nor any county by county allocation restriction. There is no local match requirement and funds are limited to reconstruction and replacement. The words "Minnesota Statutes, Chapter 161 and" must be stricken from section (b) of the proposed rule for it to be accurate and reasonable.

7. That except for subsection 6 as hereinafter discussed, there were no significant objections raised to the definitions contained in proposed section (C) of the rule and they are reasonable and necessary to clarify and simplify the proposed rule. The definition of bridge contained in section 6 would limit the program to bridges more than 20 feet long. It was objected to in written comment from Senator Josephson (L) and Crow Wing County (B). The above-quoted response to the southeastern RDC asserts wrongly that this statute contains a 20-foot limitation and Mr. Fay was apparently still under that misconception at the hearing (R 34). When it was made clear at the hearing that there was no 20-foot limit in Chapter 339, he was unable to supply any other reasons for inserting such a limit in the rules when asked specifically to do so. No further justification was submitted in written comments after the hearing, and it is specifically found that the agency has failed to document either

either the need for or the reasonableness of such a limitation.

8. That the application process must be modified to be found reasonable in light of criticisms received. The Winona County Highway Engineer (Comment C) objected to making the counties the agents for the townships and the department staff has not adequately responded. While it is undoubtedly true that in most cases counties will have the only staff capability to provide technical assistance to townships and municipalities of less than 5,000 population, the staff has documented neither the need for nor the reasonableness of precluding these governmental units from applying for funding altogether in the event of disagreement with the county. To be found reasonable, section (D) of the proposed rule must be amended by adding a subsection (1)(c) allowing local units of government who disagree with the county's decisions to submit separate applications.

The City of Minneapolis (Rules Committee Minutes, Page 15) representative highlighted an ambiguity in this section of the proposed rule which should be clarified. The problem can be solved by changing the period in subsection (1)(a) to a comma, adding "other than urban municipal or trunk highway bridges". Similar clarification is needed in subsection (2).

9. That with the addition of a time limit to subsection (1) and the deletion of subsection (2), section (E) of the proposed rule providing for RDC review will be needed, reasonable and in accord with the statutory mandate. A time limit on the RDC review to determine consistency with long range plans in subsection (1) was suggested by the public (Rules Committee Minutes, Page 18) and the Department staff has not documented the reasonableness of omitting some limitation. Without some clarification, an RDC might be able to delay or stop a project altogether by simply failing to respond. A provision clarifying that if no review is forthcoming within 30 days (the time period for A 95 review) of the forwarding of the application by the commissioner, he may proceed on the assumption that the RDC has no objection, is essential and would not be a substantial change under HE 108.

Subsection (2) of this proposed rule directing RDC review of each local government's finances was universally criticized by all

of the RDC's submitting comments and by Crow Wing County (Comment B) and the South St. Paul City Engineer at the rules committee meeting (Minutes, Page 7). One of the RDC's urged that the rule by changed to "may" and another flatly stated that it does not have the capacity to carry out this proposed review. Department staff candidly acknowledged that the likely result of delegating their responsibility under Chapter 339 to evaluate the "availability of other financing capability" will be that the RDC's will, in all probability not dilligently or uniformly fulfill this legislative mandate:

> "...they should be able to set up their own guidelines as to how you know, sophisticated they want to become about a review about this. Maybe they would want to just ask a few questions, maybe one question then leads to another question, I don't know,...." (Rules Committee Minutes, Page 7)

The only justification cited for this proposed subsection of the rule is the hereinbefore discussed attempt at uniformity and it is on the contrary a good example of where such uniformity is neither necessary nor reasonable, because of the differing nature of the statutes involved. The "turnback law" for township bridges requires RDC review "to determine the relative need of the township for financial assistance". The language is not only arguably different in that it directs a comparative review of need as opposed to funding possibilities, but the purpose served by this provision in the turnback law is largely irrelevant in Chapter 339 funding. That purpose, according to the statewide transportation advisory committee minutes (Page 4) is that "the legislators thought that some of the locals may have cd's drawing interest or other available funds." This is a reference to the fact that as a result of revenue sharing and state local government aids many townships with limited service responsibility have been banking surplus in certificates of deposit. This is not true with regard to the counties and urban municipalities where two-thirds of these Chapter 339 local government grants will be used. Finally, the complexity of review under the two statutes is fundamentally different. Township review under the turnback program is a simple task infrequently and easily performed by an RDC, as the primary function of township government is provision of road and bridge services and their financial structure is a relatively simple matter of relative mill

rates and bonded debts. The financial complexities involved in county and municipal governments with their manifold service responsibilities is an entirely different matter.

10. That the biggest and most strongly criticized failure of this proposed rule is section (F) "Establishment of Priority". The statute requires that a "criteria for priority...shall be established by rules.... Based on consideration of" a list of six factors. The rule as proposed simply does not carry out this mandate or even attempt to partially do so. The omission was criticized at the hearing (R 24) and in written comments (G). The result is public confusion and misunderstanding, even amongst the most knowledgeable of affected engineers, over what the priorities are likely to be. This may lead local government units to fail to apply for funding or cause them to fail to vigorously assert their opinion as to what local priorities should be. Illustrative is the following exchange between Mr. Fay and Bruce Boyer, a very knowledgeable and experienced city engineer from Cloquet, at the rules committee meeting when members were informed that a lot of applications are expected:

> "Bruce Boyer: In other words, don't waste your time? You see, I would like to have....
>
> F. Fay: No, do you know what the priority is?
>
> Bruce Boyer: No, I don't, I just expect it to be....
>
> G. Fay: We could tell you what the priority is but you see the priority as established by our computer program is not the priority that the local unit of government may wish to put on that bridge. They may for obvious reasons, we could have a priority on a bridge that wouldn't be extremely high but some damage may come between the last inspection and the reporting and in that case, the local unit of government may certainly wish to put down that as their number one priority and state why they want to do it, and submit it to be prioritized statewide. Now, I don't feel any bridge is a loss of time to be submitted, if there's reasonable justification as far as replacement.
>
> Bruce Boyer: Well, the only justification is that it's not adequate for traffic, which....
>
> G. Fay: Well, traffic you know in this case is eliminating a deficiency in a transportation system and the number of people affected by the deficiency are certainly two things well to be considered.
>
> Bruce Boyer: Yes.

G. Fay: And, it would seem to me that if you feel as strongly as I understand that you do, you would be negligent if you didn't submit it.

Bruce Boyer: Okay, thank you."

Consequently, it is specifically found the department staff has failed to demonstrate the reasonableness of failing to carry out this fundamental condition of this statutory expenditure of $50 million of public monies.

It is further specifically found that the Department failed to document its statutory authority to adopt the proposed rule which is on its face completely contrary to the clear and unambiguous language of the statute. This is not merely a legal technicality, on the contrary, it is the essence of the administrative process. The legislature delegated the administrative authority to spend $50 million with minimal but specific restrictions on the discretion of the commissioner in deciding which bridges to spend it on. The legislation does not require notice and hearings on the decision itself; instead, public input and scrutiny is limited to the criteria or basis for the decision. This section is therefore the "guts" of this proposed rule.

It is impossible, based on these Findings to recommend adoption of this section of the proposed rule. Addition of the legislatively mandated criteria that the commissioner intends to use at this stage of the proceedings would almost certainly constitute a "substantial change" as that term is defined in HE 108 in that it would be "a major substantive change that was not raised by the original Notice of Hearing in such a way as to invite reaction at the hearing" and would leave the rule "fundamentally different from that contained in the Notice of Hearing".

It must be pointed out very clearly that this Report's recommendation in this regard, is just that--a recommendation. It is the function of the Attorney General to rule on the final legality of any proposed rulemaking. Likewise, should the Department, upon final adoption, propose the criteria discussed above, even if the Chief Hearing Examiner determines that it constitutes a substantial change, it is still the Attorney General who has the "final say".

11. That section (G) of the proposed rules dealing with design standards and specifications was not objected to, but the Hearing Examiner nonetheless finds that major revisions are necessary in the rule as proposed and in the materials it proposes to incorporate into law, for it to be found reasonable and legally authorized. While the statute says that "maximum use of standardized bridges is encouraged", there are serious problems with attempting to do this by incorporating more than a thousand pages of manuals and specifications into these rules by making reference to them and thereby giving them all the unequivocal force of law. It appears simpler to withdraw this proposed section of the rule and attempt standardization in a different fashion.

Although there was considerable Department testimony as to the reasonableness of these documents, it has not been adequately documented that they were designed to have the inflexible force of law. The bridge design manual for example, which subsection (1) would cause to have the force of law for all trunk highway bridges constructed with chapter 339 funds, contains the following language in the Forward: "This manual is not designed as, nor does it establish, a legal standard. It is published solely for the information and guidance of highway department employees, and it is not intended to be used as a substitute for engineering judgment." Modification of either the rules or the manual should be considered to clear up this contradiction.

Proposed subsection (2) would make state aid bridges subject to design and construction standards in the State Aid Manual. The "design standards" section of that manual (5--892.210) refers readers to the rules and regulations for state aid operations and has a table with minimum widths and load capacities for rural bridges. The rules and regulations for state aid operations, rule 32H(1) entitled "geometric design standards" merely says that the commissioner shall establish desirable standards in cooperation with associations of transportation officials. Thus, affected persons must go first to the manual and then to the published rules and still will not find the "standards" that this subsection purports to make legally binding.

More specification is clearly necessary in this subsection if final adoption is pursued.

The Statement of Need wrongly asserts that the standards and specifications in this section of the proposed rule may be changed from time to time "by the commissioner after consultation with the County Highway Engineer's Association of Minnesota and the City Engineer's Association of Minnesota". The specifications that are given the force of law by the adoption of these rules are the current standards and specifications. Revisions of the matters incorporated by reference can only be accomplished after new notice and hearing with an opportunity for public reaction and judicial review.

The proposed subsections do not adequately warn affected persons that the laws would consist of the rules at the time of adoption and that subsequent modifications of the various manuals, etc., must be disregarded. As proposed, the subsections are not even specific enough to precisely identify the text of these documents which is incorporated such as by edition or date. Moreover, two of the manuals involved are "loose leaf" services specially paginated for easily replacing pages to facilitate frequent revision. An included "Transmittal Record Sheet" would advise readers of the dates new pages were inserted after the effective date of legalization, but nothing is included to warn users to retain the old pages which will continue to be the law.

The Hearing Examiner makes no Finding on legality of incorporating these standards and specifications by reference, as this is a proper matter for the Attorney General when he reviews the finally adopted rules as to form and legality.

12. That the following matters appear in the record and would normally be considered rule material, but are not contained in the rules as proposed. Attention should be given on final adoption to incorporating insubstantial modifications to give the public proper notice and an opportunity to contest them.

> (1) Department staff took the position from the rules committee meeting (Minutes, Page 5) that chapter 339 funds could be used to match funds from all other programs, including the township "turnback" allocations. This interpretation may be contrary to the arguable legislative intent under the turnback program of requiring a 50% local effort.

(2) Department staff takes the position that engineering, environmental and right of way costs under this program are entirely a local responsibility (Rules Committee Minutes, Page 16) although this is not clear in the statute.

(3) The rule is also silent on what mechanism will be used to ensure that constitutional funds and general fund money is exhausted before transportation bonds are issued.

13. That comments by the Pollution Control Agency (M) urging that the design standards should include various matters have been carefully considered and rejected. These substantial proposed revisions clearly represent a "substantial change" as that term is defined in procedural rule HE 108 and could only be incorporated by the Department after a new notice and hearing.

CONCLUSIONS

1. That the Department of Transportation duly acquired and now has jurisdiction over the within proceeding.

2. That all relevant legal and procedural requirements of statute and rule have been properly complied with.

3. That the rules hereinafter recommended for adoption will properly implement the legislative mandate of Chapter 339, Minnesota Laws of 1976.

4. That a clear and compelling need has been demonstrated for the adoption of the proposed rules hereinafter recommended for adoption.

5. That individually and taken together the rules hereinafter recommended for adoption are a reasonable implementation of the legislature's delegated responsibilities.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions, the Hearing Examiner makes the following Recommendations:

1. That the Department of Transportation, as the successor to the Department of Highways, adopt those rules recommended for adoption in this Report, after considering the insubstantial changes recommended.

2. That the Department of Transportation immediately begin to formulate criteria discussed in Finding Number 10 hereof, and

notice the same for hearing as soon as possible in order to shorten the time for the rulemaking process.

3. That in the event it is determined that the Department possesses emergency rulemaking authority in this area, that it exercise such powers in order that the intent of the legislation will not be unduly delayed.

Dated this 22nd day
of December, 1976.

HOWARD L. KAIBEL, JR.
Hearing Examiner

ADMIN 1000

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT TRANSPORTATION - Commissioner
Room 411

TO : Warren R. Spannaus
Attorney General

Attention: Michael B. Miller,
Spec. Asst. Atty. General

DATE: January 14, 1977

FROM : Jim Harrington
Commissioner

Extension 3000

SUBJECT: Rules Relating to Construction and Reconstruction of Bridges In the State of Minnesota

Enclosed is the complete file for the Department of Transportation's rule proceedings conducted on September 30, 1976 which heard our proceedings in the matters of:

1) Adopting Rules Relating to the Bridge Construction and Reconstruction Program; pursuant to Laws of Minnesota 1976, Chapter 339.

In accordance with Minn. Stat. Sec. 15.0412, Subd. 4 the Department of Transportation hereby submits said file for review as to legality.

Your assistance is requested in obtaining prompt review of these matters. The Department would be pleased to answer any questions you may have regarding the rules.

Jim Harrington
Commissioner

cc:
Gordon M. Fay
William C. Merritt
F. C. Marshall
Eric B. Schultz
Ellen Temple
File (2)

K. H. Bjork:djm

Ex 1

STATE OF MINNESOTA

DEPARTMENT OF HIGHWAYS

In the matter of the proposed adoption of rules of the Department of Highways relating to Construction and Reconstruction of Bridges in the State of Minnesota.

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in Room 57 of the State Office Building, Park Avenue, between Aurora and Fuller, Saint Paul, Minnesota 55155 on September 30, 1976, commencing at 9:00 A. M., and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

STATE OF MINNESOTA
DEPARTMENT OF HIGHWAYS

Frank D. Marzitelli

Frank D. Marzitelli, Commissioner

Dated this 9th day of August, 1976.

STATE OF MINNESOTA

DEPARTMENT OF HIGHWAYS

In the matter of the proposed adoption of rules of the Department of Highways relating to Construction and Reconstruction of Bridges in the State of Minnesota.

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in Room 57 of the State Office Building, Park Avenue, between Aurora and Fuller, Saint Paul, Minnesota 55155 on September 30, 1976, commencing at 9:00 A. M., and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be sumitted at the hearing. In addition, written materials may be submitted by mail to Howard L. Kaibel, Jr., Hearing Examiner, Office of the Hearing Examiner, Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104.

Said statements may be provided either before the hearing or within 20 days after the close of the hearing.

The proposed rules, if adopted, would establish procedures for applying for grants from the Minnesota State Transportation Fund by agencies and subdivisions of the State for the reconstruction and replacement of key bridges in the State of Minnesota.

Notice of Hearing - Continued

A copy of the proposed rules is enclosed (below). Additional copies will be available at the door on the date of the hearing. The Department's authority to promulgate the proposed rules is contained in Laws of Minnesota 1976, Chapter 339. A "statement of need" explaining why the Department of Highways feels the proposed rules are necessary and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiner's Office at least 25 days prior to the hearing and will be available there for inspection.

Please be advised that pursuant to Minnesota Statutes, Section 10A. 01, Subdivision 11 (1974) any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as the promulgation of these rules, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual.

STATE OF MINNESOTA
DEPARTMENT OF HIGHWAYS

Frank D. Marzitelli

Frank D. Marzitelli, Commissioner

Dated this 9 day of August, 1976.

Hwy. 40 Rules for the Construction and
Reconstruction of Bridges in the State of Minnesota

A. Purpose. The purpose of these rules is to carry out the mandate of the legislature and to implement that mandate as set forth in Laws of Minnesota, 1976, Chapter 339.

B. Scope. The scope of these rules is intended to be confined within the framework of and consistent with Minnesota Statutes, Chapter 161 and Laws of Minnesota, 1976, Chapter 339.

C. Definitions.

1. Commissioner. The Commissioner of Transportation.

2. Agency. A county, municipality or township.

3. Urban Municipality. Any City having 5,000 or more population determined in accordance with the provisions of law.

4. Regional Development Commission. A commission established by the State Planning Officer in accordance with Minnesota Statutes, Chapter 462.

5. Metropolitan Council. A commission established in accordance with Minnesota Statutes, Chapter 473.

6. Bridge. A structure including supports erected over a depression or an obstruction as water, highway, or railway, and having a track or passageway for carrying traffic or other moving loads, and having an opening measured horizontally along the center of the roadway of more then 20 feet between undercopings of abutments, or more than 20 feet between spring line of arches, or extreme ends of openings for multiple boxes: it also includes multiple pipes where the clear distance between openings is less than half of the smaller contiguous opening. This definition of a bridge describes all railroad bridges, but for

application of these rules all railroad bridges are excluded except for railroad bridges over or under a public highway or street.

7. Construction. The construction of a bridge to replace an existing deficient bridge or a bridge that has been destroyed to the design standards and specifications required by these rules. Minnesota Rule Hwy. 40, G.

8. Reconstruction. The reconstruction of an existing deficient bridge to the design standard and specifications required by these rules. Minnesota Rule Hwy. 40, G.

9. Road Systems.

a. Trunk Highway. The system of routes established by law, the location of which has been established by the commissioner under the jurisdiction of the State of Minnesota.

b. State-Aid. The system of roads and streets established and designated by the commissioner under the jurisdiction of a county or urban municipality.

c. Other Roads or Streets. Those local roads and streets under the jurisdiction of the counties, municipalities and townships.

10. "Off-system" Bridge Replacement Program. A program using federal monies to replace deficient bridges not on any road system supported by federal aid.

D. Application by Agency.

1. Counties.

a. The county board in cooperation with other local units of government within the county, other than urban municipalities, shall determine a proposed program for the construction and/or reconstruction of key bridges within the county.

b. The county board by resolution shall request of the commissioner authorization to construct or reconstruct specific bridges within

the county and request funding from available bridge funding programs.

2. Urban Municipalities. The City Council by resolution shall request of the commissioner authorization to construct or reconstruct specific bridges within the municipality and request funding from available bridge funding programming.

3. State Highway System. The commissioner shall establish the bridge construction and/or reconstruction program for the trunk highway system.

E. Review by Regional Development Council or Metropolitan Council.

1. The commissioner shall submit the application of the agencies to the proper Regional Development Commission or Metropolitan Council, as the case may be, for review of consistency with long term comprehensive development plans and guides for which the agencies are responsible.

2. The Regional Development Commission or the Metropolitan Council, whichever is appropriate, shall review the availability of other financing capabilities of the agency.

F. Establishment of Priority.

1. The commissioner shall establish a statewide priority of bridge construction and/or reconstruction based on criteria as established in Laws of Minnesota, 1976, Chapter 339.

2. Upon establishement of priorities, the commissioner shall notify the local units of government as to priority rank and funding availability for those bridges submitted for approval.

3. The local unit of government shall by resolution agree to the terms and conditions as specified in the notification by the commissioner consistent with Laws of Minnesota, 1976, Chapter 339.

G. Design Standards and Specifications.

1. Trunk Highway. The approved standards currently in effect for design and construction of bridges as identified in the Department of Transportation Bridge Design Manual.

2. State-Aid System. The approved standards currently in effect for design and construction of bridges as identified in the State-Aid Manual.

3. Other Road or Street Systems. The approved standards currently in effect for design and construction of bridges as identified in the "Off-System" Bridge Program.

4. Specifications for Bridge Construction. Construction shall be in accordance with the current construction specifications as identified in the Minnesota Standard Specifications for Highway Construction.

5. Specifications for Bridge Design. Design shall be in accordance with the current Specifications for Highway Bridges of the American Association of State Highway and Transportation Officials and the Minnesota Department of Transportation.

Ex 5

STATE OF MINNESOTA COUNTY OF RAMSEY

DEPARTMENT OF HIGHWAYS

In the matter of the proposed adoption of rules of the Department of Highways relating to Construction and Reconstruction of Bridges in the State of Minnesota.

STATEMENT OF EVIDENCE

In addition fo the "Statement of Need" which is available for inspection or purchase at the Office of Hearing Examiners, Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104 and in support thereof the Department of Highways will introduce the following evidence:

Laws of Minnesota 1976, Chapter 339 establishes a Minnesota State Transportation Fund from which money shall be appropriated to agencies and subdivisions of the State of Minnesota for the reconstruction and replacement of key bridges and approaches to remove obstructions to the flow of traffic on state and county highways, municipal streets and township roads. And, whereas Subdivision 7 of the act requires the Commissioner of Transportation - as the successor to the Commissioner of Highways - to develop rules, standards and criteria, including bridge specifications, in cooperation with road authorities of political subdivisions, for use in the administration of funds appropriated to the commissioner and for the administration of grants to subdivisions, therefore the Commissioner of Highways acting by and through his agent Gordon M. Fay, State Aid Engineer would propose rules to administer the provisions of Laws of Minnesota 1976, Chapter 339.

Mr. Fay and the following employees of the Department of Highways will show the reasonableness of these rules given replacement priorities established as a

result of bridge appraisal ratings of record made pursuant to Minnesota State Section 165.03, as amended.

We may call one or more of the following expert witnesses to testify:

Gordon M. Fay, State Aid Engineer
Roy L. Hanson, Assistant State Aid Engineer
Keith V. Venthin, Bridge Engineer

We intend to introduce the following manuals, books, scientific treatises, and other documentary evidence:

Minnesota Standard Specifications for Highways Construction. State of Minnesota, Department of Highways, St. Paul, Minnesota 55155, January 1, 1972.

Minnesota Supplemental Specifications for Highway Construction. State of Minnesota, Department of Highways, St. Paul, Minnesota 55155, April 1, 1976.

Standard Specifications for Highway Bridges. Adopted by American Association State Highway Officials. Eleventh edition 1973. Interim Specifications Supplement 1974, 1975 & 1976. 341 National Press Building, Washington, D.C. 20004. A copy of which is on file in the Office of Bridges and Structures, Room 610D, State Highway Building, St. Paul, Minnesota 55155.

Highway Department Manual No. 5-892, State Aid Manual. State of Minnesota, Department of Highways, St. Paul, Minnesota.

Highway Department Manual No. 5-392, Bridge Design Manual. State of Minnesota, Department of Highways, St. Paul, Minnesota.

Minutes of Statewide Transportation Advisory Committee. 13th Meeting on May 27, 1976 Room B9 of State Highway Building, Capitol Complex, St. Paul.

1976 Rules Committee Meeting Minutes, June 14, 1976.

Minnesota Department of Highways Bridge Inventory; List of Inadequate Bridges & Estimated Replacement Cost by System Dated: July 22, 1976.

Minnesota Highway Department Bridge Inventory; Replacement Priority - Statewide Non-Trunk Highway Bounding Program. Dated: July 7, 1976.

Office of State Aid Memorandum No. 76-18, dated July 23, 1976. State of Minnesota, Department of Highways - St. Paul, Minnesota 55155. Application for Grants (Minnesota State Transportation Fund).

Office of State Aid Memorandum No. 76-19, dated July 23, 1976. State of Minnesota, Department of Highways - St. Paul, Minnesota 55155. Application for Grants (Minnesota State Transportation Fund).

Office of State Aid Memorandum No. 75-21, dated June 12, 1975. State of Minnesota, Department of Highways - St. Paul, Minnesota 55155. County Federal Aid Off System Roads Program - Bridge Replacement - Fiscal Year 1976.

Office Memorandum - Frank D. Marzitelli, Commissioner of Highways to Duane R. Harves, Chief Hearing Examiner, dated August 31, 1976.

Order for Hearing...In the matter of the proposed adoption of rules of the Department of Highways relating to Construction and Reconstruction of Bridge in the State of Minnesota, dated 9 August 1976, /ss/ Frank D. Marzitelli, Commissioner of Highways.

Notice of Hearing...In the matter of proposed adoption of rules of the Department of Highways relating to Construction and Reconstruction of Bridges in the State of Minnesota, dated 9 August 1976, /ss/ Frank D. Marzitelli, Commissioner of Highways.

Statement of Need...In the matter of the proposed adoption of rules of the Department of Highways relating to Construction and Reconstruction of Bridges in the State of Minnesota, dated September 1, 1976.

Certificate...In the matter of the proposed adoption of rules of the Department of Highways relating to Construction and Reconstruction of Bridges in the State of Minnesota, dated August 31, 1976, /ss/ Joan Anderson Growe, Secretary of State.

Affidavit of receipt of the Secretary of State's List, /ss/ Kenneth H. Bjork.

Affidavit of Mailing, /ss/ Kenneth H. Bjork.

We will be citing the following statutes and case law:

Title 49, United States Code, Chapter 23

Title 23, U. S. C., 101-405

Minnesota Constitution, Article XIV.

Minnesota Statutes, Chapter 15, 160, 161, 162, 163, 164, 165; as amended.

Laws of Minnesota, Chapter 339 (1976)

Minnesota State Regulations, Rules and Regulations of the Department of Highways, 1974 Edition.

Minn. Reg. Hwy. 32., Rules and Regulations for State-Aid Operations under Minnesota Statutes 1965, Chapters 161 and 162, as amended.

Minnesota State Regulations, Rules and Regulations of the Department of Highways, Annual Supplement 1975, Supplement No. 1.

Minn. Reg. Hwy. 38., Rules and Regulations for the Inspection and Inventory of Bridges in the State of Minnesota.

STATE OF MINNESOTA
DEPARTMENT OF HIGHWAYS

Frank D. Marzitelli

Frank D. Marzitelli, Commissioner
Dated this 31 day of August 1976

Ex 7

STATE OF MINNESOTA

DEPARTMENT OF HIGHWAYS

COUNTY OF RAMSEY

In the matter of the proposed adoption of rules of the Department of Highways relating to Construction and Reconstruction of Bridges in the State of Minnesota.

STATEMENT OF NEED

The above captioned rules are not amendments to existing rules of the Department of Highways.

The need to adopt these rules arises because of the adoption of Chapter 339, of the 1976 Laws of Minnesota which established a Minnesota State Transportation Fund from which money shall be appropriated to agencies and subdivisions of the state for the reconstruction and replacement of key bridges in the State of Minnesota. The law states that procedures for applications for grants from the fund, conditions for their administration and criteria for priority, unless established in the laws authorizing the grant, shall be established by rules of the Department of Transportation consistent with those laws.

The passage of this act brings the number of bridge programs in the State of Minnesota to four. At the present time we have two federal bridge programs in existence; one is the Special Federal Bridge Replacement Program established by Section 204 of the Federal Aid Highway Act of 1970. This offers assistance to the states in financing replacement of regular Federal Aid Highway Funds. The second federal program is referred to

as the replacement of bridges that are off federally designated routes. This program is financed 72.06 percent Federal funds and 27.94 local funds.

A third bridge program to be called the town bridge program was established by the 1975 legislature by amending Minnesota Statutes, Section 161.082 with the addition of Subdivision 2a, which reads: "An amount equal to 32 percent of the County Turnback Account shall be expended within counties having two or more towns on town road bridge structures that are 20 feet or more in length. The expenditures on such bridge structures shall be on a matching basis and not more than 50 percent of the cost of any such bridge structure shall be paid from the County Turnback Account. The rules and regulations of the Commissioner of Highways relating to the expenditures of funds for the purposes of this subdivision shall include review of township bridge projects by the Regional Development Commission or the Metropolitan Council to determine the relative need of the township for financial assistance." Under the town bridge program, the Office of State-Aid met with the Executive Secretary of the Minnesota Association of Township Officers on August 5, 1975 and explained in detail the prerequisites for the program to become operational. The rules for State-Aid operations would have to be revised and an agreement reached as to distribution of money and administration of the account. Subsequent meetings were held with the full executive committee on August 18, 1975 and October 14, 1975. The consensus at these meetings was that the town bridge account should be handled similar to the "off-system" bridge program. The county engineer and the county board would act as intermediaries between townships and

the state. It was decided that allocating monies to individual townships would not produce a bridge program of deficient bridge replacement for several years because available money distributed and accumulated would be minimal. The township would probably have to save up monies for several years in order to replace deficinet bridges in its township. Therefore, it was decided that allocations could be made to the county on the basis of deficient town bridge needs in that county. The county engineer, in cooperation with the county board would invite those townships that have deficient bridges to a public meeting to decide a program for bridge replacement. A resolution by the county board establishing the programs would then be submitted to the Office of State-Aid. The proposals as to the distribution of monies and administration were presented to the Minnesota Association of Township Officers at their annual meeting on December 1, 1975.

With the passage of Chapter 339, we have a fourth bridge program for the State of Minnesota. The act provides $50 million to be appropriated as follows: $25 million for the construction and reconstruction of key bridges and bridge approaches on the trunk highway system; $13.5 million for the construction and reconstruction of key bridges on the county highway system; $4 million for the construction and reconstruction of key bridges on the municipal street system; and $7.5 million for the construction and reconstruction of key bridges on the township road system.

The most effective way to administer these bridge programs is to keep them similar in policy and procedure. The "off-system" program in which bridges off federal aid routes may be replaced or reconstructed involves township bridges, county road bridges and some municipal street bridges,

i.e., municipal streets in municipalities under 5,000 population. It was determined through the cooperative efforts of the State Highway Department and the Executive Committee of the County Highway Engineers Association of Minnesota that the county engineer would handle the program for the county. The State of Minnesota provides each county with a priority listing of eligible deficient bridges in the county. Here again the county engineer with the cooperation of the county board, invites those townships or municipalities that have bridges listed to a public meeting to discuss the geasibility of replacing those bridges. After considering all possibilities, the county board, by resolution, submits to the State Highway Department bridges that it wishes to program under the "off-system" procedure. Whereas 27.94 percent of the funds required for the bridge structure must come from the local unit of government, it is the local responsibility to determine who is going to participate in the cost. Local options are as follows: The township will finance its share entirely; the county will finance the local share; the county and the township will jointly finance the local share. The State of Minnesota will deal directly with the county. It will be the county's obligation to deposit the amount of the local participation with the State of Minnesota.

Under the fourth bridge program, established by Chapter 339, monies are to be made available as grants to counties, townships and municipalities. The most expeditious way to handle a program of this magnitude and diversity would be to keep it similar to other bridge programs. Therefore, it is proposed that the county engineer will hold public meetings with townships and small municipalities, (under 5,000 population) and arrive at a program for bridge replacement within the county. Then

by resolution, the county board would make application to the Department of Transportation for grants available under Chapter 339 and request priority bridge construction. In the same instance, the municipalities over 5,000 population would submit to the Department of Transportation, by city resolutions, requests for participations of grants available under Chapter 339 and priority establishment of their deficient bridges. The commissioner, upon receiving the application for grants from the counties and the municipalities, shall compile the data and submit same to the Regional Development Commission or the Metropolitan Council for review and recommendation as to priority of construction. The Regional Development Commission and/or the Metropolitan Council shall also review the financial capabilities of the local unit of government as to the availability of other funds which may used for the reconstruction or the replacement of bridges.

We have developed rules for the construction and reconstruction of bridges in the State of Minnesota that we feel are consistent with the law, provide for efficient administrative management, and serve the State of Minnesota and the local units of government in the best possible way.

Under A. The purpose of the rules is to carrt out the mandate of the legislature and to implement that mandate as set forth in Laws of Minnesota 1976, Chapter 339.

Under B. The scope of the rules is intended to be confined within the framewor of and consistent with Minnesota Statutes Chapter 161 and Laws of

Minnesota 1976, Chapter 339. Minnesota Statutes Chapter 161.082, Subdivision 2a provides monies for expenditures on town road bridges. The 1976 laws of Minnesota, Chapter 339 provides monies for the reconstruction or replacement of deficient bridges on the township road systems, along with the county highway systems and municipal street systems. To keep the two programs compatible and reduce confusion and administrative red tape, we intend to apply like rules to both programs, hence the reference to Chapter 161.

Under C. Definitions are given to avoid any misinterpretation of the rules. The definition of commissioner is self explanatory. The definition of agency is given to identify the unit of government. Urban municipalities is defined as any city having 5,000 or more population. We identify an urban municipality because they have a city engineer and provide their own bridge replacement or reconstruction program. The small municipality under 5,000 population that does not have its bridge programs submitted by the County Engineer, along with the county program and township program.

The definitions for Regional Development Commissioner and the Metropolitan Council are referred to the chapters in the Minnesota Statutes which established the Regional Development Commission and the Metropolitan Council.

The definition for bridge is the same as that given in the Rules and Regulations for the Inspection and Inventory of Bridges in the State of Minnesota.

The definition for construction clearly indicates the replacement of an existing deficient bridge or a bridge that has been destroyed. This eliminates the misinterpretation that bridges on new construction or non-existing roads are eligible under this program; they are not. A bridge must replace an existing deficient bridge or a bridge that has been destroyed.

The definition for reconstruction states that an existing deficient bridge must be reconstructed to the design standards and specifications required by the rules. That clearly indicates that maintenance type repair project will not be eligible under these Rules.

The definition of road systems is self-explantory.

A definition for State-Aid road systems was given because further in the rules we refer to design standards and specification for State-Aid systems.

A defintion for "Off-system" is necessary as we refer to "Off-system" under Design Standards and Specifications.

Under D. Application by Agency. We state that a county board in cooperation with other local units of government within the county, other than urban municipalities, shall cooperatively determine a proposed program for the construction and/or reconstruction of key bridges within the county. This rule then is similar to the operating procedure for the "off-system" bridge program and will be similar to the operating procedure for the town bridge program. The county engineer in cooperation with the county board will take the initiative and invite those municipalities or townships that have deficient bridges, as identified in the department's bridge inventory, to a public meeting to determine priority construction

for their county. After due consideration to all the facts, the county board will then submit by resolution to the commissioner requests for authorization to construct or reconstruct those deficient bridges within their county and will request funding from available bridge programs. The counties are given an allocation for "off-systems" money, and they will be given an allocation for town bridge monies. Therefore, their request for monies under the 1976 Bridge Act will be considered by the commissioner taking into account availability of other funds. Likewise, the urban municipalities will develop a program for bridge replacement and shall submit to the commissioner, by council resolution, a request to construct or reconstruct deficient bridges within their municipality and shall request funding from the 1976 Bridge Act. The commissioner will check to see if other funds are available to the municipality. If so they must be used to the best advantage of the state.

Under E. The commissioner, upon receipt of application from the county and urban municipality, will submit copies of same to the proper Regional Development Commission or Metropolitan Council for review and remarks as to consideration of priority and funding.

Under F. The commissioner, upon receipt of comments from the various Regional Development Commission and Metropolitan Councils will then establish a statewide program for bridge construction and/or reconstruction, considering the funding capabilities and the recommendations of the Regional Development Commissions or Metropolitan Councils. The commissioner will notify the local units of government as to the funding availability for their application and possibility of advancing projects to construction status. The local units of government will in return reply by resolution, agreeing as to the specific funding conditions and will agree pursuant to law to assume any financial overrun which is not anticipated, and will

assume that financial obligation to be the responsibility of the local unit of government.

Under G. The design standards and specifications are those standards and specifications currently in practice.

Any change in the standards and/or specifications may be made by the commissioner after consultation with the County Highway Engineers Association of Minnesota and the City Engineers Association of Minnesota.

STATE OF MINNESOTA
DEPARTMENT OF HIGHWAYS

Frank D. Marzitelli

Dated this 31 day of August, 1976

Ex 6

STATE OF MINNESOTA

DEPARTMENT OF HIGHWAYS

In the matter of the proposed adoption of rules of the Department of Highways relating to Construction and Reconstruction of Bridges in the State of Minnesota.

CERTIFICATE

I hereby certify that the attached 502 labels & one sheet constitutes the complete list of persons, associations, and other interested groups who as of 2:00 o'clock ~~p.m.~~., this 31st day of August, 1976, have requested pursuant to Minnesota State Statutes Supplement 1974, Section 15.0412 that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Joan Anderson Growe
Secretary of State

Joan Anderson Growe

By Neil Dion

Ex 7

STATE OF MINNESOTA

DEPARTMENT OF HIGHWAYS

In the matter of the proposed adoption of rules of the Department and Highways relating to Construction and Reconstruction of Bridges in the State of Minnesota.

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

Kenneth H. Bjork, being duly sworn on oath deposes and says:

1) That he is an employee of the State of Minnesota, Department of Highways.

2) That on the 31st day of August, 1976, he went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M. S. 15.0412.

3) That on the 31st day of August, 1976, in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Kenneth H. Bjork

Subscribed and sworn to before me this 31st day August 1976.

Agnes I. Litfin

Notary Public,

Ramsey County, Minnesota

My Commission expires Nov. 21, 1980

AGNES I. LITFIN
Notary Public, Ramsey Co., Minn.
My Commission Expires
November 21, 1980

STATE OF MINNESOTA

DEPARTMENT OF HIGHWAYS

In the matter of the proposed adoption of rules of the Department of Highways relating to Construction and Reconstruction of Bridges in the State of Minnesota.

AFFIDAVIT OF MAILING

Kenneth H. Bjork, being first duly sworn, and deposes and says:

That on the 31st day of August, 1976, at the City of Saint Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing by depositing in the United States mail at said City of Saint Paul, a true and correct copy thereof, on the attached Certificate of the Secretary of State.

Kenneth H. Bjork

Subscribed and sworn to before me this

31st day of August 1976

Agnes I. Litfin

Notary Public,

Ramsey County, Minnesota

My Commission expires Nov. 21, 1980

AGNES I. LITFIN
Notary Public, Ramsey Co., Minn.
My Commission Expires
November 21, 1980

HIGHWAY

Ass'n of Cas. and Surety Executives, 60 John St., New York 7

Bowar, C. L., Minnesota AAA, Burnsville 55378

Higgens, J. C., Brotherhood Rwy. Clks., 2317 W. 7th St., Duluth

Hoglund United Sales, Inc., So. Hwy 25, Monticello, Minn.

Hopkins, Bill, 2004 Lyndale Ave. S., Minneapolis 55405

Matthias, Dr. Howard, 329 Brown Hall, St. Cloud State College, St. Cloud 56301

Minnesota School Bus Operators Assn - Faribault, Minn.

Nelson-Zepper, 9150 Central Ave N.E., Blaine 55434

Perley A. Thomas Car Works, Inc., Attn. Carroll Graham, High Point, North Carolina (School bus laws only)

Shields, J. B., Driver Ed. Range, 1000 N. Snelling Ave., St. Paul 55108

Stern, Philip J. - 1234 Soo Line Bldg., Mpls (Re driving instructor & sch.)

St. Paul Motorcycle Escort Club, Inc., PO Box 3264, St. Paul 55101

TYPE ENVELOPES

NAME	ADDRESS	CITY	STATE	ZIP
MANSFIELD LARRY HCARC	1200 CHICAGO AVE S	MPLS	MN	55404
SCHMIDT WARREN WELCOME MHS	GARDEN CITY		MN	56034
BLANDIN PAPER CO W J LICHE	115 1st St SW	GRAND RAPIDS	MN	55744
REIERSON E	1336 WHITE BEAR AVE	St PAUL	MN	55106
MPLS ASSN RETARDED CITIZENS	3100 W LAKE ST	MPLS	MN	55416

STATE OF MINNESOTA

DEPARTMENT OF TRANSPORTATION — FINDINGS OF FACT

In the Matter of the proposed adoption of rules relating to construction and reconstruction of bridges in the State of Minnesota.

The above-entitled matter came on for hearing before the Commissioner of Transportation of the State of Minnesota on the 30th day of September, 1976, at 9:00 A.M. in Room 57, State Office Building, Park Avenue, between Aurora and Fuller, Saint Paul, Minnesota 55155 after proper notice required by Minn. Stat. 1975 (Supp.), Section 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

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

FINDINGS OF FACT

I

The Findings of Fact numbered 1 through 5 of the Hearing Examiner's Report are hereby adopted.

II

That sections (A) and (B) of the proposed rule are needed and reasonable; that the objections of the Hearing Examiner with respect to confining the proposed rule to Chapter 339 have been met by deleting the reference to Minnesota Statutes, Chapter 161.

III

That section C of the proposed rule is needed and reasonable and that the Hearing Examiner's objection with respect to subsection 6 has been met by deleting the portion of the rule restricting the application of the definition to bridges over 20 feet in length.

IV

That section D of the proposed rule is needed and reasonable; that the Hearing Examiner's objection to the application process has been met by amending subsection (1) (c) to permit local units of government to submit applications independently; and that the Hearing Examiner's suggested clarification in adding the words "other than urban municipal or trunk highway bridges" has been adopted.

V

That section E of the proposed rule is needed and reasonable; that the Hearing Examiner's suggestion in improving a 30 day time limit on RDC review has been adopted and that the Hearing Examiner's objection to subsection 2 of the proposed rule has been met by eliminating the same.

VI

That section F of the proposed rule is needed and reasonable and that the Hearing Examiner's objection to establishing criteria for priority has been met by the rewording of subsection 1.

VII

That the Hearing Examiner's objection to section G of the proposed rule has been met by the deletion of said subsection G.

VIII

That the final proposed rules are not substantially different from those proposed at the public hearing and that the Department of Transportation has met all requirements of Minn. Stat. 15.0412, Subd. 4.

STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION

Jim Harrington
Commissioner

Dated this 15th day of February, 1977.