

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 821

new submission 7-9-82

RULE REVIEW CHECKLIST

DATE RULE RECEIVED ~~5-27-82~~
DATE FOR REVIEW ~~6-4-82~~ 7-19-82
DATE DUE ~~6-10-82~~ 7-23-82 withdrawn

Adopted w/a hearing
Adopted w/o hearing ✓
Temporary rule

Approved 7-23-82 Disapproved Returned to Agency 7-26-82

Resubmitted ~~7-9-82~~ Due ~~7-19-82~~
Approved Disapproved Returned to Agency

Date filed w/Secretary of State 7-26-82 Revisor approved 7/12/82 5/14/82
disapproved

GREEN indicates new submission

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 5.27.82 Date 7.9.82

✓ Notice of Intent to Solicit Outside Opinion SR 3.23.81 + comments

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
4.6.82 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
4.12.82 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

Chief Hearing Examiner's Report(s)
Approving H.E.'s Report
Approving agency action

Agency's Findings of Fact see Order Adopting

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

✓ Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General
Misstate number of days this office will allow for comment.

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO RICHARD P. BRAUN
Commissioner of Transportation

DATE: 7/23/82

ATTN: GILBERT S. BUFFINGTON, Spec. Ass't. Atty. Gen.

FROM : LARRY D. STARNS
Special Assistant
Attorney General

PHONE: 297-3493

SUBJECT: In the Matter of the Proposed Adoption of Rules of the Department of Transportation Relating to Implementation of the State Rail Bank Program

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register. This must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

LDS:drw
Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : STEVE BUFFINGTON
Special Assistant
Attorney General

DATE: 6/24/82

FROM : JUDITH V. WEHRWEIN JVW
Legal Assistant

PHONE: 297-3471

SUBJECT: Rail Bank Rules

When the above-referenced rules are submitted to this office, please reference our file No. 821. Thank you.

JVW:drw

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Mike Miles
Assistant Attorney General

DATE: June 10, 1982

FROM : Steve Buffington
Special Assistant
Attorney General
515 Transportation Bldg. Office

PHONE: 6-6596

SUBJECT: Rail Bank rules

RECEIVED
JUN 14 1982
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Mike, please send back the above-referenced rules to me, as my client, the Minnesota Department of Transportation, desires to make minor and non-substantive changes and resubmit very shortly.

Thanks very much.

SB:jmr

List of Documents Submitted to the Attorney General Pertaining to the Adoption of Rules Without a Hearing for the Implementation of the State Rail Bank Program for the Minnesota Department of Transportation.

1. Notice of Intent to Solicit Outside Opinion:

   a. Original Notice.
   b. State Register dated March 23, 1981.
   c. Mailing lists, Affidavit of Mailing, and Certificate of Completeness.

2. Order for Notice of Intent to Adopt Rules Without Public Hearing.

3. Comments received by the Department in response to the Notice of Intent to Solicit Outside Opinion.

4. Department response to comments received due to the Notice of Intent to Solicit Outside Opinion.

5. Notice of Intent to Adopt Rules Without a Public Hearing:

   a. Original Notice.
   b. State Register dated April 12, 1982.
   c. Rules as Proposed.
   d. Statement of Need and Reasonableness, and list of persons who requested a copy.
   e. Mailing lists, Affidavit of Mailing, and Certificate of Completeness.

6. Comments received by the Department in response to the Notice of Intent to Adopt Rules Without a Public Hearing (note: No requests for a hearing were received. One change was made to 14 MCAR 1.4012 in response to a comment.)

7. Department response to comments received due to the Notice of Intent to Adopt Rules Without a Hearing.

8. Order Adopting Rules, and Adopted Rules.

9. Statement of Compliance with Rule Making Procedures.

10. Affidavit of Mailing Notice of Submission to the Attorney General.

11. Notice of Submission to the Attorney General.

Department of Transportation

Public Transportation/Planning Division

Adopted Rules Relating to the Implementation of the State Rail Bank Program

Rules as Adopted

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

A. Acquire. "Acquire" means to purchase a rail line with state funds provided for the state rail bank program.

B. Betterments. "Betterments" means required improvements made to acquired property to prepare the property for continued rail use.

C. Commissioner. "Commissioner" means the Commissioner of the Minnesota Department of Transportation.

D. Continued rail operations. "Continued rail operations" means the utilization of a rail line for rail service upon acquisition or in the near or immediate future after acquisition.

E. Convey. "Convey" means to sell, lease, or grant an easement for the use of rail bank property for the purposes cited in Minn. Stat. S 222.63, subd. 4.

F. Department. "Department" means the Minnesota Department of Transportation.

G. Dispose. "Dispose" means to convey property to a governmental subdivision of the state for any of the purposes in Minn. Stat. S 222.63, subd. 4, or to sell the property as provided in Minn. Stat. S 222.63, subd. 5.

H. Other uses. "Other uses" means any uses of banked property other than those specified in Minn. Stat. S 222.63, subd. 2b.

I. Preserve. "Preserve" means to hold rail bank property during the period of time it is not being utilized for the purposes specified in Minn. Stat. S 222.63, subd. 2b.

J. Project. "Project" means any rail line proposed for acquisition, and rail lines actually acquired under the program.

K. Program. "Program" means the state rail bank program.

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

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

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

14 MCAR S 1.4011 Program criteria.

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

B. Funding criteria.

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

a. the availability of program funds;

b. the probability of the rail line being utilized for the purpose identified;

c. the likelihood that an alternative rail line right-of-way could not be reestablished in the future;

d. the adequacy of the title and the costs to cure any defects in the title; and

e. the likelihood that no other entity will acquire a the rail line for an appropriate use.

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

a. rail lines that are to be utilized for continued rail operations;

b. rail lines that are needed as part of the future overall rail system;

c. rail lines that have an identified future use that will benefit a greater portion of the state; and

d. rail lines where the identified future utilization includes more than one use.

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

1. the costs of the project compared to the benefits resulting from the project;

2. a detailed plan of operations for the rail line; and

3. a detailed plan providing for financing of the project.

14 MCAR S 1.4012 Acquisition of rail bank property.

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

1. a statement that the list is published pursuant to Minn. Stat. S 222.63, subd. 3;

2. the name, length, and owning railroad of each line;

3. the counties where each line is located;

4. any identified future uses for each line;

5. the abandonment status of each line;

6. the name, address, and telephone number of the department's contact person; and

7. other pertinent information.

B. Initiation of title search. A title search of the property proposed for acquisition shall be initiated after the procedures under A. have been completed. For a rail ~~lines~~ line not yet abandoned, a title search shall be initiated after the owning railroad has filed an abandonment application with the appropriate decision making authority. To inform the public of its action the department shall publish a notice in at least one newspaper of general circulation in ~~the area~~ each county where

the line is located.

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

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

E. Notification to railroads. The department shall send a notice to each railroad that owns a rail line proposed for acquisition at the following times:

1. when the initial and subsequent lists of proposed acquisitions is published pursuant to A.;

2. when the public meeting notices are published pursuant to C.; and

3. when the department publishes notice of its decision pursuant to D.

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

14 MCAR S 1.4013 Utilization of rail bank property.

A. Notice to utilize rail bank property. The commissioner shall publish notice in the State Register when the department is considering utilizing banked property. The notice shall also

be published once a week for two consecutive weeks in at least one newspaper of general circulation in ~~the area~~ each county where the property is located. The published notice shall include the following:

1. a statement that the notice is published pursuant to Minn. Stat. S 222.63, subd. 3;

2. the identifying name, length in miles, and acres of land of the property;

3. the counties where the property is located;

4. the purpose of the proposed use and the conditions under which the property would be utilized;

5. the name, address, and telephone number of the department's contact person; and

6. other pertinent information.

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

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

14 MCAR S 1.4014 Disposition of rail bank property.

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

county where the property is located. The published notice shall include the following:

1. a statement that the notice is published pursuant to Minn. Stat. S 222.63, subd. 3;

2. the identifying name, length in miles, and acres of land of the property;

3. the counties where the property is located;

4. the reasons for and the conditions of the disposal;

5. the name, address, and telephone number of the department's contact person; and

6. other pertinent information.

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

C. Decision to dispose of property. The commissioner shall decide whether or not to dispose of property after the public meeting. The department shall publish notice of its decision in at least one newspaper of general circulation in ~~the area~~ each county where the rail line is located. When the property is to be sold because it has not been utilized, the notice shall include the following:

1. a statement noting the required six-month period which allows owners of private property adjacent to the banked property to make offers to purchase the property from the department; and

2. the name, address, and telephone number of the department's contact person.

14 MCAR S 1.4015 Management of banked property.

A. Maintenance and other uses during preservation of property. Rail bank property shall be maintained and may be

leased for other uses while it is being preserved in the program. Proposed other uses for rail bank property shall be considered if they meet one or more of the following conditions:

1. uses which were in effect prior to department acquisition of the property;

2. uses that minimize maintenance costs and maximize income to the program;

3. uses which are not in conflict with adjacent land uses; and

4. uses that provide a benefit to the state.

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

14 MCAR S 1.4016 Administration of the state rail bank program.

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

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

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

1. A variance shall be granted if:

a. the ~~rationale for~~ purpose of the rule in question can be ~~met~~ accomplished or exceeded by the specific alternate practice proposed for substitution;

b. the application of the rule in question would

impose an excessive burden on the person or entity applying for the variance in attempting to carry out the intent of the program; and

c. the granting of the variance will not adversely affect the public health and safety.

2. The commissioner shall set forth in writing the reasons for granting or denying a variance.

3. The person or entity who is granted a variance shall comply with the alternative practice granted by the commissioner.

4. The person or entity who is granted a variance shall immediately notify the department of any material changes in the circumstances which justified granting the variance.

5. A variance shall be revoked if material changes occur in the circumstances which justified the variance, or if the person or entity who was granted the variance fails to comply with the alternative practice granted by the commissioner.

APPROVED AS TO LEGALITY

July 23, 1982

WARREN SPANNAUS, ATTORNEY GENERAL

BY Jerry D. Thorne

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUL 26 1982
Joan Anderson Growe
Secretary of State

9:55
A.M.

Rules as Proposed (all new material)

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

A. Acquire. "Acquire" means to purchase a rail line with state funds provided for the state rail bank program.

B. Betterments. "Betterments" means required improvements made to acquired property to prepare the property for continued rail use.

C. Commissioner. "Commissioner" means the Commissioner of the Minnesota Department of Transportation.

D. Continued rail operations. "Continued rail operations" means the utilization of a rail line for rail service upon acquisition or in the near or immediate future after acquisition.

E. Convey. "Convey" means to sell, lease, or grant an easement for the use of rail bank property for the purposes cited in Minn. Stat. S 222.63, subd. 4.

F. Department. "Department" means the Minnesota Department of Transportation.

G. Dispose. "Dispose" means to convey property to a governmental subdivision of the state for any of the purposes in Minn. Stat. S 222.63, subd. 4, or to sell the property as provided in Minn. Stat. S 222.63, subd. 5.

H. Other uses. "Other uses" means any uses of banked property other than those specified in Minn. Stat. S 222.63, subd. 2b.

I. Preserve. "Preserve" means to hold rail bank property during the period of time it is not being utilized for the purposes specified in Minn. Stat. S 222.63, subd. 2b.

J. Project. "Project" means any rail line proposed for acquisition, and rail lines actually acquired under the program.

K. Program. "Program" means the state rail bank program.

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

M. Railroad. "Railroad" means a rail carrier as defined in

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the Interstate Commerce Act, 49 United States Code, Section 10102(4), (18) and (19).

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

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

B. Funding criteria.

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

a. the availability of program funds;

b. the probability of the rail line being utilized for the purpose identified;

c. the likelihood that an alternative rail line right-of-way could not be reestablished in the future;

d. the adequacy of the title and the costs to cure any defects in the title; and

e. the likelihood that no other entity will acquire a rail line for an appropriate use.

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

a. rail lines that are to be utilized for continued rail operations;

b. rail lines that are needed as part of the future overall rail system;

c. rail lines that have an identified future use that will benefit a greater portion of the state; and

d. rail lines where the identified future utilization includes more than one use.

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

1. the costs of the project compared to the benefits

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resulting from the project;

2. a detailed plan of operations for the rail line; and

3. a detailed plan providing for financing of the project.

14 MCAR S 1.4012 Acquisition of rail bank property.

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

1. a statement that the list is published pursuant to Minn. Stat. S 222.63, subd. 3;

2. the name, length, and owning railroad of each line;

3. the counties where each line is located;

4. any identified future uses for each line;

5. the abandonment status of each line;

6. the name, address, and telephone number of the department's contact person; and

7. other pertinent information.

B. Initiation of title search. A title search of the property proposed for acquisition shall be initiated after the procedures under A. have been completed. For rail lines not yet abandoned, a title search shall be initiated after the owning railroad has filed an abandonment application with the appropriate decision making authority. To inform the public of its action the department shall publish a notice in at least one newspaper of general circulation in the area where the line is located.

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

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three days after publication of the notice. At least one meeting shall be held in the area where the rail line is located.

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

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

14 MCAR S 1.4013 Utilization of rail bank property.

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

1. a statement that the notice is published pursuant to Minn. Stat. S 222.63, subd. 3;

2. the identifying name, length in miles, and acres of land of the property;

3. the counties where the property is located;

4. the purpose of the proposed use and the conditions under which the property would be utilized;

5. the name, address, and telephone number of the department's contact person; and

6. other pertinent information.

B. Public information meeting. After the procedures under A. have been completed, the department shall conduct at least one public meeting to provide information on the proposal for

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utilization and to seek comments. Notice of the meeting shall be given by publication in at least one newspaper of general circulation in the area where the rail line is located. The meeting shall be held at least three days after publication of the notice. At least one meeting shall be held in the area where the property is located.

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

14 MCAR S 1.4014 Disposition of rail bank property.

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

1. a statement that the notice is published pursuant to Minn. Stat. S 222.63, subd. 3;

2. the identifying name, length in miles, and acres of land of the property;

3. the counties where the property is located;

4. the reasons for and the conditions of the disposal;

5. the name, address, and telephone number of the department's contact person; and

6. other pertinent information.

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

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meeting shall be held at least three days after publication of the notice. At least one meeting shall be held in the area where the property is located.

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

1. a statement noting the required six-month period which allows owners of private property adjacent to the banked property to make offers to purchase the property from the department; and

2. the name, address, and telephone number of the department's contact person.

14 MCAR S 1.4015 Management of banked property.

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

1. uses which were in effect prior to department acquisition of the property;

2. uses that minimize maintenance costs and maximize income to the program;

3. uses which are not in conflict with adjacent land uses; and

4. uses that provide a benefit to the state.

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

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property.

14 MCAR S 1.4016 Administration of the state rail bank program.

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

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

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

1. A variance shall be granted if:

a. the rationale for the rule in question can be met or exceeded by the specific alternate practice proposed for substitution;

b. the application of the rule in question would impose an excessive burden on the person or entity applying for the variance in attempting to carry out the intent of the program; and

c. the granting of the variance will not adversely affect the public health and safety.

2. The commissioner shall set forth in writing the reasons for granting or denying a variance.

3. The person or entity who is granted a variance shall comply with the alternative practice granted by the commissioner.

4. The person or entity who is granted a variance shall immediately notify the department of any material changes in the circumstances which justified granting the variance.

5. A variance shall be revoked if material changes occur in the circumstances which justified the variance, or if the person or entity who was granted the variance fails to comply with the alternative practice granted by the commissioner.

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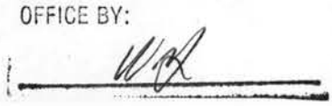


OFFICE OF THE REVISOR OF STATUTES
PROPOSED RULES

RD157
1-5-82

Agency: Department of Transportation

Division: Public Transportation

Agency Contact: Donnarae McKenzie Phone Number: 296-8627

Title: Proposed Rules Relating to the State Rail Bank Program

Type of Rules: Permanent X Temporary ____

Incorporations by References:

Rule Number	Material Incorporated Author Title Place Publisher Date Cost Places Available

See Additional references on back Yes ____ No X

Duplication of Statutory Language: None

Rule Number	Statutory Section Duplicated

The attached rules are approved as to form.

Steven C. Cross
Revisor of Statutes

Name: Ward P. Gronfield
Ward P. Gronfield

Title: Deputy Revisor

Phone: 296-0945

AG copy

Department of Transportation

Public Transportation/Planning Division

previously submitted rule

Adopted Rules Relating to the Implementation of the State Rail Bank Program

Rules as Adopted

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

A. Acquire. "Acquire" means to purchase a rail line with state funds provided for the state rail bank program.

B. Betterments. "Betterments" means required improvements made to acquired property to prepare the property for continued rail use.

C. Commissioner. "Commissioner" means the Commissioner of the Minnesota Department of Transportation.

D. Continued rail operations. "Continued rail operations" means the utilization of a rail line for rail service upon acquisition or in the near or immediate future after acquisition.

E. Convey. "Convey" means to sell, lease, or grant an easement for the use of rail bank property for the purposes cited in Minn. Stat. S 222.63, subd. 4. amended by Laws 82, Ch. 424, §60

F. Department. "Department" means the Minnesota Department of Transportation.

G. Dispose. "Dispose" means to convey property to a governmental subdivision of the state for any of the purposes in Minn. Stat. S 222.63, subd. 4, or to sell the property as provided in Minn. Stat. S 222.63, subd. 5.

H. Other uses. "Other uses" means any uses of banked property other than those specified in Minn. Stat. S 222.63, subd. 2b.

I. Preserve. "Preserve" means to hold rail bank property during the period of time it is not being utilized for the purposes specified in Minn. Stat. S 222.63, subd. 2b.

J. Project. "Project" means any rail line proposed for acquisition, and rail lines actually acquired under the program.

K. Program. "Program" means the state rail bank program.

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

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

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

14 MCAR S 1.4011 Program criteria.

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

B. Funding criteria.

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

a. the availability of program funds;

b. the probability of the rail line being utilized for the purpose identified;

c. the likelihood that an alternative rail line right-of-way could not be reestablished in the future;

d. the adequacy of the title and the costs to cure any defects in the title; and

e. the likelihood that no other entity will acquire a rail line for an appropriate use.

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

a. rail lines that are to be utilized for continued rail operations;

b. rail lines that are needed as part of the future overall rail system;

c. rail lines that have an identified future use that will benefit a greater portion of the state; and

d. rail lines where the identified future utilization includes more than one use.

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

1. the costs of the project compared to the benefits resulting from the project;

2. a detailed plan of operations for the rail line; and

3. a detailed plan providing for financing of the project.

14 MCAR S 1.4012 Acquisition of rail bank property.

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

1. a statement that the list is published pursuant to Minn. Stat. S 222.63, subd. 3;

2. the name, length, and owning railroad of each line;

3. the counties where each line is located;

4. any identified future uses for each line;

5. the abandonment status of each line;

6. the name, address, and telephone number of the department's contact person; and

7. other pertinent information.

B. Initiation of title search. A title search of the property proposed for acquisition shall be initiated after the procedures under A. have been completed. For rail lines not yet abandoned, a title search shall be initiated after the owning railroad has filed an abandonment application with the appropriate decision making authority. To inform the public of its action the department shall publish a notice in at least one newspaper of general circulation in the area where the line is located.

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

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

E. Notification to railroads. The department shall send a notice to each railroad that owns a rail line proposed for acquisition at the following times:

1. when the initial and subsequent lists of proposed acquisitions is published pursuant to A.;

2. when the public meeting notices are published pursuant to C.; and

3. when the department publishes notice of its decision pursuant to D.

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

14 MCAR S 1.4013 Utilization of rail bank property.

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

property is located. The published notice shall include the following:

1. a statement that the notice is published pursuant to Minn. Stat. S 222.63, subd. 3;

2. the identifying name, length in miles, and acres of land of the property;

3. the counties where the property is located;

4. the purpose of the proposed use and the conditions under which the property would be utilized;

5. the name, address, and telephone number of the department's contact person; and

6. other pertinent information.

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

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

14 MCAR S 1.4014 Disposition of rail bank property.

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

1. a statement that the notice is published pursuant to Minn. Stat. S 222.63, subd. 3;

2. the identifying name, length in miles, and acres of land of the property;

3. the counties where the property is located;

4. the reasons for and the conditions of the disposal;

5. the name, address, and telephone number of the department's contact person; and

6. other pertinent information.

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

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

1. a statement noting the required six-month period which allows owners of private property adjacent to the banked property to make offers to purchase the property from the department; and

2. the name, address, and telephone number of the department's contact person.

14 MCAR S 1.4015 Management of banked property.

A. Maintenance and other uses during preservation of property. Rail bank property shall be maintained and may be leased for other uses while it is being preserved in the program. Proposed other uses for rail bank property shall be

considered if they meet one or more of the following conditions:

1. uses which were in effect prior to department acquisition of the property;

2. uses that minimize maintenance costs and maximize income to the program;

3. uses which are not in conflict with adjacent land uses; and

4. uses that provide a benefit to the state.

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

14 MCAR S 1.4016 Administration of the state rail bank program.

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

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

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

1. A variance shall be granted if:

a. the rationale for the rule in question can be met or exceeded by the specific alternate practice proposed for substitution;

b. the application of the rule in question would impose an excessive burden on the person or entity applying for the variance in attempting to carry out the intent of the

program; and

c. the granting of the variance will not adversely affect the public health and safety.

2. The commissioner shall set forth in writing the reasons for granting or denying a variance.

3. The person or entity who is granted a variance shall comply with the alternative practice granted by the commissioner.

4. The person or entity who is granted a variance shall immediately notify the department of any material changes in the circumstances which justified granting the variance.

5. A variance shall be revoked if material changes occur in the circumstances which justified the variance, or if the person or entity who was granted the variance fails to comply with the alternative practice granted by the commissioner.

STATE OF MINNESOTA

DEPARTMENT OF TRANSPORTATION

In the Matter of the Proposed Adoption of Rules of the Department of Transportation Relating to Implementation of the State Rail Bank Program.	ORDER ADOPTING RULES

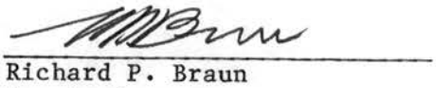
- -

Notice of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on April 12, 1982 and was sent by the United States mail to all persons on the list maintained by the department pursuant to Minnesota Statutes §15.0412, subdivision 4 on the 6th day of April, 1982. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven written requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules,

NOW THEREFORE, IT IS ORDERED that these rules identified as Rules of the Department of Transportation Relating to Implementation of the State Rail Bank Program are adopted with the following changes this 27th day of May, 1982 pursuant to authority vested in me by Minnesota Statutes §§ 15.0412 and 222.63.

Please take note that rule 14 MCAR §1.4012 "Acquisition of rail bank property" has been amended with the addition of language requiring the department to provide certain forms of notice concerning departmental actions to the concerned railroads during its proceedings to acquire rail bank property.

STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION



Richard P. Braun
Commissioner

STATE OF MINNESOTA

DEPARTMENT OF TRANSPORTATION

In the Matter of the Proposed Adoption of Rules of the Department of Transportation Relating to Implementation of the State Rail Bank Program.	ORDER ADOPTING RULES

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NOW, THEREFORE, IT IS ORDERED that these rules identified as Rules of the Department of Transportation Relating to Implementation of the State Rail Bank Program are adopted with the following changes this 9th day of July, 1982 pursuant to authority vested in me by Minnesota Statutes §§ 15.0412 and 222.63.

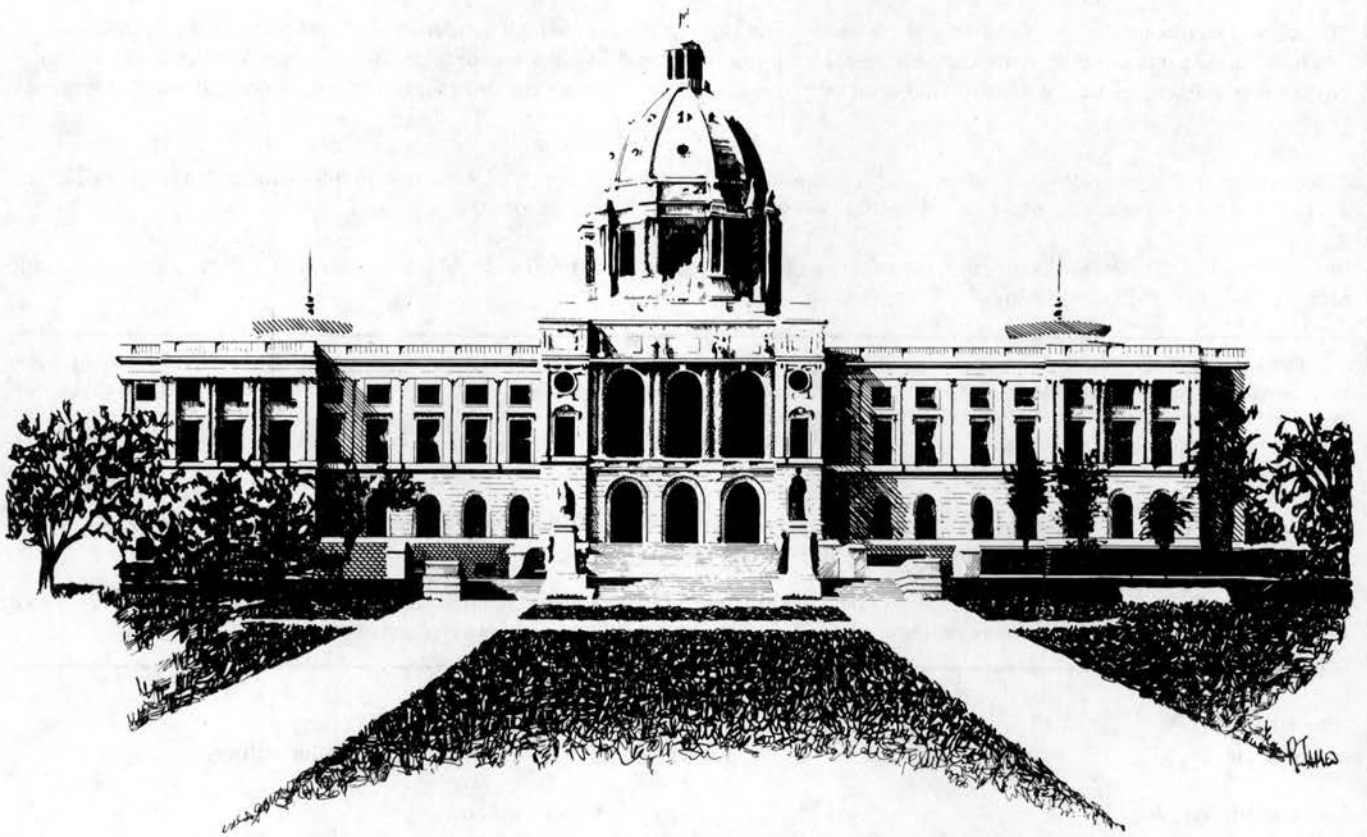
Please take note that rule 14 MCAR § 1.4012 "Acquisition of rail bank property" has been amended with the addition of language requiring the department to provide certain forms of notice concerning departmental actions to the concerned railroads during its proceedings to acquire rail bank property.

STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION

for Richard P. Braun
Commissioner

STATE REGISTER

STATE OF MINNESOTA



VOLUME 5, NUMBER 38

March 23, 1981

Pages 1475-1518

STATE REGISTER

Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
	SCHEDULE FOR VOLUME 5		
39	Monday Mar 16	Monday Mar 23	Monday Mar 30
40	Monday Mar 23	Monday Mar 30	Monday Apr 6
41	Monday Mar 30	Monday Apr 6	Monday Apr 13
42	Monday Apr 6	Monday Apr 13	Monday Apr 20

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

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

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The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

Albert H. Quie
Governor

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Commissioner
Department of Administration

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

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

The PROPOSED RULES section contains:

- Calendar of Public Hearings on Proposed Rules.
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
- Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
- Notice of adoption of temporary rules.
- Adopted amendments to temporary rules (changes made since the proposed version was published).

All ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* will be published in the Minnesota Code of Agency Rules (MCAR). Proposed and adopted TEMPORARY RULES appear in the *State Register* but are not published in the MCAR due to the short-term nature of their legal effectiveness.

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

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Issues 14-25, inclusive
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Mar 27	State Board of Education Department of Education Prohibition of Discriminatory Practices in Athletic Programs in Public and Elementary Schools Hearing Examiner: George Beck	9:00 a.m., Room D, Veterans Services Building, 20 W. 12th Street & Columbus Avenue St. Paul, MN 55155
Apr 2	State Board of Education Department of Education Licensure Requirements for Head Varsity Coaches of Interscholastic Sports in Senior High Schools Hearing Examiner: Peter Erickson	9:00 a.m., Room D, Veterans Services Building 20 W. 12th Street & Columbus Avenue, St. Paul, MN 55155
Apr 3	State Board of Education Department of Education Standards & Procedures of Special Education Instruction & Services for Children & Youth Who Are Handicapped Hearing Examiner: Jon Lunde	9:00 a.m., Room D, Veterans Services Building, 20 W. 12th Street & Columbus Avenue, St. Paul, MN 55155

PROPOSED RULES

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

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

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

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Agriculture
Dairy Industries Division

Proposed Amendments to Rules Governing Grade A Requirements for Milk, Milk Products, and Goat Milk (Chapter 47: AGR 1149-1167)

Notice of Intent to Adopt Rules without A Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture proposes to adopt amendments to the above-entitled rules without a public hearing. The commissioner has determined that the proposed adoption of these amendments to the rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, § 15.0412, subdivision 4h (1980).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, § 15.0412, subdivisions 4-4f. If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language and the reasons or data relied on to support the suggested modifications is desired.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, Minnesota 55107, (612) 296-1486.

Authority for the adoption of these rules is contained in Minnesota Statutes, § 32.394, subdivision 4. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments to the rules and identifies the data and information relied upon to support the proposed amendments to the rules has been prepared and is available from Mr. Heil upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Mr. Heil.

The amendments are proposed in order to adopt an updated version of the federal standard for the identity, production, and processing of Grade A milk, milk products, and goat milk. The 1965 Recommendations of this federal standard, the Grade A Pasteurized Milk Ordinance, are currently used in Minnesota. The proposed amendments would incorporate the 1978 Recommendations of the Grade A Pasteurized Milk Ordinance, identify for Grade A designation in Minnesota milk products included in Supplement I to the 1978 Recommendations, and make minor technical and grammatical changes. If adopted, the

proposed amendments to the rules would assure continued interstate acceptance of Minnesota milk and milk products and assure consumers an adequate supply of safe and wholesome Grade A milk, milk products, and goat milk.

Please be advised that Minnesota Statutes, Chapter 10A requires each lobbyist to register with the Ethical Practices Board within five days after he/she becomes a lobbyist. Lobbying includes attempting to influence rulemaking by communicating or using others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, (612) 296-5615.

Copies of this Notice and proposed amendments to the rules are available and may be obtained by contacting Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, Minnesota 55107, (612) 296-1486.

Mark W. Seetin
Commissioner of Agriculture

Amendments as Proposed

3 MCAR § 1.1149 Purpose and authority.

A. Purpose. A regulation defining "milk", "condensed milk," "dry milk products," "condensed whey," "dry whey," "cottage cheese," and certain "milk products," "milk producer," "pasteurization," etc.; prohibiting the sale of adulterated and misbranded milk and milk products; requiring permits for the sale of Grade A milk and Grade A milk products; regulating the inspection of Grade A dairy farms and Grade A milk plants, the examination, grading, labeling, pasteurization, distribution and sale of Grade A milk and Grade A milk products; providing for the construction of future Grade A dairies and Grade A milk plants, and the enforcement of this regulation. ~~and the fixing of penalties.~~

B. Authority. The rules contained herein are prescribed pursuant to Minn. Stat. § 32.394, subd. 4 by the commissioner to provide regulations regarding the identity, production and processing standards for milk, milk products and goat milk which are intended to bear the Grade A label.

C. Definitions. As used in 3 MCAR § 1.1149 through 3 MCAR § 1.1167, the following definitions shall apply:

1. "Regulatory agency" shall mean the commissioner of the Minnesota Department of Agriculture.

2. "Grade A Pasteurized Milk Ordinance" shall mean the "Grade A Pasteurized Milk Ordinance—1978 Recommendations" and the "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey—Supplement I to the Grade A Pasteurized Milk Ordinance 1978 Recommendations", including all footnotes and appendixes, standards of the United States Public Health Service/Food and Drug Administration. A copy of this ordinance shall be filed in the office of the regulatory agency.

3 MCAR § 1.1150 ~~Agr 1149~~ Enforcement. The production, transportation, processing, handling, sampling, examination, grading, labeling, and sale of all milk and milk products intended to bear the Grade A label and sold for ultimate consumption within the state of Minnesota, including the inspection of dairy herds, dairy farms, milk plants, receiving stations and transfer stations and the issuing and revocation of permits to milk producers, haulers, distributors, milk plants, receiving stations and transfer stations, shall be regulated in accordance with the provisions of ~~Part II of~~ the 1978 Grade A Pasteurized Milk Ordinance, ~~1965 Recommendations of the U.S. Public Health Service,* including footnotes,~~ with the following exceptions:

A. ~~(a)~~ [Omit Sections 9, 16 and 17 in their entirety.]

~~(b) Omit footnote 2 as it relates to the definitions for cream, light cream, coffee cream, table cream, whipping cream, light whipping cream, heavy cream, heavy whipping cream, cottage cheese and creamed cottage cheese.~~

~~(c) Definitions for egg nog and egg nog flavored milk as set forth in Agr 1150 and Agr 1151 below shall be included in the definition of milk products (Section 1.0).~~

B. The definitions of egg nog flavored milk and cottage cheese as set forth in 3 MCAR § 1.1151 and 3 MCAR § 1.1152 below shall be included in the definition of milk products.

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

~~Agr 1150 Egg Nog. "Egg Nog." Egg nog is a milk product consisting of a mixture of milk or milk product of at least 6.0 per cent butterfat, at least 1.0 per cent egg yolk solids, sweetener and flavoring, emulsifier and not over 0.5 per cent stabilizer may be added. Egg nog shall be pasteurized in approved and properly operating equipment so that every particle is heated and continuously held for the following minimum specified times and temperatures:~~

~~155°F. and held at or above this temperature for at least 30 minutes.~~

~~175°F. and held at or above this temperature for at least 25 seconds".~~

3 MCAR § 1.1151 ~~Agr 1151~~ Egg nog flavored milk. ~~"Egg nog flavored milk~~ Egg nog flavored milk is a milk product consisting of a mixture of at least 3.25 per cent butterfat, at least 0.5 per cent egg yolk solids, sweetener, and flavoring~~,~~. e Emulsifier and a maximum of 0.5 per cent stabilizer may be added~~"~~. Egg nog flavored milk shall be pasteurized in approved and properly operating equipment so that every particle is heated and continuously held for the following minimum specified times and temperatures:

150° F. and held at or above this temperature for at least 30 minutes.

166° F. and held at or above this temperature for at least 16 seconds.

3 MCAR § 1.1152 Cottage cheese defined.

A. Cottage cheese. Cottage cheese is that product defined in the "Code of Federal Regulations," Title 21, Section 133.128.

B. Dry curd cottage cheese. Dry curd cottage cheese is that product defined in the "Code of Federal Regulations," Title 21, Section 133.129.

C. Lowfat cottage cheese. Lowfat cottage cheese is that product defined in the "Code of Federal Regulations," Title 21, Section 133.131.

~~Agr 1152 Health Authority. "Health authority" as used herein shall mean the commissioner.~~

3 MCAR § 1.1153 ~~Agr 1153~~ Minimum requirements. All references herein to municipalities, municipal ordinances or police jurisdiction shall refer to the local subdivisions of state government having jurisdiction, provided such local ~~subdivision's~~ subdivisions' standards are not inconsistent herewith. In all other cases the provisions of this chapter shall apply and the state of Minnesota shall be the proper legal jurisdiction.

3 MCAR § 1.1154 ~~Agr 1154~~ Examination of milk and milk products. Sampling procedures and laboratory examinations ~~as set forth in Section 6~~ shall be in substantial compliance with the ~~Eleventh~~ Fourteenth Edition of Standard Methods for the Examination of Dairy Products of the American Public Health Association, and the ~~Tenth~~ Thirteenth Edition of Official Methods of Analysis of the Association of Official ~~Agricultural~~ Analytical Chemists.

~~Agr 1155 Unconstitutionality clause. The various provisions of this regulation shall be severable, and if any part or provision shall be held to be invalid, it shall not be held to invalidate any other part or provision thereof.~~

~~Agr 1156 Effective date. The regulation shall be effective July 1, 1967.~~

~~*A certified copy of the Grade A Pasteurized Milk Ordinance—1965 Recommendations of the U.S. Public Health Service shall be filed in the office of the Commissioner.~~

3 MCAR §§ 1.1155-1.1167 ~~Agr 1157-1167~~ [Reserved for future use.]

~~Filed 6-14-67~~

Department of Revenue
Property Equalization Division

Proposed Rules Governing the Apportionment of the Value of Railroad Operating Property to Counties and Taxing Districts

Notice of Intent to Adopt Rules without A Public Hearing

Notice is hereby given that the State of Minnesota Department of Revenue proposes to adopt the above-entitled rules without a public hearing. The commissioner has determined that the proposed adoption of these rules will be uncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, § 15.0412, subdivision 4h (1980).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, § 15.0412, subdivisions 4-4f.

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

Gerald D. Garski, Manager
State Assessed Properties
Property Equalization Division
Minnesota Department of Revenue
Centennial Office Building
St. Paul, MN 55145
(612) 296-5131

Authority for the adoption of these rules is contained in Minnesota Statutes, §§ 270.06 (14), 270.81 subd. 5 and specifically 270.86. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from G. D. Garski at the above listed address upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to G. D. Garski at the above listed address.

The rules proposed for adoption relate to the following matters: definitions of terms; general comments on the apportionment method; a description of the reporting requirements and computation of the three apportionment components of railroad operating land, miles of track, and railroad structures which will be used in the apportionment method; a narrative description and a comprehensive numerical example of the complete apportionment computation.

Copes of this Notice and the proposed rules are available and may be obtained by contacting G. D. Garski either in writing or by telephone.

Clyde E. Allen, Jr.
Commissioner of Revenue

Rules as Proposed

Chapter Two: Valuation and Assessment of Railroads

13 MCAR § 1.0022 Definitions. As used in this chapter, the following words, terms and phrases shall have the meanings given to them by this rule. Some of the words, terms and phrases listed below are defined by statute but are included here for completeness.

A. "Allocation" means the process by which a fair and reasonable portion of each railroad's total unit value is assigned to Minnesota for purposes of taxation.

B. "Apportionment" means the process of distributing that portion of the railroad's unit value which has been allocated to Minnesota after deducting exempt and non-operating property to the various counties and taxing districts in which the railroad company operates.

C. "Book depreciation" means the depreciation shown by a railroad company on its corporate books, and allowed the company by the Interstate Commerce Commission.

D. "Capitalization rate" means an anticipated rate of return from an investment; a rate at which income is processed (capitalized) to indicate the probable capital value. This rate is usually expressed as a percentage.

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

E. "Exempt property" means property which is non-taxable for ad valorem tax purposes by statutes. Examples of such property are approved pollution control equipment for which an exemption has been granted, and personal property otherwise exempt from taxation under Minn. Stat. ch. 272.

F. "I.C.C." means the Interstate Commerce Commission, a Federal regulatory agency.

G. "Mainline track" means all track reported to the I.C.C. by the respondent railroad as main line.

H.~~G.~~ "Non-operating property" means all property owned by a railroad company which does not fall under the definition of operating property. Non-operating property shall include real property which is leased or rented or available for lease or rent to any person which is not a railroad company. Vacant land shall be presumed to be available for lease or rent if it has not been used as operating property for a period of one year preceding the valuation date. It shall also include land which is not necessary and integral to the performance of railroad transportation services and which is not used on a regular and continual basis in the performance of these services.

I.~~H.~~ "Operating property" means all property owned or used on a regular and continual basis by a railroad company in the performance of railroad transportation services, including without limitation franchises, rights-of-way, bridges, trestles, shops, docks, wharves, buildings and structures.

J.~~I.~~ "Original cost" means the amount paid for an asset as recorded on the railroad's books in accordance with ICC accounting rules and regulations.

K.~~J.~~ "P.U.C." means the Minnesota Public Utilities Commission.

L.~~K.~~ "Railroad company" means any company which as a common carrier operates a railroad or a line or lines of railway situated within or partly within Minnesota.

M. "Structure" means all coal and ore wharves or docks, station houses, depots, shops, office buildings, and all other buildings with an original cost of over $10,000.

N.~~L.~~ "System" means the total tangible property, real and personal, of a company which is used in its railroad operations in all states in which it operates.

O.~~M.~~ "Unit value" means the value of the system of a railroad company taken as a whole without any regard to the value of its component parts.

P.~~N.~~ "Weighting" means the confidence or reliability given to a factor or indicator. It is usually expressed as a portion of 100%.

13 MCAR § 1.0027 Apportionment.

A. General. After the taxable Minnesota portion of the railroad's unit value has been determined this value must be distributed to the various counties and taxing districts in which the railroad operates. This distribution will be accomplished by the Commissioner of Revenue through the use of certain apportionment components. Each of the components in the apportionment method is a reflection of the property owned or used by the railroad within a particular taxing district. The figures making up these components will be developed on the basis of information submitted by the railroad companies in annual reports filed with the commissioner, and information supplied to the commissioner by the various county auditors and assessors.

B. Apportionment components. There are three components which will be used in the distribution of the value of railroad property to the various taxing districts. They are: railroad operating land, miles of track, and railroad operating structures with an original cost of $10,000 or more.

1. Railroad operating land. The information for the computation of this apportionment component will be based on information submitted by both the railroads and the various county auditors and assessors. The railroad companies shall file with the Commissioner of Revenue each year, in conjunction with their Annual Reports required by 13 MCAR § 1.0023 A., the number of acres of railroad operating land owned or used by them in each taxing district in which they operate. The county auditor shall also be requested to submit to the Commissioner of Revenue a report showing the number of acres of railroad operating land, detailed by owning railroad, in each taxing district within his county. If either the railroads or the auditors find that it is administratively impracticable to submit this information, the commissioner shall make an estimate of the number of acres of railroad operating land within each taxing district based on the best information available to him. Such information would usually consist of the miles of railroad track within the taxing district and the normal width of the right-of-way used by the railroad. In addition, information relative to the current estimated market value of all land within the respective taxing districts will be obtained from the county or city assessors by a review of the Abstract of Assessment of Real and Personal Property which the various assessors are required to submit yearly to the Commissioner of Revenue in compliance with Minn. Stat.

§ 273.061, subd. 9. A review will also be made of the Abstract of Assessment of Exempt Real Property which is submitted to the Commissioner of Revenue by the various assessors in compliance with Minn. Stat. § 273.18.

The computation for the railroad operating land apportionment component will be accomplished annually in the following manner:

a. The average estimated market value per taxable acre within a specific taxing district will be calculated by dividing the estimated market value of all taxable land within the taxing district (as indicated by the most recent Abstract of Assessment of Real and Personal Property) by the number of taxable acres within the taxing district. The number of acres within a taxing district will be obtained from the most recent statistics available from the Land Management Information Center, State Planning Agency. The total number of acres will be adjusted to allow for non-taxable or exempt acres by subtracting these non-taxable or exempt acres from the total acres. The number of non-taxable or exempt acres will be obtained from the most recent Abstract of Assessment of Exempt Real Property. The following example illustrates this calculation.

Estimated Market Value of All Taxable Land Within Taxing District		$200,000
Total Area of Taxing District	210 Acres	
Non-Taxable or Exempt Acres	10 Acres	
Taxable Acres within Taxing District		200
Average Estimated Market Value per Acre		$ 1,000

b. This average estimated market value per taxable acre is then applied to the number of acres of railroad operating land within the taxing district to compute a gross railroad operating land component within the taxing district. The following example illustrates this computation:

Average Estimated Market Value Per Acre	$1,000
Acres of Railroad Operating Land	× 5
Gross Railroad Operating Land Component	$5,000

c. This railroad operating land component will then be adjusted. This adjustment is achieved by striking a ratio between the System Unit Value for all Minnesota railroads as described in 13 MCAR § 1.0024 E to the total of Investment in Railway Property Used in Transportation Service as defined by the I.C.C. for all railroads operating in Minnesota. This relationship will be computed annually and will then be applied to the Gross Railroad Operating Land Component to arrive at the Adjusted Railroad Operating Land Component. This adjusted land value will then be used as one element of the apportionment computation.

The following is an example of how the Adjusted Railroad Operating Land Component is to be computed:

Railroad	System Unit Value	Investment in Railway Prop. Used in Trans. Services
ABC Railway	$20,000,000	$ 40,000,000
FGH Railway	5,256,000	8,000,000
JKL Railroad	2,000,000	4,780,830
MNO Railroad	50,000,000	90,000,000
XYZ Railroad	22,212,500	25,000,000
	$99,468,500	$165,780,830

Total System Unit Value ($99,468,500 ÷ Total Investment in Railway Property Used in Transportation Services ($165,780,830) = 60%

Gross Railroad Operating Land Component Within the Taxing District	$5,000
Adjustment Factor	60%
Adjusted Railroad Operating Land Component	$3,000

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2. Miles of track. The information for the computation of this apportionment component will be based on information submitted by the railroads to the Commissioner of Revenue in conjunction with the Annual Report required by 13 MCAR § 1.0023 A. Each railroad will be required to list the miles of track they own in each taxing district within Minnesota. The track must be separated into two classes; main line track and all other track.

In order to make the miles of track in each taxing district compatible with the other apportionment components, the miles must be converted to dollars. This conversion will be computed annually. The conversion will be accomplished by adding together the following I.C.C. accounts for each railroad's investment in Minnesota: Account 1 Engineering, Account 3 Grading, Account 8 Ties, Account 9 Rails, Account 10 Other Track Material, Account 11 Ballast, Account 12 Track Laying. The total of these accounts will then be divided by the number of miles of track operated by the respective railroads within Minnesota to obtain a cost per mile figure. This will be used as the average cost per mile for track within Minnesota.

The following is an example of how the average cost per mile of track in Minnesota will be computed.

Railroad	Total of Accts. #1,3,8,9,10,11,12	Mileage Operated in Minn.
ABC Railway	$4,000,000	154
FGH Railway	800,000	42
JKL Railroad	500,000	20
MNO Railroad	7,450,000	290
XYZ Railroad	2,500,000	104
	$15,250,000	610

Total cost of track ($15,250,000) ÷ Total miles operated (610)
= Average Cost per Mile of Track $ 25,000

An additional calculation is necessary to adjust this average cost per mile of track to allow for weighting. Mainline track shall be weighed at 1.5 times the cost of all other track; thus if the average cost per mile of track is $25,000, mainline track would be worth more than $25,000 per mile, while all other track would be worth less. The calculation for the average cost of both main line and all other track shall be made annually on an industry basis.

The calculation to determine the average cost per mile of mainline track and the average cost per mile of all other track will be computed in the following manner:

a. Total mileage operated will be multiplied by the average cost per mile to arrive at a total track cost.

b. Total mileage operated will be separated into the two types of track, main line and all other track.

c. Main line track will be multiplied by 1.5 to arrive at adjusted main line miles.

d. Adjusted main line miles will be added to all other track miles to arrive at adjusted total track miles.

e. Total track cost will be divided by adjusted total track miles to arrive at the cost per mile of all other track.

f. The cost per mile of main line track will be computed by multiplying the cost per mile of all other track by 1.5.

An illustration of this computation is as follows:

Railroad	Mileage Operated	Main Line Miles	All other Track Miles
ABC Railway	154	96	58
FGH Railway	42	10	32
JKL Railroad	20	15	5
MNO Railroad	290	132	158
XYZ Railroad	104	52	52
	610	305	305

Total Mileage Operated		610
Average Cost Per Mile of Track		$ 25,000
Total Track Cost		$15,250,000
Main Line Miles	305	
Weighting Factor	1.5	
Adjusted Main Line Miles	457.5	
Other Track Miles	305.0	
Adjusted Total Track Miles	762.5	

Total Track Cost	$15,250,000
Adjusted Total Track Miles	÷ 762.5
Average Cost Per Mile of Other Track	$ 20,000
Average Cost Per Mile of Other Track	$ 20,000
Weighting Factor	1.5
Average Cost Per Mile of Main Line Track	$ 30,000

After the per mile cost figures for main line and all other track are obtained, these per mile cost figures would be miltiplied by the length of each type of track in a particular taxing district to obtain the value of the trackage in that district. The same cost figures will be used for all railroads operating in Minnesota.

3. Structures. The information for the computation of this apportionment component will be based on statements submitted by the railroads. These schedules shall be submitted annually to the Commissioner of Revenue in conjunction with the Annual Report required by 13 MCAR § 1.0023 A. The schedules shall show the location, by taxing district, of all operating structures owned by the reporting railroad within Minnesota with an original cost of $10,000 or more. The schedules shall list a description of the structure and the railroad's current original cost investment in the structure as it appears in the appropriate I.C.C. account.

An example of this listing is as follows:

XYZ RAILROAD

Taxing District	Description	Original Cost
St. Paul, S.D. #625	Office Building	$400,000
Minneapolis, S.D. #1	Depot	20,000
Fridley, S.D. #16	Yard Tower	200,000
Anoka, S.D. #11	Engine and Car Shop	250,000
	Total	$870,000

C. Apportionment computation. After the three apportionment components have been calculated for each taxing district in which the railroad operates, the apportionment of the railroads taxable Minnesota portion of the unit value can begin. This apportionment is accomplished by totaling the value of the land, track, and structure components as developed in 13 MCAR § 1.0027 B.1., 2. and 3 for each taxing district, then finding the sum of these totals for all the taxing districts in which the subject railroad operates. The taxable Minnesota portion of the railroad's unit value is divided by this total value of the three apportionment components for all taxing districts in which the railroad operates in order to arrive at a percentage. This resulting percentage is then applied to the total value of the three apportionment components for each specific taxing district. The figure produced by this multiplication process is the taxing district's share of the railroad's taxable Minnesota portion of the unit value. It is important to note that no more value can be distributed to the various taxing districts than that produced by the valuation process described in 13 MCAR § 1.0021 to 1.0026 inclusive.

The following example illustrates the apportionment process:

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

ADOPTED RULES

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

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

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

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

Department of Administration Building Codes and Standards Division

Adopted Rule, National Electrical Code, 1981 Edition

The rule proposed and published at *State Register*, Volume 5, Number 30, p. 1159, January 26, 1981 (5 S.R. 1157) was adopted by the Commissioner of the Department of Administration, James J. Hiniker, Jr., February 26, 1981, approved by the Office of the Attorney General, March 4, 1981, and filed with the Office of the Secretary of State, March 6, 1981.

Rule as Adopted

2 MCAR § 1.18601 Electrical. Scope. All new electrical wiring, apparatus, and equipment for electric light, heat and power shall comply with the regulations contained in the 1981 edition of the National Electrical Code (NEC) as approved by the American National Standards Institute (ANSI-CI-1981) and Minn. Stats. 326.243 and the State Building Code as promulgated by the commissioner of administration. Synopsis as follows:

Office of Administrative Hearings

Adopted Rules Governing Revenue Recapture Act Hearings

The rules proposed and published at *State Register*, Volume 5, Number 22, pp. 867-873, December 1, 1980 (5 S.R. 867) are adopted with the following amendments:

Rules as Adopted

9 MCAR § 2.501 Scope and waiver of these rules.

A. Scope. These rules govern hearings between state agencies and ~~citizens~~ taxpayers based on the Revenue Recapture Act, (Laws of Minnesota 1980, Chapter 607, Article XII, to be codified as Minnesota Statutes, §§ 270A.01 to 270A.12 (1980)). In addition, these rules may be used for any other hearings conducted by the State Office of Administrative Hearings if all parties to a particular hearing agree to use them. In the event that these rules are used for a proceeding other than one arising under the Revenue Recapture Act, the parties shall agree upon appropriate substitutions for terms in the rules which are peculiar to the Revenue Recapture Act (example: claimant agency, debtor, etc.).

B. Waiver and modification. Upon request of all parties, the hearing examiner shall waive or modify any of these rules, provided that such waiver or modification does not conflict with any provision of Minn. Stat. §§ 15.0418 to 15.0426, § 15.052, or §§ 270A.01 to 270A.12 (1980).

9 MCAR § 2.502 Definitions.

A. Agency, claimant agency. Agency or claimant agency means the state or public agency asserting a claim to a tax refund.

B. Debtor. Debtor means a natural person whose tax refund is the subject of a claim by the claimant agency.

C. Party. Party means the claimant agency, the debtor, and any other persons granted permission to intervene pursuant to 9 MCAR § 2.506 of these rules.

D. Service, serve. Service or serve may be accomplished by either:

1. Delivering a document to an individual in person or by leaving a document at his/her home with some person of suitable age and discretion who resides in the same house. If a person is confined to a federal or state institution, a copy of the document must also be served upon the chief executive officer of the institution; or,

2. Mailing the document to the person by first class United States mail. Postage shall be prepaid. Mail to a person other than a state agency shall be addressed to the last known address of the person. Agencies of the State of Minnesota may also deposit the document with the Central Mailing Section, Publications Division, Department of Administration, addressed as above.

9 MCAR § 2.506 Additional parties—intervention.

A. Petition. Any person not named in the Notice of Hearing who desires to participate as a party shall submit a ~~timely~~ written petition to intervene to the examiner and shall serve a copy of the petition upon all existing parties and the agency. ~~Timeliness will be determined by the examiner in each case based on circumstances at the time of filing.~~ The petition shall show (1) how the petitioner's legal rights, duties, or privileges may be determined or affected by the proceeding, (2) shall set forth the grounds and purposes for which intervention is sought, and (3) shall indicate petitioner's statutory right to intervene if one should exist.

B. Objection. Any party may object to the petition for intervention by filing a written Notice of Objection with the examiner within seven days of service of the petition if there is sufficient time before the hearing. The Notice shall state the party's reasons for objection and a copy shall be served upon all parties, the person petitioning to intervene and the agency. If there is insufficient time before the hearing for such written objection, the objection may be made orally at the hearing.

C. Order. The examiner shall allow intervention upon a proper showing pursuant to paragraph A. above unless the examiner finds that the Petitioner's interest is adequately represented by one or more other parties participating in the case.

9 MCAR § 2.507 Prehearing procedures.

A. Prehearing conference. ~~If the amount in controversy in any case exceeds $1,000~~ Upon the request of any party or upon his/her own motion, the examiner ~~may~~ shall hold a prehearing conference prior to the hearing, if the amount in controversy in any case exceeds $1,000.

1. Purpose. The purpose of the prehearing conference is to simplify the issues to be determined at the hearing; to consider amendment of the agency's Notice if necessary; to obtain agreements in regard to uncontested facts or admissibility of testimony or exhibits; to determine the identity and number of proposed witnesses for each party; to consider such other matters that may be necessary or advisable; and, if possible, to reach a settlement without the necessity for further hearing.

2. Procedure. A prehearing conference shall be an informal proceeding conducted expeditiously by the examiner. Agreements on the simplification of issues, uncontested facts, admissibility of evidence, or other matters shall be either entered on the record at the hearing or be made the subject of a written order by the examiner.

B. Preharing motions. If a party desires the examiner to issue an order before the hearing or during a continuance in the hearing, (other than a request for a continuance or a subpoena), he/she shall make a request to the examiner in writing. The request shall state, in detail, the need for the order and what is being requested. A copy of the request shall be served upon all known parties. If a party is opposed to the granting of a motion, he should notify the examiner as soon as possible. Orders on motions may be either oral or written but the examiner shall notify all parties of record of the order.

9 MCAR § 2.509 Subpoenas.

A. Requests. A party desiring to compel the attendance of a witness or the production of documents shall file with the examiner a written request for a subpoena. The request shall indicate:

1. The name and address of the person upon whom the subpoena will be served;

2. A brief statement of the potential relevance of the testimony or documents sought;

3. If the subpoena request is for the production of documents, the documents sought should be identified with specificity.

B. Service of subpoenas. Subpoenas shall be served personally in the manner provided in 9 MCAR § 2.502 D.1. They shall not be served by mail. The witness fees ~~provided for service of subpoenas~~ applicable in the District Courts ~~by~~ pursuant to Minn. Stat. § 357.22 shall apply and shall be paid to the potential witness at the time of service. Such fees are $10 per day for each day of attendance plus 12 cents per mile for travel going to and returning from the place of attendance, to be estimated from the witness' residence.

C. Objection to a subpoena. Any person served with a subpoena who has an objection to it may file an objection with the

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examiner. The objection shall be filed promptly, and in any event at or before the time specified in the subpoena for compliance. The examiner shall cancel or modify the subpoena if he/she finds that it is unreasonable or oppressive, taking into account (1) the issues or amounts in controversy, (2) the costs or other burdens of compliance when compared with the value of the testimony or evidence sought for the presentation of a party's case, and (3) whether or not there are alternative methods of obtaining the desired testimony or evidence. Modification may include requiring the party requesting the subpoena to pay reasonable costs of producing documents, books, papers or other tangible things.

9 MCAR § 2.511. Conduct of the ~~H~~hearing procedures.

~~A. Conduct of the hearing.~~ The hearing shall be conducted substantially in the following manner:

A.~~1.~~ The examiner shall open the hearing by reading the title of the case, stating the amount claimed by the claimant agency and briefly stating the facts as alleged in the Notice of Hearing which give rise to the claim.

B.~~2.~~ Any stipulations, settlement agreements or consent orders entered into by any of the parties prior to the hearing shall be entered into the record.

C.~~3.~~ The claimant agency shall have the burden of proof and shall begin the presentation of evidence. It shall be followed by the other parties in a sequence determined by the examiner.

D.~~4.~~ Testimony may be given in narrative fashion by witnesses rather than by question and answer format.

E.~~5.~~ Cross-examination of witnesses shall be conducted in a sequence and in a manner determined by the examiner to expedite the hearing while ensuring a fair hearing. At the request of the party whose witness is being cross-examined, the examiner shall make such rulings as are necessary to prevent argumentative, repetitive or irrelevant questioning and to expedite the cross-examination to the extent consistent with the disclosure of all relevant testimony and information.

F.~~6.~~ Any party may be a witness or may present other persons as witnesses at the hearing. All oral testimony at the hearing shall be under oath or affirmation.

G.~~7.~~ A party may question an adverse party or any witness identified with an adverse party, by leading questions and contradict and impeach him/her on material matters.

H.~~8.~~ When all parties and witnesses have been heard, the hearing shall be closed unless a continuance has been ordered under 9 MCAR § ~~2.410~~ 2.510.

9 MCAR § 2.517 Timing of the decision. Following the close of the record, the examiner shall make his/her report pursuant to Minn. Stat. §§ ~~15.0412, subd. 4d, and~~ 15.052, subd. 3, and, upon completion, a copy of said report shall be served upon all parties.

Department of Commerce Insurance Division

Adopted Rules Governing the Issuance and Sale of Variable Life Insurance

The rules proposed and published at the *State Register*, Volume 5, No. 24, pp. 960-971, December 15, 1980 (5 S.R. 960) are adopted with the following amendments:

Amendments as Adopted

4 MCAR § 1.9403 Qualification of insurer to issue variable life insurance.

A. An insurer shall not deliver or issue for delivery in this state any variable life insurance policy unless it has complied with Minn. Stat. §§ 61A.13 to 61A.21 and 4 MCAR §§ 1.9401-1.941~~2~~1, and the commissioner has granted the insurer the authority to issue variable life insurance policies in the State of Minnesota pursuant to § 61A.20.

4 MCAR § 1.9404 Insurance policy requirements.

B. Mandatory policy benefit and design requirements. Variable life insurance policies delivered or issued for delivery in this state shall comply with the following minimum requirements:

3. A minimum death benefit shall be provided in an amount at least equal to the initial face amount of the policy so long as premiums are duly paid (subject to the provisions of 4 MCAR § 1.9404 C.2.).

7. The cash value of each variable life insurance policy shall be determined at least monthly. The method of computation of cash values and other nonforfeiture benefits, as described either in the policy or in a statement filed with the commissioner or person fulfilling the equivalent function of the state in which the policy is delivered, or issued for delivery, shall be in accordance with acturial procedures that recognize the variable nature of the policy. The method of computation must be such that, if the net investment return credited to the policy at all times from the date of issue should be equal to the assumed investment rate with premiums and benefits determined accordingly under the terms of the policy, then the resulting cash values and other non-forfeiture benefits must be at least equal to the minimum values required by Minn. Stat. § 61A.24 (Standard Non-Forfeiture Law) for a fixed benefit policy with such premiums and benefits. The assumed investment rate shall not exceed the maximum interest rate permitted under the Standard Non-Forfeiture Law of this state. The method of computation may disregard incidental minimum guarantees as to the dollar amount payable. Incidental minimum guarantee that the amount payable at death or maturity shall be at least equal to the amount that otherwise would have been payable if the net investment return credited to the policy at all times from the date of issue had been equal to the assumed investment rate.

C. Mandatory policy provisions. Every variable life insurance policy filed for approval in this state shall contain at least the following:

9. a description of the basis for computing the cash surrender value under the policy shall be included. Such surrender value may be expressed as either:

b. one cash value schedule as described in paragraph ~~(~~1.~~)~~ for the death benefit, or for each one thousand dollars of death benefit, which would be in effect if the net investment return is always equal to the assumed investment rate and a second schedule applicable to any adjustments to the death benefit (disregarding the minimum death benefit guarantee and term insurance amounts) if the net investment return does not equal the assumed investment rate at each age for at least 20 years from issue, or for the premium paying period if it is less than 20 years.

E. Other policy provision.

3. A provision allowing the policyholder to elect in writing in the application for the policy or thereafter an automatic premium loan on a basis not less favorable than that required of policy loans or partial withdrawals under 4 MCAR § 1.9404 ~~C.~~D., except that a restriction that no more than two consecutive premiums can be paid under this provision may be imposed.

4 MCAR § 1.9406 Separate accounts. The following requirements apply to the establishment and administration of variable life insurance separate accounts:

B. Amounts in the separate account.

2. The benefit base of any variable life insurance policy as of the beginning of any valuation period shall not be less than the sum of the following factors after deduction amounts of any indebtedness pursuant to 4 MCAR § 1.9404 ~~C.~~D.:

4 MCAR § 1.9407 Information furnished to applicants. ~~An insurer delivering or issuing for delivery in this state any variable life insurance policies shall deliver to the applicant for the policy, and obtain a written acknowledgement of receipt from such applicant coincident with or prior to the execution of the application, the following information.~~ The requirements of 4 MCAR § 1.9407 are delivered, either in the form of (1) a prospectus included in a registration statement relating to the policies which satisfies the requirements of the Securities and Exchange Commission; or (2) all information and reports required by the Employee Retirement Income Security Act of 1974 if the policies are exempted from the registration requirements of the Securities Act of 1933 pursuant to Section 3 (a) (2) thereof. An insurer delivering or issuing for delivery in this state any variable life insurance policies shall deliver to the applicant for the policy, and obtain a written acknowledgement of receipt from such application coincident with or prior to the execution of the application, the following information:

A. A summary explanation, in non-technical terms, of the principal terms, of the principal features of the policy, including a description of the manner in which the variable benefits will reflect the investment experience of the separate account and the factors which affect such variation. Such explanation must include notices of the provision required by 4 MCAR § 1.9404 ~~B.~~C. 1.e. and Minn. Stat. § 61A.03 (3).

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Department of Health
Environmental Health Division

Adopted Rules Relating to Mineral Explorers and Exploratory Borings

The rules proposed and published at *State Register*, Vol. 5, Number 8, pp. 267-271, August 25, 1980 (5 S.R. 267) are adopted with the following amendments:

Amendments as Adopted

7 MCAR § 1.210 Definitions and policies.

B.2. "Council" means the Water Well Contractors' and Exploratory Borers' Advisory Council created pursuant to the provisions of Minn. Stat. § 156A.06.

B.6. "Applicant" means any person who applies for a water well contractor's ~~or explorer's~~ license pursuant to the Act.

B.9. "Year of experience" for a water well contractor means a year during which the applicant personally drilled five (5) water wells and was actively working in the trade for a period of 1,000 hours under the supervision of a licensed water well contractor. An applicant drilling 1,000 hours per year and completing fewer than five wells per year may qualify, if the experience is gained in constructing one or more large diameter wells (casing outer diameter is ten inches or more) which are more than 500 feet deep. An applicant who seeks to qualify under this provision shall have his license limited to construction of such deep and large diameter wells. ~~A year of experience for an explorer means a year during which the applicant supervised or personally drilled five exploration borings.~~

B.10. "Licensee" means a person who is licensed as a water well contractor ~~or explorer~~ pursuant to the provisions of the Act and these rules.

7 MCAR § 1.225 ~~This rule applies to all explorers who engage in exploratory boring in accordance with the provisions of Minn. Stats. § Chap. 156A (as amended by Laws 1980, Chap. 535).~~

A. Policies.

1. This rule shall apply to all exploratory borings constructed in the State of Minnesota except those specifically exempted by Minn. Stat. § 156A.02, subd. 5. Those aspects covered are the licensing of explorers, the examination of responsible individuals, and the proper abandonment of exploratory borings to protect the quality of groundwater aquifers. **[The following sentence was previously under C.2.]** The explorer shall be responsible for the construction and abandonment of all exploratory borings completed under his license.

~~E. Any request for modification of the provisions of rules applicable to exploratory borings shall be submitted according to the procedure prescribed in 7 MCAR § 1.210D.3.a. and b.~~

2. Modification by the Commissioner.

a. When the strict application of any provision of this rule presents practical difficulties or unusual hardships, the commissioner, in a specific instance, may modify the application of such provision consistent with the general purpose of this rule and the Act and upon such conditions as are necessary, in the opinion of the commissioner, to protect the ground water of the state and the health, safety, and general well-being of persons using or potential users of ground water.

b. Any request for modification shall be submitted to the commissioner in writing and shall be signed by the licensed explorer and the designated responsible individual. Such request shall specify in detail the nature of the modification being sought, the reasons therefor, and the special precautions to be taken to avoid contamination of the ground water. The request shall also include: the proposed boring depth, casing type and depth, method of construction and grouting, geological conditions likely to be encountered, and location of the boring and of possible sources of contamination. Whether or not the request is granted, the commissioner shall state in detail the reasons for the decision.

~~A. Unless otherwise specified in this rule, the definitions given in 7 MCAR § 1.210 B and C shall apply to the terms used in this rule, as appropriate.~~

B. Definitions. For the purpose of this rule, the following terms or phrases shall have the meaning given them, except where the context clearly indicates otherwise.

1. "Aquifer" means a water-bearing formation (soil or rock horizon).

2. "Act" means Minnesota Statutes §§ 156A.01-156A.08, as amended, under which this rule is promulgated.

3. "Annular space" means the space between two cylindrical objects one of which surrounds the other, such as the space between a drillhole and a casing pipe, or between a casing pipe and liner pipe.

4. "APA" means the Administrative Procedure Act, Chapter 15, Minnesota Statutes.

5. "Casing" means an impervious durable pipe placed in a boring to prevent the walls from caving and to seal off surface drainage or undesirable water, gas or other fluids to prevent their entering the boring and the ground water.

6. "Commissioner" means the commissioner of health or his or her authorized representative.

7. "Council" means the Water Well Contractors and Exploratory Borers Advisory Council, created pursuant to the provisions of Minnesota Statutes, § 156A.06.

8. "Established ground surface" means the intended or actual finished grade (elevation) of the surface of the ground at the site of the exploratory boring.

9. "Exploratory boring" means any surface drilling done for the exploration of oil, natural gas or metallic minerals as defined in Minnesota Statutes, § 156A.02, subd. 5.

10. "Explorer" means a person who has the right to drill any exploratory boring.

11. "Geological material" means all materials penetrated in drilling an exploratory boring.

a. The following table lists materials other than consolidated rock classified according to average particle size (Wentworth 1922):

Particle Diameters

Material	Millimeters			Inches			Screen Slot No. From	Screen Slot No. To
Clay	Up to	—	0.005	Up to	—	0.0002		
Silt	0.005	—	0.062	0.0002	—	0.0025		
Fine sand	0.062	—	0.250	0.0025	—	0.010	2	10
Medium Sand	0.250	—	0.050	0.010	—	0.020	10	20
Coarse Sand	0.50	—	1.00	0.020	—	0.040	20	40
Very Coarse Sand	1.00	—	2.00	0.040	—	0.080	40	80
Fine Gravel	2.00	—	4.00	0.080	—	0.160	80	160
Coarse Gravel	4.00	—	62.50	0.160	—	2.50	60 & larger	
Cobbles	62.5	—	250.0	2.50	—	10.0		
Boulders	250.0 and larger			10.0 and larger				

b. "Limestone" means rock which contains at least 80% of carbonates of calcium and has strong reaction with HCl (muriatic acid).

12. "Ground water" means the water in the zone of saturation in which all of the pore spaces of the subsurface material are filled with water.

13. "Grout" means neat cement, concrete, heavy drilling fluid or heavy bentonite slurry.

a. "Neat cement" means a mixture of 1 bag (94 pounds) of Portland cement meeting the standard specifications of ASTM C150-69a, and not more than 6 gallons of clean water. Bentonite up to 2% by weight of cement may be used to reduce shrinkage. Other admixtures meeting the standard specifications of ASTM C494-68 may be used to reduce permeability and/or control time of set.

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b. "Concrete" means a mixture of Portland cement, sand and water in the proportion of 1 bag (94 pounds) of Portland cement meeting the standard specifications of ASTM C150-69a, and an equal volume of dry sand and not more than 6 gallons of clean water. Where large volumes are required to fill annular openings, gravel not larger than ½-inch size may be added.

c. "Heavy drilling fluid" or "heavy bentonite slurry" shall contain a high percentage of clay or bentonite to minimize shrinkage of the slurry. Bentonite shall contain at least 85% of the mineral monmorillinite and shall meet American Petroleum Institute specification standard 13A (March 1966). Heavy drilling fluid or heavy bentonite slurry shall be of sufficient viscosity to require a time of at least 70 seconds to discharge 1 quart of the material through an API Marsh funnel viscometer. Saline, acid, or alkaline substances or other additives that cause a temporary increase in viscosity of the bentonite slurry are not permitted.

14. "Person" means any natural person, corporation, partnership, or other business association.

15. "Pollution" or "contamination" means the presence or addition of any substance to water which is or may become injurious to the health, safety or welfare of the general public or private individuals and which is or may become injurious to domestic, commercial, industrial, agricultural or other uses which are being made of such water.

16. "Responsible individual" means a person who has met the qualifications prescribed in C.4.a. and has been approved for designation by the Commissioner in accordance with the terms of C.4.c.

~~B. Licensing. The procedures and conditions for licensing of water well contractors which are contained in 7 MCAR § 1.211 A. through G. shall apply to the licensing of explorers, except that experience in supervising the construction of borings need not have been gained in Minnesota.~~

C. ~~Explorer responsibilities.~~ Licensing.

1. No person shall drill, construct or otherwise cause to be made, ~~constructed any~~ an exploratory boring ~~within this state~~ unless he possesses, or is employed by one who possesses, a valid explorer's license issued by the commissioner.

~~2. The explorer shall be responsible for the construction and abandonment of all exploratory borings completed under his license.~~ [Moved to A.1.]

2. An explorer engaging in exploratory boring shall obtain a license in accordance with this rule.

3. A person shall annually apply for an explorer's license by submitting to the commissioner a properly completed application accompanied by a $50.00 license fee, payable to the Treasurer, State of Minnesota. An explorer's license shall be effective for the calendar year for which it is issued.

a. The person applying for an explorer's license shall include the name of the responsible individual who will supervise or oversee the location, construction, and abandonment of exploratory borings on behalf of the explorer.

b. If the person applying for the explorer's license does not designate a responsible individual, the commissioner shall issue a conditional license. Such a license is not considered valid for the purpose of engaging in the construction of exploratory borings until a responsible individual has been designated and the commissioner has been notified of such designation. The notification of designation shall be made at least 10 days prior to the commencement of exploratory boring.

4. Qualification as responsible individual.

a. A person who seeks to qualify for designation as a responsible individual shall

(1) complete and submit an application for qualification to the commissioner, along with a $50.00 fee which is payable to the Treasurer, State of Minnesota,

(2) take and pass an examination on the portions of this rule which relate to mineral exploration activities, or document the fact that he or she is a registered professional engineer or certified professional geologist, in accordance with Minn. Stat. § 156A.071, subd. 2.

(a) A person may take the examination as many times as he desires. Each new application for qualification shall be accompanied by a new fee.

(b) All applicants in any one examination session will be given the same combination of written, oral, or practical work based on the substance of this rule.

b. The commissioner shall not act upon the application for qualification until he has received all the information required by this rule.

c. When the commissioner determines that an individual has met all the qualifications prescribed in part C.4. (above), the commissioner shall notify the person and shall enter that person's name on a list of persons who qualify for designation as responsible individuals.

5. Revocation of license; disqualification.

a. The commissioner or council may cause an investigation to be made in any case in order to determine whether there has been a violation of the Act or this rule, and, in so doing may request the explorer and/or the designated responsible individual to appear before them to determine the merits of the situation in question. The council may make a recommendation to the commissioner as to whether proceedings under the act and the APA would be appropriate.

b. Any disciplinary action taken under this rule shall comply with the APA.

c. The commissioner may revoke the license of an explorer and may disqualify a responsible individual upon finding that the explorer or the designated responsible individual has violated the act or this rule. The commissioner may initiate such proceedings upon his own motion or upon recommendation of the council.

d. A license may be revoked and a responsible individual may be disqualified until certain conditions specifically related to the violations giving rise to the revocation are fulfilled and/or for a specified period of time as determined to be most appropriate by the commissioner and as specified in the commissioner's order of revocation. A revoked license shall be returned to the commissioner.

e. Reinstatement:

(1) An explorer who has had his license revoked may be relicensed by submitting the usual application and fee.

(2) A responsible individual who has been disqualified may be requalified by following the procedure prescribed in C.4.a.

(3) The commissioner shall require an investigation or hearing to determine whether an explorer should be issued a new license or a responsible individual should be requalified provided, however, that in no case shall a new license be issued or a responsible individual be requalified prior to one year after revocation or disqualification has taken effect.

~~D. Procedures for location, construction and abandonment of exploratory borings:~~

~~1. Location and construction:~~

~~a. An exploratory boring shall be located in accordance with the isolation distances from sources of contamination which are specified in 7 MCAR § 1.217 C.1.a. through e.~~

~~b. An exploratory boring shall be constructed in a location and maintained in such a manner as to prevent all known sources of contamination from entering the boring at any time.~~

~~c. Any boring which encounters a cavernous limestone formation shall be cased and grouted to prevent the introduction of surface water into the groundwater and to prevent the passage of water from one aquifer to another. The casing and grouting procedures are prescribed in 7 MCAR § 1.220 A., C. and H.~~

~~d. No boring shall be open except during the time when it is actually being drilled or logged.~~

~~2. Abandonment.~~

D. Abandonment of exploratory borings.

1.~~2.a.~~ Abandonment of all exploratory borings shall be carried out in accordance with the provisions of chapter 156A and ~~these~~ this rules ~~(7 MCAR § 1.210-1.225) as appropriate. b.~~ Abandonment, whether temporary or permanent, shall be undertaken immediately upon completion of drilling activities. The commissioner may order that an exploratory boring be sampled and any contamination be removed prior to abandonmemt. If an exploratory boring provides a potential or actual source or channel of contamination for an aquifer, the commissioner may order that the boring be permanently abandoned.

2. Temporary abandonment.

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a. A temporarily abandoned exploratory boring shall be maintained whereby it is not a source or channel of contamination for any aquifer.

b. Until a boring is permanently abandoned, all provisions for protection of the ground water against contaminatoin and pollution and for maintaining satisfactory sanitary conditions around the boring shall be carried out.

~~c.(1) A boring which is temporarily abandoned shall be cased from bedrock or the bottom of the boring, to one foot above the ground surface, or if in a flood plain at least two feet above the level of the highest flood of record, and protected with a water-tight cap which will prevent any surface contamination from entering the boring.~~

~~(2) Any boring which is temporarily abandoned shall be marked and protected with four steel posts as prescribed in 7 MCAR § 1.217 C.4.b.~~

c. A boring which is temporarily abandoned shall be constructed to prevent the introduction of surface contaminants into the boring to prevent the passage of water from one aquifer to another. At the minimum, a temporarily abandoned boring shall be cased from bedrock or from the bottom of the boring if the boring terminates in unconsolidated materials, to a point one foot above the ground surface, or if in a flood plain, at least two feet above the level of the highest flood of record. The casing shall be protected with an overlapping cap which will prevent any surface contamination from entering the boring.

d. Any boring which is temporarily abandoned shall be marked and protected with four steel posts (schedule 40 steel pipe) of at least 4-inch diameter at equal distances from each other and which are placed 2 feet from the center of the casing. Such posts shall be installed to a depth of 4 feet into solid ground, or to a depth of 2 feet if each post is surrounded with 1 foot of concrete to a depth of 2 feet.

e.~~(3)~~ A boring shall not be temporarily abandoned for more than five years.

3.~~d.~~ Permanent abandonment.

a.~~(1)~~ Whenever the explorer determines that a boring need not remain open any longer, or whenever he is about to lose the right to explore, ~~t~~he explorer shall permanently abandon the boring. ~~in the manner prescribed in these rules.~~

~~(2) A boring which is permanently abandoned shall be completely filled in the manner and with the materials prescribed in 7 MCAR § 1.218 C.2.a. through e.~~

The boring shall be filled with grout to prevent contaminating materials from entering the water-bearing ground formations.

b. All materials, debris and obstructions that may interfere with sealing operations shall be removed from the boring. Liner pipe shall be removed or perforated when necessary to assure placement of an effective seal. The commissioner shall be consulted for instruction in case of abandonment of a contaminated boring or where there is a question of proper procedure.

c. All casing and screen may be salvaged except casing that has been cemented in place. The boring shall be filled with appropriate sealing materials as described in subpart D.3.g. prior to removal of the casing.

d. The top of the hole shall be filled with 10 feet of cement or concrete grout to within 2 feet of the land surface. Casing remaining in the hole shall be cut off at least 2 feet below land surface. The remaining top 2 feet of hole shall be filled with native topsoil.

e. When concrete, cement of heavy drilling fluid is used as a grout material, it shall be inserted in the boring through a grout pipe from the bottom of the boring upward to the surface under pressure.

f. The flow in a boring,[1] encountering flowing artesian conditions shall be confined if possible; and the boring abandoned in accordance with these rules.

g. A permanently abandoned boring shall be filled and sealed using one or more of the following substances in accordance with the geological materials penetrated.

(1) The section of a boring in unconsolidated deposits shall be filled with neat cement, concrete, or heavy drilling fluid to provide a permeability no greater than the natural condition.

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[1] Proper judgment shall be exercised in the feasibility and practicability of sealing a boring encountering flowing artesian conditions. In some cases the confining formation may have been so badly disturbed that sealing may only cause the flow to discharge in a less appropriate location. In other situations, the flow may have eroded so much material that the landscape has taken on the appearance of a natural spring. The sealing in this case may be impractical, if not impossible.

(2) The section of a boring in a rock formation shall be filled with neat cement or concrete.

(3) The section of a boring in a cavernous or creviced rock (such as cavernous limestone or creviced granite, etc.) shall be filled with concrete or neat cement or alternate layers of concrete or neat cement and gravel or stone aggregate. At the top of the cavernous or creviced formation, the filling shall be completed by a layer of neat cement or concrete extending at least ten feet (10 feet) into the above overlying formation, and finished as provided in these rules.

(4) A boring so large that the use of neat cement, concrete or heavy drilling fluid is impractical, may be sealed with other materials subject to the approval of the commissioner.

4.~~c.~~ Abandonment report. Within 30 days of temporary or permanent abandonment, the explorer shall submit ~~The~~ an abandonment report required by Minnesota Statutes, § 156A.071, subd. 8, to the commissioner. The abandonment report shall specify whether the boring is being temporarily or permanently abandoned. A separate abandonment report shall be filed when a temporarily abandoned boring is permanently abandoned.

Metropolitan Waste Control Commission

Adopted Amendments to the Waste Discharge Rules for the Metropolitan Disposal System

The rules published at *State Register*, Volume 5, Number 10, pp. 355-378 (5 S.R. 355) are now adopted with the following amendments:

Amendments as Adopted

6 MCAR § 6.010 C. These rules are intended:

1. To carry out the comprehensive plan for the Metropolitan Disposal System as contained in the "Metropolitan Development Guide, Waste Management Policy Plan" adopted by the Metropolitan Council, as amended;

2. To comply with provisions of the Federal Clean Water Act (33 U.S.C. 1251 et.seq), as amended;

3. To comply with permit requirements under the National Pollutant Discharge Elimination System;

4. To comply with federal ~~(U.S. Environmental Protection Agency~~ (EPA) and state (Minnesota Pollution Control Agency) rules and regulations in order to maintain eligibility for federal and state grants for construction of treatment facilities;

5. To prevent and abate pollution;

6. To prevent the introduction of pollutants into the MDS which will interfere with the operation of the MDS, including interference with its use or disposal of sewage sludge;

7. To prevent the introduction of pollutants into the MDS which will pass through the treatment works or otherwise be incompatible with such works; and

8. To improve opportunities to recycle and reclaim municipal and industrial waste water and sludges.

6 MCAR § 6.011 H. "Industrial user"—A persons ~~who discharge industrial waste and~~ whose ~~activities are~~ activity is listed in the SIC major group, group, or industry numbers contained in attached Appendix C ~~shall be deemed industrial users~~ unless the discharge contains only domestic waste generated at the discharge site. ~~or unless the discharge of Industrial Waste is insignificant.~~

6 MCAR § 6.012 A. Scope. Industrial users discharging directly or indirectly into the Metropolitan Disposal System shall obtain an industrial discharge permit pursuant to these rules~~.~~ unless the Chief Administrator determines after a review of a completed permit application that the discharge has no noticeable or measurable impact on the MDS. Issuance of an industrial discharge permit shall not relieve the industrial user from any obligation to obtain a hazardous waste permit from the appropriate other authorities.

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

6 MCAR § 6.012 B.1. ~~An industrial user who is required to obtain an industrial discharge permit~~ All industrial users shall complete and file with the commission a permit application in a form substantially the same as that set forth in Appendix A. The appropriate permit fee as provided in § 6.012 F. shall accompany the permit application form at the time of application. No industrial user shall discharge into the MDS after ~~January~~ March 1, 1982, unless the industrial user has been granted an industrial discharge permit. ~~or has submitted a completed permit application.~~

6 MCAR § 6.012 C.9. Requirements for notification to the chief administrator of any change in the volume or characteristics of industrial waste introduced into the MDS which the permittee knows or has reason to ~~know~~ believe will or is likely to have, either singly or by interaction with other wastes, a negative impact on the MDS treatment process;

6 MCAR § 6.012 D.1. An industrial discharge permit ~~may~~ shall be modified, suspended, or revoked, in whole or in part, by the chief administrator during its term for ~~cause, including~~ the following causes:

a. Violation of these rules;

b. Violation of any terms or conditions of the industrial discharge permit;

c. Obtaining an industrial discharge permit by misrepresentation or failure to disclose fully all relevant facts;

d. Amendment of these rules where permit provisions are affected;

e. A change in the MDS treatment process which results in the permittee's discharge having a significantly different and negative impact on the process;

f. A change in the permittee's industrial waste volume or characteristics which ~~the permittee knows or has reason to know~~ will or is likely to have, either singly or by interaction with other wastes, a negative impact on the MDS treatment process (modification only);

g. A determination by the chief administrator that the permittee's discharge reasonably appears to present an imminent endangerment to the health or welfare of persons, present an endangerment to the environment, or threaten interference with the operation of the MDS.

6 MCAR § 6.012 G.1. Industrial discharge permits shall be issued to specific industrial users at specific location, except in the case of waste transport haulers. An industrial discharge permit shall not be assigned or transferred to a new owner or different premises without the written consent of the commission.

6 MCAR § 6.012 K. Report and monitoring discrepancies. A permittee shall be notified in writing by the ~~Commission~~ chief administrator of a significant discrepancy between the permittee's routine self-monitoring reports and the commission's monitoring results within thirty (30) days after the receipt of such reports and monitoring results. The permittee shall then have ten (10) working days to reply in writing to such notification. If mutual resolution of such discrepancy is not achieved, additional sampling shall be performed by the commission. Samples shall be split between the permittee's laboratory or agent and the commission's laboratory for analysis.

6 MCAR § 6.012 L. Public access to information. Public access to information and data furnished to the commission by permittees shall be available to the public as provided by the Minnesota Government Data Practices Act, Minn. Stat. § 15.1611 to § 15.1698, and 40 CFR § 403.14 of the General Pretreatment Regulations.

6 MCAR § 6.013 J. After August 25, 1981, heat in amounts which will or is likely to inhibit biological activity in any commission treatment plant resulting in interference or causing damage to the MDS, but in no case heat in such quantitites that the industrial waste temperature is greater than 65°C (150°F) at its point of discharge to the MDS, or heat causing, individually or in combination with other wastewater, the influent at any commission treatment plant to have a temperature exceeding 40°C (104°F).

6 MCAR § 6.013 O. Any hazardous waste, as defined by Minn. Stat. § 116.06, subd. 13 and 6 MCAR §§ 4.9001 through 4.9002, unless prior approval has been obtained from the chief administrator upon a showing by the discharger that the hazardous waste would not cause, or threaten to cause, an endangerment to the health or welfare of persons, an endangerment to the environment, or interference with the operation of the MDS.

6 MCAR § 6.014 A. 1. No persons, except as authorized pursuant to a compliance schedule in a permit, shall discharge or cause or allow to be discharged, directly or indirectly, into the MDS any waste containing concentrations in excess of the following:

Pollutant	Limitation
~~Parameter~~	(Maximum for any operating day)
Cadmium (Cd)	2.0 mg/l
Chromium total (Cr)	8.0 mg/l

Copper (Cu)	6.0 mg/l
Cyanide total (Cn)	4.0 mg/l
Lead (Pb)	1.0 mg/l
Mercury (Hg)	0.1 mg/l
Nickel (Ni)	6.0 mg/l
Zinc (Zn)	8.0 mg/l

6 MCAR § 6.014 B. 1. An industrial user shall make industrial waste acceptable under the limitations established in § 6.014A.1., the prohibitions under § 6.013, and/or any applicable pretreatment standard before discharging, directly or indirectly, into the MDS. Any industrial user required to pretreat industrial waste shall provide, operate, and maintain such a facility at the industrial user's expense. Detailed plans showing the pretreatment facilities shall be submitted to the commision for review and approval at least sixty (60) days prior to the initiation of construction. The chief administrator shall approve the industrial user's pretreatment plans if it appears that the proposed pretreatment facility is capable of meeting all applicable limitations and prohibitions. The commission's review and approval shall in no way relieve the industrial user from the responsibility of modifying the facility as necessary to produce an effluent complying with the provisions of these rules. Any subsequent modifications in the pretreatment facilities which will result in a substantial change in discharge shall be reported to and be approved by the chief administrator, upon a determination that the modified facility is capable of meeting all applicable limitations and prohibitions, prior to the modification of the existing facility.

6 MCAR § 6.015 A.1. Pretreatment standards as promulgated pursuant to § 307 of the Act shall be met by all affected industrial users. Where an industrial user is subject to applicable pretreatment standards, such industrial user shall comply with the pollutant limitations contained therein and not the limitations under § 6.014A.1., except that where the applicable pretreatment standards~~, by reason of the nature of particular industrial user~~, do not regulate all the pollutants ~~parameters~~ specified in § 6.014A.1. for that industrial user, then such industrial user shall be subject to the limitations provided in § 6.014A.1. for those pollutants, ~~parameters~~ for which it is not regulated under the pretreatment standards. In all other respects, industrial users subject to pretreatment standards shall comply with all provisions of these rules and any permit issued thereunder, notwithstanding less stringent provisions of the General Pretreatment Regulations or any applicable pretreatment standard. Industrial users subject to pretreatment standards shall comply with all more stringent provisions of the General Pretreatment Regulations and applicable pretreatment standards, notwithstanding less stringent provisions contained in these rules or any permit issued thereunder.

6 MCAR § 6.016 B.2. The responsible person shall send a letter describing the prohibited discharge to the Commission within ~~three (3)~~ five (5) calendar days after obtaining knowledge of the discharge. The letter shall include the following information:

a. the time and location of the spill;

b. description of the accidentally discharged waste, including estimate of pollutant concentrations;

c. time period and volume of wastewater discharged;

d. actions taken to correct or control the spill;

e. a schedule of corrective measures to prevent further spill occurrences.

6 MCAR § 6.016 C. Slug discharges. In the event that an industrial user discharges a slug in ~~such~~ a volume or strength ~~that~~ which the industrial user knows or has reason to know ~~it~~ will cause interference in the MDS, the industrial user shall immediately report the same to the chief administrator. Within ~~three (3)~~ five (5) calendar days thereafter, the industrial user shall send a letter to the commission describing the slug.

6 MCAR § 6.017 Enforcement.

B. Criminal penalties.

~~1. Any person who willfully or negligently violates any provision of these rules or any provision or condition of any permit issued by the Commission thereunder including discharging waste in violation of any Commission order, prohibition, discharge limitation, or pretreatment standard, or any person who continues such violation beyond the time limit provided for in the chief administrator's written notice of violation, shall be a misdemeanor. Each day in which any such violation continues shall be deemed a separate offense.~~

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

a. Any person who willfully or negligently violates any provision of these rules or any provision of a permit issued by the Commission thereunder shall be guilty of a misdemeanor.

b. Any person who continues any violation of any provision of these rules or any provision of a permit issued by the Commission thereunder beyond the time limit provided for in the chief administrator's written notice of violation shall be guilty of a misdemeanor.

c. Each day in which a violation referred to in either B 6.017 B. 1. a. or b. continues shall be deemed a separate offense.

6 MCAR § 6.018 D. Variances. Except in the case of pretreatment standards, upon the written request of any person the ~~chief administrator~~ commission shall grant a variance where there is no prudent and feasible alternative to non-compliance with these rules or a permit issued thereunder. The chief administrator, upon approval of the commission, shall respond within forty-five (45) days of a request for a variance and shall set forth in writing ~~his~~ the reasons for granting or denying the variance.

APPENDIX A. J.

J. CERTIFICATION OF INFORMATION

I hereby certify that the information supplied in this application is complete and correct to the best of my knowledge.

* Name (PRINT): _____

Title: _____

Signature: _____

Phone (Area Code): _____

Date: _____

*For Federal Categorical Pretreatment Industries, the signatory must be an authorized representative. An authorized representative may be:

1) a principal executive officer of at least the level of vice president, if the permittee is a corporation;

2) a general partner or proprietor, if the permittee is a partnership or sole proprietorship, respectively; or

3) a duly authorized representative of the individual designated in (1) or (2) above if such representative is responsible for overall operation of the facility.

Send completed form and an application fee of _____ to:

Metropolitan Waste Control Commission
Industrial Waste Section
350 Metro Square Building
St. Paul, Minnesota 55101

TAX COURT

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

State of Minnesota

Hennepin County

Tax Court

Regular Division

Maribeth Jennings, Successor Executrix of the Estate of George E. Kennedy, Deceased,

Appellant,

v.

The Commissioner of Revenue,

Appellee.

In the Matter of an Appeal from the Commissioner's Order dated October 1, 1979, Relating to the Inheritance Taxes of the Estate of George E. Kennedy, Deceased.

Docket No. 2994

Order Dated March 3, 1981.

The above matter was submitted for decision on the basis of a Stipulation of Facts and briefs filed by the parties and was considered by the Honorable Carl A. Jensen, Judge of the Minnesota Tax Court.

Mr. Lee N. Johnson, Attorney at Law, appeared on behalf of Appellant.

Mr. James W. Neher, Special Assistant Attorney General, appeared on behalf of Appellee.

Issue

The issue is whether a share of stock in a cooperative corporation which entitles the owner to a proprietary interest in a specific apartment in the cooperative apartment building is an intangible interest taxable by Minnesota in the estate of a Minnesota resident. If it is an interest in real property it is taxable only by the State of Florida. If it is an intangible interest such as most shares of stock are, it is taxable in the state of residence of the decedent.

Decision

The share of stock in this case represents an interest in a specific parcel of real estate located outside of the State of Minnesota and is not subject to Minnesota Inheritance Taxes and it is ordered that the taxes levied on the basis of the inclusion of this property for Minnesota Inheritance Tax purposes be abated.

Findings of Fact

The parties stipulated to the facts as follows:

1. The deceased was a resident of the State of Minnesota.

2. At the time of his death the deceased owned Certificate No. 81 for one share of capital stock in Harbor Colony, Inc., a Florida cooperative corporation and this certificate entitled the owner to a proprietary interest in apartment 7 of the cooperative apartment building owned by the corporation.

3. That Florida statutes relating to condominiums clearly indicate that ownership of a condominium is an interest in real estate but that the Florida statutes relating to cooperative apartment units do not clearly indicate that such interest is an interest in real estate.

4. That real estate taxes in Florida are in fact assessed against each of the owners of the various units and the real estate taxes are paid by the owners of the units directly to the collecting authorities.

5. That read as a whole the Florida statutes indicate that the owners of such shares of stock in cooperative units do in fact own a specific parcel of real estate and that such Certificate of Ownership is not an intangible item of personal property.

Conclusions of Law

1. That the interest of the decedent in the cooperative apartment building in Florida was an interest in real estate located outside the State of Minnesota and was not subject to Minnesota Inheritance Taxes.

2. It is ordered that the inheritance taxes assessed on the basis that this was intangible personal property are hereby abated.

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

MINNESOTA TAX COURT
Carl A. Jensen

Memorandum

This was a very close question and the issues were well briefed by both the parties. It was agreed by the parties that the determination of the issue was properly based on an interpretation of Florida law.

Florida statutes are quite clear in indicating that ownership of condominium units are clearly an interest in real property and as such would not be subject to Minnesota Inheritance taxes on Minnesota residents. The Florida statutes are not so clear relative to ownership of a unit in a cooperative association. No judicial rulings of Florida law on this issue were brought to the attention of this Court. An Exhibit G was offered by the Appellee which was a letter dated October 13, 1980 from the Florida Department of Revenue over the signature of R. Glenn Dixon, Technical Assistant, Statutory Compliance Section. This letter stated the following:

"This is also to advise, per your request, that Florida considers cooperative apartments, where title is held by shares of stock, to be an intangible asset taxable by the state of domicile.

It is generally a matter of reciprocity between states that cooperative apartments are considered intangible rather than real property.

If you have further questions please advise."

The letter does not indicate whether or not the writer is an attorney nor does it indicate the status of such a letter, so the evidentiary value of the letter is questionable. It is probably safe to assume that there have been no judicial rulings on the issue as it would appear that letter would have indicated if there had been such rulings.

We are persuaded by the fact that the decedent did in fact own a specific unit in this cooperative and we find it difficult to distinguish this ownership from the ownership of a condominium and it is agreed that a condominium unit would not be subject to Minnesota taxes.

We are further persuaded by a Florida Statute, Section 719.108 which relates to liability for assessments and liens and priorities. This statute talks about the "unit owner of the cooperative parcel". This section discusses a judicial sale and voluntary and involuntary conveyances. It also provides that liens for assessments may be foreclosed by suit in the same manner as a foreclosure of mortgage on real property. This is not language ordinarily used in discussing intangible shares of stock in a corporation. This and other sections of the Florida statutes lead us to conclude that the interest of the decedent, as evidenced by the certificate in the cooperative, was in fact an interest in real property and was not subject to Minnesota Inheritance Taxes.

State of Minnesota
County of Ramsey

Tax Court
Regular Division

Ted Glasrud Associates, Inc.,

Appellant,

v.

The Commissioner of Revenue, through 7/31/79.

Appellee.

In the Matter of the Appeal from the Commissioner's Order dated December 14, 1979, relating to sales and use tax of Ted Glasrud Associates, Inc. for the taxable period 4/1/75 through 7/31/79.

Docket No. 3052

Order dated March 6, 1981.

The above matter came on for trial in the Tax Court in the City of St. Paul, Minnesota, before the Honorable Jack Fena who was then one of the Judges of the Court, on the 28th day of August, 1980. Subsequent to that briefs were filed by the parties and Judge Fena's term of office ended February 2, 1981 before he had rendered his decision in the matter. The parties through their attorneys agreed to have the case submitted to another Tax Court Judge upon the transcript, briefs and other materials in the file and the case was submitted to the Honorable Carl A. Jensen, Judge of the Minnesota Tax Court.

Mr. Steven Z. Kaplan of Briggs and Morgan, represented the Appellant.

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

Issue

The issue is whether the failure to file certain use tax returns within the times specified was due to wilful neglect and therefore subject to the penalties provided therefore.

Decision

The facts do not substantiate a finding that the failure to file use tax returns was due to wilful neglect and Appellant is not subject to the penalties provided for in the case of wilful neglect.

From all the files, records and proceedings herein the Court finds as follows:

Findings of Fact

1. Appellant is a Minnesota corporation engaged in the business of constructing and selling condominiums and apartments and managing apartment complexes. The corporation was formed in 1971. Mr. Theodore Glasrud is the President and sole shareholder.

2. The controller-treasurer of the Appellant corporation during the periods at issue herein was Mr. Steve Anderson. He was responsible for the corporation's recordkeeping and financial affairs and the preparation of most of the returns required by the state and federal governments such as unemployment taxes, workers compensation, withholding, employment returns and all other returns of a similar nature except the income tax returns which were prepared by auditors Peat, Marwick, Mitchell and Company and were signed by Mr. Glasrud.

3. Appellant's President, Theodore Glasrud, is a lawyer by profession but has been in the construction business as a business man since 1960. In 1971 he formed his own corporation Ted Glasrud Associates, Inc. and has been carrying on his business as such corporation since 1971.

4. The records of Appellant were audited in 1975 and certain delinquent use taxes were assessed against Appellant for the period April 1, 1971 through December 31, 1974. Appellant made no sales that were subject to sales taxes and Appellant's purchase orders require that the sales tax be included in the total invoice submitted. For reasons which were unexplained by either party, a number of Appellant's vendors failed to collect sales taxes due. The department originally assessed a penalty on this audit but subsequently agreed to settle the matter without penalty.

5. After 1975, Steve Anderson, the controller-treasurer filed some Sales and Use Tax Returns all of which indicated that no sales or use tax was payable. Minn. Stat. § 297A.27 requires returns to be filed by any person making retail sales or any persons subject to use taxes on purchases on which no sales tax was paid. Appellant assumed that the sales taxes were included in invoices received. It appears that Appellant did not believe Sales or Use Tax Returns were required since Appellant believed no such tax was due, although this is not spelled out precisely in the record.

6. Appellant's records were again audited in August of 1979 and delinquent use taxes, penalties and interest were assessed against Appellant for the period from April 1, 1975 to July 1, 1979. The use tax originally assessed for this period was $82,676.32 and the penalty was $15,106.28. The parties have subsequently agreed to the amount of use tax that is owed and this amount is now shown in the record. The only issue involved is whether or not the penalty provided for failing to file and pay the taxes due because of wilful neglect should be assessed against Appellant.

7. The record shows that in 1975 when the first audit was being conducted, the department requested Appellant to file Sales & Use Tax Returns. Some returns were filed but they all showed no tax due. Although Appellant's purchase orders required the invoices to include the sales tax, Steve Anderson, Appellant's controller-treasurer, was negligent in not taking some further action to see that this was always done after the first audit but, this negligence is not considered wilful neglect. Steve Anderson was not a CPA and he apparently thought the department's letters directing the filing of returns were merely form letters.

8. The primary responsibility for collecting the sales and use taxes is upon the seller. There is no explanation in the record as to any action that the department may have taken relative to the vendors to Appellant who were not collecting sales tax.

9. The failure on the part of Appellant to take affirmative steps to see that sales taxes were paid on all purchases subject to sales or use taxes is close to the wilful neglect provided in the statutes but, this Court, finds that such failure on the part of the Appellant was due to ordinary negligence.

10. Minn. Stat. § 297A.39, subd. 2, provides that penalties up to 25 percent of the tax due can be assessed in cases where the failure to file the return and pay the taxes is due to wilful neglect. The department adopted a rule which contains the following language:

"The wilful neglect penalty will be assessed unless the person required to file the return exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time."

This rule attempts to define wilful neglect as the failure to exercise ordinary care and prudence and to this extent goes beyond the rule making power of the department.

11. The facts in this case do not substantiate a finding that failure to file the returns and pay the taxes was due to wilful neglect and the penalties therefore should not be assessed.

Conclusions of Law

1. The failure to file the Sales and Use Tax Returns and failure to pay the use tax under the facts in this case was not due to wilful neglect and the Order of the Commissioner assessing penalties on the basis of the provision in the statute relative to wilful neglect should be reversed.

Order for Judgment

The Commissioner's Order dated December 14, 1979 assessing certain penalties is hereby reversed only as to the assessment of the penalties.

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

MINNESOTA TAX COURT
Carl A. Jensen, Judge

Memorandum

This is a very close case. Appellant made no attempt to avoid paying the use tax and in fact assumed it was paying the use taxes since its purchase order forms stated that the sales tax should be included in the invoices. Apparently this was not done in some cases. It appears that in some instances the invoices included the sales tax but did not so indicate, although this is contrary to the statutes. The primary responsibility for the collection of the tax is on the seller. It would appear that if the department had attempted to collect the taxes from the delinquent sellers instead of the Appellant, that there would be no question that the delinquent sellers were guilty of wilful neglect. Although the state has the power to collect the tax from the purchaser if the seller fails to collect it, penalties for wilful neglect should be assessed only when there is a clear showing that the purchaser knew that the sales tax had not been paid. It does appear that Steve Anderson was not competent for the job and Appellant has now realized this. All businesses have sufficient problems with complying with all the necessary rules, regulations, taxes, forms etc. of the various units of government without being charged with penalties for wilful neglect for employing a person who is not quite competent for the job.

It would appear that there might be some negligence on the part of the department if the department thought the same situation would occur after the first audit. In hindsight, under the circumstances, it appears that the department should have clearly notified Appellant that it would be subject to wilful neglect penalties in the future on failure to comply with the statutes or that it would have been prudent for the department to audit the Appellant's books more than every 4 years.

SUPREME COURT

Decisions Filed Friday, March 13, 1981

Compiled by John McCarthy, Clerk

81-28/Sp. In the Matter of the Contest of the General Election Held on November 4, 1980 for the Purpose of Electing A County Commissioner for the Third District in Dakota County. James W. Kennedy, Contestant, v. John Voss, Contestee, Appellant. Dakota County.

An extreme or illogical inference in campaign literature, if based upon an accurate statement of fact, does not constitute distribution of "false information" within the meaning of Minn. Stat. § 210A.04, subd. 1 (1980).

Reversed. Sheran, C. J. Conc. spec. Peterson, J.

50529/335 Hennepin County Welfare Board, Plaintiff, Anita Elizabeth Boyer, Appellant, v. Stephen Guy Ayers. Hennepin County.

In a paternity action, once a proper foundation is laid and an offer is made to introduce into evidence the results of blood tests tending to confirm paternity, it is reversible error to refuse to admit that evidence.

Reversed and remanded. Otis, J.

51177/Sp. State of Minnesota v. Paul R. Hayes, Appellant. Polk County.

Evidence of defendant's guilt held sufficient.

Assault with a dangerous weapon, Minn. Stat. § 609.222 (1980), is a lesser-included offense of criminal sexual conduct by a person armed with a dangerous weapon, Minn. Stat. §§ 609.342(d) and 609.343(d) (1980).

Three convictions affirmed, one vacated. Otis, J.

51126/381 Soo Line Railroad Company, petitioner, Appellant, v. Minnesota Department of Transportation, City of Bemidji. Hennepin County.

Minn. Stat. § 219.40 (1978) (amended 1980) requires the cost of building a bridge over railroad tracks to be apportioned on the basis of benefits to the users.

Because the Commissioner of the Department of Transportation apportioned the cost according to specific findings of benefits, the commissioner adhered to the statutory requirements and did not exceed his statutory authority.

When the commissioner's findings of benefits are not supported by substantial evidence, the findings cannot be sustained.

Reversed and remanded with instructions. Yetka, J.

50997,
51013/368 Ideal Life Church of Lake Elmo, Petitioner, Relator-Respondent, v. County of Washington, Respondent-Relator. Tax Court.

The proper test for determining the meaning of the word "church," under Minn. Const. art. X, § 1, and Minn. Stat. § 272.02(1)(5), depends upon an analysis of all the facts and circumstances of each particular case. Applying this "factual analysis test" to this case, we find that the property in question is not owned by a "church," and is therefore not exempt from real property taxes.

Scott, J. Conc. spec. Wahl, J. Took no part, Sheran, C. J.

50514/Sp. C. R. Investments, Inc., Petitioner, Appellant, v. Village of Shoreview. Ramsey County.

The denial of a special use permit was arbitrary when some of the reasons given for the denial were legally sufficient but did not have sufficient factual basis and other reasons given were not legally sufficient because they had no substantial relation to public health, safety, and welfare.

Reversed. Scott, J.

51408/Sp. Cumis Insurance Society, Inc., v. Lois E. Blum, Appellant. Chisago County.

Affirmed. Wahl, J.

OFFICIAL NOTICES

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

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

Department of Agriculture
Agronomy Services Division

Notice of Special Local Need Registrations for Aatrex 80 W, Aatrex Nine-0, Aatrex 4L, and Aatrex 4LC

Pursuant to Minn. Stat. § 18A.23 and 3 MCAR § 1.0338 B., the Minnesota Department of Agriculture on March 10, 1981, issued Special Local Need Registrations for Aatrex 80 W, Aatrex Nine-0, Aatrex 4L, and Aatrex 4LC manufactured by Ciba-Geigy Corporation, Greensboro, North Carolina 27409.

The Commissioner of Agriculture, based upon information in the applications, has deemed it in the public interest to issue such registrations, and has deemed that the information in the applications indicates that the pesticides do not have the potential for unreasonable adverse environmental effects.

In addition to the uses prescribed on the product labels, these Special Local Need Registrations permit the use of these products to control weeds in proso millet.

The applications and other data required under Minn. Stat. §§ 18A.22, subd. 2 (a-d), 18A.23, and 40 CFR 162.150-162.158, subpart B relative to these registrations (identified as SLN #MN 81-0004, MN 81-0005, MN 81-0006, and MN 81-0007) are on file for inspection at:

Minnesota Department of Agriculture
Pesticide Control Section
90 West Plato Blvd.
Saint Paul, Minnesota 55107
Phone: (612) 296-8379

A federal or state agency, a local unit of government, or any person or group of persons filing with the commissioner a petition that contains the signatures and addresses of 500 or more individuals of legal voting age has thirty (30) days to file written objections with the Commissioner of Agriculture regarding the issuance of these Special Local Need Registrations. Upon receipt of such objections and when it is deemed in the best interest of the environment or the health, welfare, and safety of the public, the Commissioner of Agriculture shall order a hearing pursuant to Minn. Stat. ch. 15, for the purpose of revoking, amending, or upholding these registrations.

Mark W. Seetin, Commissioner
Department of Agriculture

Notice of Special Local Need Registrations for Anchor Permectrin 10% EC and Bioceutic Overtime

Pursuant to Minn. Stat. § 18A.23 and 3 MCAR § 1.0338 B., the Minnesota Department of Agriculture on March 10, 1981, issued Special Local Need Registrations for Anchor Permectrin and Bioceutic Overtime manufactured by Philips Roxane, Inc., St. Joseph, Missouri 64506.

The Commissioner of Agriculture, based upon information in the applications, has deemed it in the public interest to issue such registrations, and has deemed that the information in the applications indicates that the pesticides do not have the potential for unreasonable adverse environmental effects.

In addition to the uses prescribed on the product labels, these Special Local Need Registrations permit the use of these products for premise fly control in beef, horse, dairy, poultry, and swine barns.

The applications and other data required under Minn. Stat. §§ 18A.22, subd. 2 (a-d), 18A.23, and 40 CFR 162.150-162.158, subpart B relative to these registrations (identified as SLN #MN 81-0001 and MN 81-0002) are on file for inspection at:

Minnesota Department of Agriculture
Pesticide Control Section
90 West Plato Blvd.
Saint Paul, Minnesota 55107
Phone: (612) 296-8379

A federal or state agency, a local unit of government, or any person or group of persons filing with the commissioner a petition that contains the signatures and addresses of 500 or more individuals of legal voting age has thirty (30) days to file written objections with the Commissioner of Agriculture regarding the issuance of these Special Local Need Registrations. Upon receipt of such objections and when it is deemed in the best interest of the environment or the health, welfare, and safety of the public, the Commissioner of Agriculture shall order a hearing pursuant to Minn. Stat. ch. 15, for the purpose of revoking, amending, or upholding these registrations.

Mark W. Seetin, Commissioner
Department of Agriculture

Notice of Special Local Need Registration for Evercide Permethrin

Pursuant to Minn. Stat. § 18A.23 and 3 MCAR § 1.033 B., the Minnesota Department of Agriculture on March 10, 1981, issued a Special Local Need Registration for Evercide Permethrin to Mosquito Control Technology, Saint Paul, Minnesota 55110.

The Commissioner of Agriculture, based upon information in the application, has deemed it in the public interest to issue such a registration, and has deemed that the information in the application indicates that the pesticide does not have the potential for unreasonble adverse environmental effects.

In addition to the uses prescribed on the product label, this Special Local Need Registration permits the use of this pesticide when necessary to achieve localized control of potential disease-bearing mosquitos by ground back-pack sprayers rather than area wide aerial spraying.

The application and other data required under Minn. Stat. §§ 18A.22, subd. 2 (a-d), 18A.23, and 40 CFR 162.150-162.158, subpart B relative to this registration (identified as SLN #MN 81-0003) is on file for inspection at:

Minnesota Department of Agriculture
Pesticide Control Section
90 West Plato Blvd.
Saint Paul, Minnesota 55107
Phone: (612) 296-8379

A federal or state agency, a local unit of government, or any person or group of persons filing with the commissioner a petition that contains the signatures and addresses of 500 or more individuals of legal voting age has thirty (30) days to file written objections with the Commissioner of Agriculture regarding the issuance of this Special Local Need Registration. Upon receipt of such objections and when it is deemed in the best interest of the environment or the health, welfare, and safety of the public, the Commissioner of Agriculture shall order a hearing pursuant to Minn. Stat. ch. 15, for the purpose of revoking, amending, or upholding this registration.

Mark W. Seetin, Commissioner
Department of Agriculture

Department of Commerce Insurance Division

Meeting Notice

Minnesota Comprehensive Health Association
Nominating Committee
Tuesday, April 14, 1981
10:45 a.m.
Blue Cross and Blue Shield of Minnesota
3535 Blue Cross Road
St. Paul, Minnesota 55165

Changes in any scheduled meetings and notices of any additional meetings will be posted or otherwise be available upon inquiry at the office of the Insurance Division, and may also be obtained by telephone from the Life and Health Section, telephone (612) 296-2202.

Ethical Practices Board

Request for Advisory Opinion

Re: Hennepin County Disclosure Law—Administration

The Minnesota State Ethical Practices Board solicits opinions and comments on the following request for an advisory opinion which will be discussed at its March 27, 1981 Board meeting. Written comments concerning the opinion request should be forwarded to arrive at the Board's office prior to March 25, 1981.

Ms. Mary Ann McCoy
Executive Director
State Ethical Practices Board
41 State Office Building
St. Paul, Minnesota 55155

Dear Ms. McCoy:

I am the official responsible for administration of the election laws for Hennepin County and am requesting advisory opinions on several matters regarding duties of the filing officer pursuant to Chapter 362, Laws of 1980.

1. The Hennepin County Park Reserve Board has eleven members. Three members are appointed by the Hennepin County

Board; the Minneapolis Park Board appoints two members, and the Minneapolis City Council appoints two members. The remaining four members are elected on a district basis within Hennepin County.

(a) Is a member of the Hennepin County Park Reserve Board so appointed an elected official of Hennepin County who is required to file a statement of economic interest pursuant to section 13?

(b) Is an elected member of the Hennepin County Park Reserve Board an "elected official of Hennepin County" for purposes of section 13?

2. In December, 1979, Alan Greene resigned as an elected member of the Hennepin County Park Reserve Board. Mr. John Hannah was duly appointed by the Hennepin County Board on December 18, 1979, to fill the unexpired term of Mr. Greene's office. Mr. Hannah will not face election until 1982.

(a) As an appointed official to an elected office, is Mr. Hannah required by section 13 to file a statement of economic interest as an "elected official of Hennepin County?" If the answer is affirmative, what is the due date for filing the statement?

3. Since January 1, 1980, there have been no city council elections in Bloomington and Minneapolis. Several of these city council members did not receive contributions or make expenditures in excess of $100 in 1980, and they did not register their principal campaign committees or make campaign reports.

(a) What is my responsibility in this matter as a filing officer, assuming that neither my staff nor I have any knowledge that these city council members had campaign activity during 1980?

(b) If no registration or campaign report has been filed, may I assume that none is required?

4. Section 14, subdivision 8 requires that if the filing officer has knowledge or reason to believe that a violation of Chapter 362, Laws of 1980, has occurred, he or she shall immediately notify the county attorney of the county in which the violation is thought to have occurred. A copy of the report shall also be sent to the ethical practices board.

(a) In view of the conflicting or redundant procedures prescribed in greater specificity in section 14, subdivision 7 and section 17 for the reporting and prosecution of violations arising from failure to file the required statements or reports, is section 14, subdivision 8 applicable to violations for failure to file the statements or reports required in chapter 362?

(b) If your answer is in the affirmative, at what point does the failure to file a required statement or report constitute a "violation" for the purpose of reporting pursuant to section 14, subdivision 8?

(c) If a political fund reports a contribution to a candidate, does section 14, subdivision 8 or any other section of chapter 362 require the filing office to audit, review and monitor the political funds reports and the candidate's principal campaign committee reports to assure that the contributions have been properly reported as income? Must the candidate's reports be monitored to assure that political funds register and file appropriate reports? In other words, does section 14, subdivision 8 charge the filing officer with the constructive knowledge of information contained in reports or statements filed?

I thank you in advance for your helpful assistance.

Sincerely,

Vernon T. Hoppe, Director of Property Taxation

The Metropolitan Council and Metropolitan Health Board

Public Hearing for the Joint Consideration of Revising the 1980-81 Health Systems Plan

The Metropolitan Council and Metropolitan Health Board will hold a public hearing on Wednesday, April 15, 1981, at 7:00 p.m. in the Metropolitan Council Chambers, 300 Metro Square Building, 7th and Robert Streets, St. Paul, Minnesota, 55101 for the purpose of receiving oral and written comments on ten service plan components for inclusion in the 1980-81 Health Systems Plan for the Twin Cities Metropolitan Area. These service components include stratified coronary care, trauma care, burn care, regional poison information and treatment, spinal injury care, medical control, computed tomography scanning, home health care, developmental disabilities services and emergency medical services overview. Copies of these plan components are available for public inspection beginning March 17, 1981 at the following locations:

Metropolitan Council Library
300 Metro Square Building
St. Paul, MN 55101

Minneapolis Public Library
Government Documents Room
300 Nicollet Mall
Minneapolis, MN 55401

St. Paul Public Library
Science and Industry Room
90 West Fourth Street
St. Paul, MN 55102

Anoka County Library—Blaine Branch
707 Highway 10
Blaine, MN 55434

Carver County Library—Chaska Branch
314 Walnut Street
Chaska, MN 55318

Dakota County Library—Burnsville Branch
1101 W. County Rd. 42
Burnsville, MN 55337

Hennepin County Library—Southdale Branch
7001 York Avenue
Edina, MN 55435

Ramsey County Library—Roseville Branch
2180 N. Hamline Avenue
Roseville, MN 55113

Scott County Library—Shakopee Branch
235 S. Lewis Street
Shakopee, MN 55379

Washington County Library—Park Grove Branch
7520—80th Street S.
Cottage Grove, MN 55106

Copies of the ten service components are available free of charge from the Metropolitan Health Board, 300 Metro Square Building, St. Paul, Minnesota 55101, telephone 291-6352.

People who wish to speak at this public hearing may register in advance by contacting Eleanor Suneson at 291-6352. Those who register first will be scheduled to speak first. If you cannot attend you are encouraged to send written comments to the Metropolitan Health Board, up to seven days following this hearing. For further information contact the Metropolitan Health Board at 291-6352.

Barbara O'Grady, Chairperson
Metropolitan Health Board

Charles Weaver, Chairman
Metropolitan Council

Department of Public Safety
Driver and Vehicle Services Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Revisions to Rules on Driver Training, Vehicles, Instruction, Instructors and Schools

Notice is hereby given that the Department of Public Safety is seeking information, comments and opinions from sources outside the department in preparing to draft revisions to rules relating to commercial driver training schools. Such rules are authorized by Minn. Stat. §§ 171.33 and 171.34. The department is proposing to incorporate rules concerning truck driver training and to update the existing rules, Driver License 31-38.

All interested or affected persons or groups are invited to provide information on this subject until May 1, 1981 by contacting:

Mr. Rollis Odendahl
Driver Training Supervisor
314 Transportation Building
St. Paul, MN 55155

Written statements will be made part of the public hearing record.

Department of Transportation
Public Transportation Division

Notice of Intent to Solicit Outside Opinion Concerning Rules for the Implementation of the State Rail Bank Program

Notice is hereby given that the Minnesota Department of Transportation (hereinafter "department") is seeking information or opinions from sources outside the department in preparing to propose the adoption of rules relating to the implementation of the State Rail Bank Program authorized by Minn. Laws of 1980, ch. 558, § 228.63 (Act).

The rules are authorized by Minn. Stat. § 15.0412, subd. 3 (1978). The proposed rules would include the following areas:

1. The establishment of criteria for the purchase of abandoned rail lines under the State Rail Bank Program.
2. The definition of the types of property that may be purchased.
3. The delineation of the purposes for which the line purchased may be used.
4. Procedures for the acquisition and disposition of the land purchased.

The department requests information and comments concerning the subject matter of the proposed rules. Interested or affected persons or groups may submit statements of information, comment and advice in writing or orally to:

Mr. G. W. Boldt, Director
Office of Railroad Administration
Minnesota Department of Transportation
419 Transportation Building
John Ireland Boulevard
St. Paul, Minnesota 55155

All statements of information and comment must be received by May 15, 1981. Any written material received by the Department shall become part of the hearing record when rules governing the subject are promulgated.

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of the County of Blue Earth for A Variance from State Aid Standards for Design Speed

Notice is hereby given that the County Board of the County of Blue Earth has made a written request to the Commissioner of Transportation for a variance from minimum design speed standards along County State Aid Highway No. 10, between its Junctions at Trunk Highway No. 22 at Beauford and Trunk Highway No. 83 northwest of Pemberton.

The request is for a variance from 14 MCAR § 1.5032 H.1.d. Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit 43 miles per hour design speed instead of 45 miles per hour design speed.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 16th day of March, 1981.

Richard P. Braun
Commissioner of Transportation

Petition of the County of Jackson for A Variance from State Aid Standards for Bridge Width

Notice is hereby given that the County Board of the County of Jackson has made a written request to the Commissioner of Transportation for a variance from minimum design standards for bridge width along CSAH 14 (Ashley Street) between U.S. Highway 71 (Main Street) and CSAH 23 (River Street) over the Des Moines River in the City of Jackson.

The request is for a variance from 14 MCAR § 1.5032 H.1.c. Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a minimum roadway width of 32 feet instead of 46 feet and maintain two traffic lanes across the bridge.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 16th day of March, 1981

Richard P. Braun
Commissioner of Transportation

Petition of the County of Hennepin for A Variance from State Aid Standards for Street Width and Parking Restrictions in the City of Mound

Notice is hereby given that the County Board of the County of Hennepin has made a written request to the Commissioner of Transportation for a variance from minimum design standards for street width along County State Aid Highway No. 110 (Commerce Boulevard) from County State Aid Highway No. 125 (Bartlett Boulevard) to County State Aid Highway No. 15 (Lynwood Boulevard) in the City of Mound.

The request is for a variance from 14 MCAR § 1.5032 H.1.c., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a minimum roadway width of 48 feet instead of 50 feet and permit two parallel restricted peak traffic hour parking lanes between a point approximately 200′ south of County Road 125 (Bartlett Boulevard) and a point approximately 300′ south of County State Aid Highway No. 15 (Shoreline Boulevard).

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 16th day of March, 1981

Richard P. Braun
Commissioner of Transportation

Petition to the County of Hennepin for A Variance from State Aid Standards for Street Width

Notice is hereby given that the County Board of the County of Hennepin has made a written request to the Commissioner of Transportation for a variance from minimum design standards for street width along County State Aid Highway No. 57 (Fremont Avenue North) between West Broadway and Lowry Avenue in the City of Minneapolis.

The request is for a variance from 14 MCAR § 1.5032 H.1.c. Rules for State Aid Operations under Minnesota Statute, Chapters 162 and 163 (1978) as amended, so as to permit a minimum roadway width of 32 feet with restricted peak hour parking permitted on the east side of the street and still maintain two traffic lanes.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 16th day of March, 1981.

Richard P. Braun
Commissioner of Transportation

Petition of the County of Hennepin for A Variance from State Aid Standards for Design Speed

Notice is hereby given that the County Board of the County of Hennepin has made a written request to the Commissioner of Transportation for a variance from minimum design speed standards for County State Aid Highway 125 over the Spring Park Channel of Lake Minnetonka between Spring Park and Mound.

The request is for a variance from 14 MCAR § 1.5032 H.1.c., Rules for State Aid Operations under Minnesota Statute, Chapters 162 and 163 (1978) as amended, so as to permit a design speed of 25 MPH over the bridge instead of 30 MPH.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 16th day of March, 1981.

Richard P. Braun
Commissioner of Transportation

Petition of the County of Hennepin for A Variance from State Aid Standards for Bridge Width

Notice is hereby given that the County Board of the County of Hennepin has made a written request to the Commissioner of Transportation for a variance from minimum design standards for bridge width along County State Aid Highway 123 over Crow River near the City of Hanover.

The request is for a variance from 14 MCAR § 1.5032 H.1.a. Rules for State Aid Operations under Minnesota Statute, Chapters 162 and 163 (1978) as amended, so as to permit a 32′ wide bridge instead of a 40′ wide bridge.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 16th day of March 1981

Richard P. Braun
Commissioner of Transportation

Petition of the City of Duluth for A Variance from State Aid Standards for Street Width

Notice is hereby given that the City Council of the City of Duluth has made a written request to the Commissioner of Transportation for a variance from minimum design standards for street width along 24th Avenue West between Michigan Street and Skyline Boulevard.

The request is for a variance from 14 MCAR § 1.5032 H.1.c. Rules for State Aid Operations under Minnesota Statute, Chapters 162 and 163 (1978) as amended, so as to permit a minimum roadway width of 30′ with no parking permitted on either side of the street instead of a 32′ wide street.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 16th day of March, 1981.

Richard P. Braun
Commissioner of Transportation

Department of Transportation Technical Services Division

Appointment and Scheduled Meeting of A State Aid Standards Variance Committee

Notice is hereby given that the Commissioner of Transportation has appointed a State-Aid Standards Variance Committee who will conduct a meeting on Wednesday, April 8, 1981, at 9:30 a.m. in Room 419, State Transportation Building, John Ireland Boulevard, St. Paul, Minnesota.

This notice is given pursuant to Minnesota Statute § 471.705.

The purpose of the open meeting is to investigate and determine recommendation(s) for variances from minimum State-Aid roadway and parking standards as governed by 14 MCAR § 1.5032 M.4.b. Rules for State-Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978), as amended.

The agenda will be limited to these questions:

1. Petition of the County of Blue Earth for a variance from minimum design Speed Standards on County State Aid Highway 10 between Beauford and Pemberton.

2. Petition of the County of Jackson for a variance from Standards for Bridge Width on County State Aid Highway 14 (Ashley Street) in the City of Jackson.

3. Petition of the County of Hennepin for a variance from Standards on County State Aid Highway 110 for Street Width and parking restrictions in the City of Mound.

4. Petition of the County of Hennepin for a variance from Standards for street width on County State Aid Highway 57 (Fremont Avenue North) in the City of Minneapolis.

5. Petition of the County of Hennepin for a variance from design speed standards on County State Aid Highway 125 over the Spring Park Channel of Lake Minnetonka.

6. Petition of the County of Hennepin for a variance for bridge width on County State Aid Highway 123 over Crow River near the City of Hanover.

7. Petition of the City of Duluth for a variance from street width on Municipal State Aid Street 116 (24th Avenue West) from Michigan Street to Skyline Boulevard.

Dated this 16th day of March, 1981

Richard P. Braun
Commissioner of Transportation

STATE OF MINNESOTA

OFFICE OF THE STATE REGISTER

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

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FOR LEGISLATIVE NEWS

Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

Briefly/Preview—Senate news and committee calendar; published weekly during legislative sessions. Contact Senate Public Information Office, Room B29 State Capitol, St. Paul MN 55155, (612) 296-0504.

Perspectives—Publication about the Senate. Contact Senate Information Office.

Weekly Wrap-Up—House committees, committee assignments of individual representatives, news on committee meetings and action, House action and bill introductions. Contact House Information Office, Room 8 State Capitol, St. Paul, MN, (612) 296-2146.

This Week—weekly interim bulletin of the House. Contact House Information Office.

Transportation Department
Attn: Ken Bjork
Interoffice
Room 313 D O T Bldg



(8)3

STATE OF MINNESOTA

DEPARTMENT OF TRANSPORTATION

In the Matter of the Proposed Adoption) of Rules of the Department of Trans-) portation Relating to Implementation) of the State Rail Bank Program.)	ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

- -

IT IS ORDERED THIS 29th day of March, 1982, that Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the State of Minnesota, Department of Transportation for that purpose and be published in the State Register.

STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION

for Richard P. Braun
Commissioner

STATE OF MINNESOTA

DEPARTMENT OF TRANSPORTATION

PUBLIC TRANSPORTATION/PLANNING DIVISION

Proposed Adoption of Rules Relating to the Implementation of the State Rail Bank Program	Notice of Intent to Adopt Rules Without a Public Hearing.

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

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

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

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

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

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

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event that a public hearing is required, Mn/DOT will proceed according to the provisions of Minn. Stat. § 15.0412, subd. 4-4f.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to Mr. G. W. Boldt, at the address and telephone number previously stated, no later than May 12, 1982. If a person desires to request a public hearing, Mn/DOT requests that the person identify the particular provisions objected to, the suggested modifications to the proposed language, and the reasons and data relied on to support the suggested modifications.

Upon adoption of the rules by the Commissioner, the rules as proposed, this notice, the statement of need and reasonableness, all written comments received, and the final rule as adopted will be sent to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Mr. G. W. Boldt, at the address previously stated.

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

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

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

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

for Richard P. Braun
Commissioner

Dated this 29th day of March, 1982.

STATE OF MINNESOTA

DEPARTMENT OF TRANSPORTATION

AFFIDAVIT OF MAILING

In the Matter of the Proposed Adoption of Rules Relating to the Implementation of the State Rail Bank Program

Notice of Intent to Adopt Rules Without a Public Hearing.

- -

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

That on the 6th day of April, 1982, at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Intent to Adopt Rules Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Commissioner of Transporation for the purpose of receiving notices concerning proposals for or proposed rules of the Department of Transportation.

AFFIANT

Kenneth H. Bjork

Subscribed and sworn to before me

this 7th day of April, 1982.

Colette E. Prokop

Notary Public

COLETTE E. PROKOP
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Comm. Expires Sep. 13, 198[illegible]

Ramsey County, Minnesota.

My Commission expires 9-13-86.

STATE OF MINNESOTA

DEPARTMENT OF TRANSPORTATION

In the Matter of the Proposed Adoption of Rules Relating to the Implementation of the State Rail Bank Program	CERTIFICATE AS TO COMPLETENESS OF MAILING LIST

- -

I, Kenneth H. Bjork, Manager - Administrative Procedures and Documentation Section, do certify that attached and included in the Affidavit of Mailing of the Notice to all persons on the Department of Transportation mailing list, there is a complete list of persons, associations, and other interested groups who as of 4:00 P.M., April 6, 1982 requested pursuant to Minn. Stat. § 15.0412, subd. 4 that their names be placed on file with the Commissioner of Transportation for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Dated this 7th day of April, 1982.

AFFIANT

Kenneth H. Bjork

Subscribed and sworn to before me

this 7th day of April, 1982.

Colette E. Prokop

Notary Public

Ramsey County, Minnesota.

COLETTE E. PROKOP
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Comm. Expires Sep. 13, 1986

My Commission expires 9-13-86.

Mn/DOT RAIL DEV.
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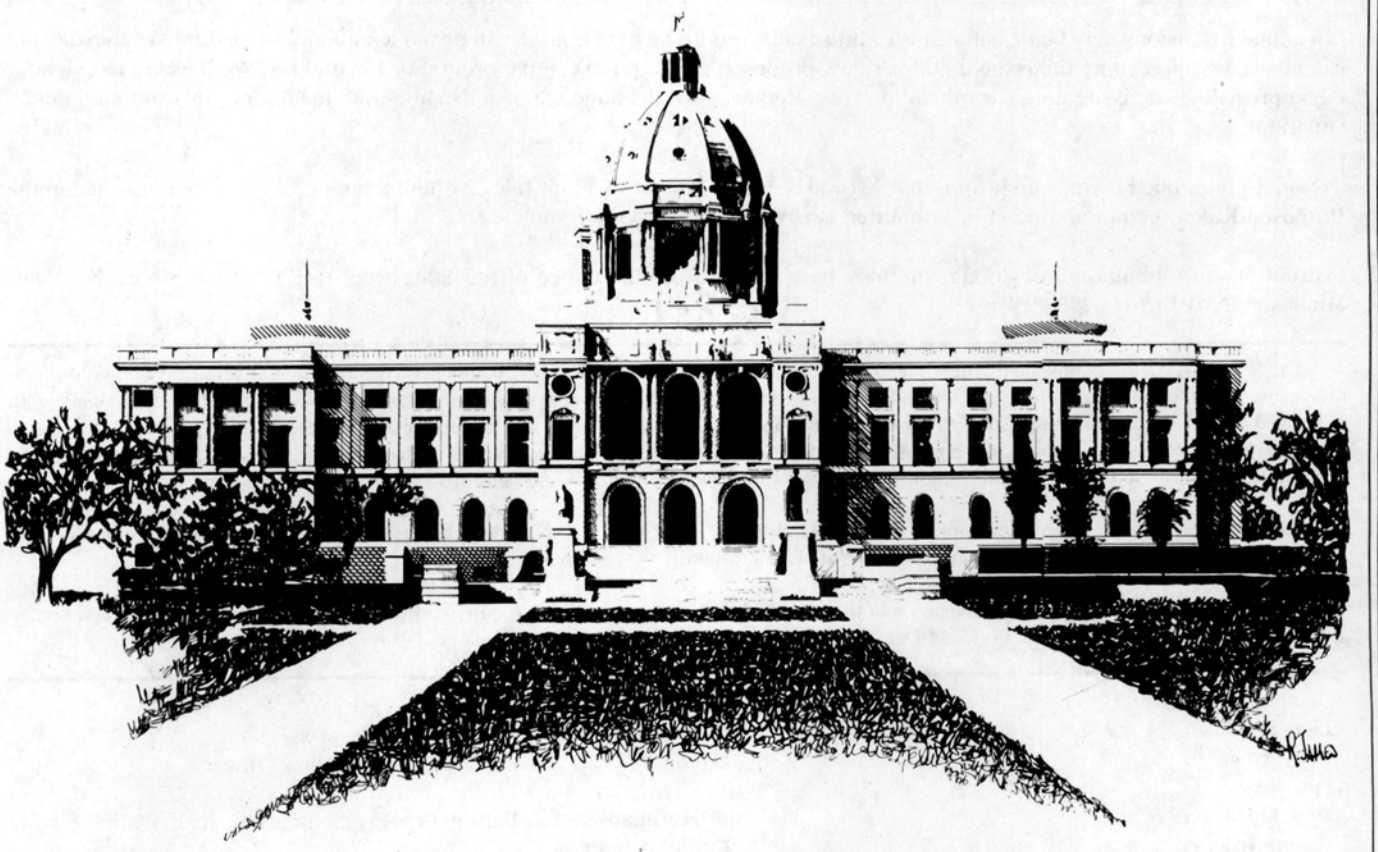
Rail Bank Rules -
Notice to Adopt
Without Hearing
page 1711 - 1715

STATE REGISTER

STATE OF MINNESOTA



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April 12, 1982

Pages 1705-1728

STATE REGISTER

Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
	SCHEDULE FOR VOLUME 6		
42	Monday April 5	Monday April 12	Monday April 19
43	Monday April 12	Monday April 19	Monday April 26
44	Monday April 19	Monday April 26	Monday May 3
45	Monday April 26	Monday May 3	Monday May 10

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

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

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NOTICE

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

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

The PROPOSED RULES section contains:

- ~~Calendar of Public Hearings on Proposed Rules.~~
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without a Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
- Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
- Notice of adoption of temporary rules.
- Adopted amendments to temporary rules (changes made since the proposed version was published).

All ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* will be published in the Minnesota Code of Agency Rules (MCAR). Proposed and adopted TEMPORARY RULES appear in the *State Register* but are not published in the MCAR due to the short-term nature of their legal effectiveness.

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

Issues 1-13, inclusive
Issues 14-25, inclusive
Issue 26, cumulative for 1-26
Issue 27-38, inclusive
Issue 39, cumulative for 1-39
Issues 40-51, inclusive
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PROPOSED RULES

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

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

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

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

Department of Public Safety
Fire Marshal Division

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

Notice of Intent to Adopt Rules without a Hearing

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

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified prior to final adoption if modifications are supported by the data and views submitted to the Department of Public Safety and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. The written request must be specific on which rule(s) a hearing is desired. Identification of the particular objection, the suggested modifications, and the reasons or data relied upon to support the suggested modifications are desired. In the event a public hearing is required, the department will proceed according to the provisions of Minn. Stat. § 15.0412, subdivision 4-4f.

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

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

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

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for

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

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

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

John P. Sopsic
Commissioner of Public Safety

Rules as Proposed (all new material)

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

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

11 MCAR § 1.5203 Definitions.

A. Applicability. As used in 11 MCAR §§ 1.5201-1.5210 the following terms and phrases have the meanings given them.

B. Secretary. "Secretary" means the Commissioner of Public Safety.

C. State agency. "State agency" means the Department of Public Safety, State Fire Marshal Division.

D. State. "State" means the state of Minnesota.

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

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

§ 191.5 Telephonic notice of certain leaks.

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

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

§ 191.7 Addressee for written reports.

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

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

§ 191.9 Distribution system: Leak report.

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

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

§ 191.11 Distribution system: Annual report.

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

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

§ 191.17 Transmission and gathering systems: Annual report.

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

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

§ 192.17 Filing of inspection and maintenance plans.

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

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

Department of Transportation
Public Transportation/Planning Division

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

Notice of intent to Adopt Rules without a Public Hearing

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

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

1. Establish criteria for property eligible for inclusion in the program, and

2. Establish public participation procedures for the acquisition, utilization and disposition of banked property.

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

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

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

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

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event that a public hearing is required, Mn/DOT will proceed according to the provisions of Minn. Stat. § 15.0412, subd. 4-4f.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to Mr. G. W. Boldt, at the address and telephone number previously stated, no later than May 12, 1982. If a person desires to request a public hearing, Mn/DOT requests that the person identify the particular provisions objected to, the suggested modifications to the proposed language, and the reasons and data relied on to support the suggested modifications.

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

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

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

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

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

March 29, 1982

Richard P. Braun
Commissioner

Rules as Proposed (all new material)

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

A. Acquire. "Acquire" means to purchase a rail line with state funds provided for the state rail bank program.

B. Betterments. "Betterments" means required improvements made to acquired property to prepare the property for continued rail use.

C. Commissioner. "Commissioner" means the Commissioner of the Minnesota Department of Transportation.

D. Continued rail operations. "Continued rail operations" means the utilization of a rail line for rail service upon acquisition or in the near or immediate future after acquisition.

E. Convey. "Convey" means to sell, lease, or grant an easement for the use of rail bank property for the purposes cited in Minn. Stat. § 222.63, subd. 4.

F. Department. "Department" means the Minnesota Department of Transportation.

G. Dispose. "Dispose" means to convey property to a governmental subdivision of the state for any of the purposes in Minn. Stat. § 222.63, subd. 4, or to sell the property as provided in Minn. Stat. § 222.63, subd. 5.

H. Other uses. "Other uses" means any uses of banked property other than those specified in Minn. Stat. § 222.63, subd. 2b.

I. Preserve. "Preserve" means to hold rail bank property during the period of time it is not being utilized for the purposes specified in Minn. Stat. § 222.63, subd. 2b.

J. Project. "Project" means any rail line proposed for acquisition, and rail lines actually acquired under the program.

K. Program. "Program" means the state rail bank program.

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

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

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

14 MCAR § 1.4011 Program criteria.

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

B. Funding criteria.

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

   a. the availability of program funds;

   b. the probability of the rail line being utilized for the purpose identified;

   c. the likelihood that an alternative rail line right-of-way could not be reestablished in the future;

   d. the adequacy of the title and the costs to cure any defects in the title; and

   e. the likelihood that no other entity will acquire a rail line for an appropriate use.

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

   a. rail lines that are to be utilized for continued rail operations;

   b. rail lines that are needed as part of the future overall rail system;

   c. rail lines that have an identified future use that will benefit a greater portion of the state; and

   d. rail lines where the identified future utilization includes more than one use.

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

1. the costs of the project compared to the benefits resulting from the project;

2. a detailed plan of operations for the rail line; and

3. a detailed plan providing for financing of the project.

14 MCAR § 1.4012 Acquisition of rail bank property.

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

1. a statement that the list is published pursuant to Minn. Stat. § 222.63, subd. 3;

2. the name, length, and owning railroad of each line;

3. the counties where each line is located;

4. any identified future uses for each line;

5. the abandonment status of each line;

6. the name, address, and telephone number of the department's contact person; and

7. other pertinent information.

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

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

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

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

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

14 MCAR § 1.4013 Utilization of rail bank property.

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

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

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

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

14 MCAR § 1.4014 Disposition of rail bank property.

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

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

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

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

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

1. a statement noting the required six-month period which allows owners of private property adjacent to the banked property to make offers to purchase the property from the department; and

2. the name, address, and telephone number of the department's contact person.

14 MCAR § 1.4015 Management of banked property.

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

1. uses which were in effect prior to department acquisition of the property;

2. uses that minimize maintenance costs and maximize income to the program;

3. uses which are not in conflict with adjacent land uses; and

4. uses that provide a benefit to the state.

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

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

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

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

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

1. A variance shall be granted if:

a. the rationale for the rule in question can be met or exceeded by the specific alternate practice proposed for substitution;

b. the application of the rule in question would impose an excessive burden on the person or entity applying for the variance in attempting to carry out the intent of the program; and

c. the granting of the variance will not adversely affect the public health and safety.

2. The commissioner shall set forth in writing the reasons for granting or denying a variance.

3. The person or entity who is granted a variance shall comply with the alternative practice granted by the commissioner.

4. The person or entity who is granted a variance shall immediately notify the department of any material changes in the circumstances which justified granting the variance.

5. A variance shall be revoked if material changes occur in the circumstances which justified the variance, or if the person or entity who was granted the variance fails to comply with the alternative practice granted by the commissioner.

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

ADOPTED RULES

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

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

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

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

Board of Animal Health

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

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

Rule as Adopted

3 MCAR § 2.057 Quarantined feedlots.

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

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

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

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

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

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

Temporary Rules as Adopted

6 MCAR § 2.4024 [Temporary] Definitions.

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

TAX COURT

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

State of Minnesota
County of Yellow Medicine

Tax Court
Regular Division

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

Appellant,

v.

The Commissioner of Revenue,

Appellee.

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

Findings of Fact, Conclusions of Law and Order for Judgment

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

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

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

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

Syllabus

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

Findings of Fact

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusions of Law

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

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

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

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

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

Memorandum

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

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

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

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

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

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

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

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

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

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

C.A.J.

SUPREME COURT

Decisions Filed Friday, April 2, 1982

Compiled by John McCarthy, Clerk

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

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

Reversed. Peterson, J.

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

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

Affirmed. Yetka, J.

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

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

Scott, J.

Decisions Filed Thursday, March 25, 1982

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

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

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

Remanded. Amdahl, C. J.

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

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

Affirmed. Amdahl, C. J.

Decisions Filed Friday, March 26, 1982

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

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

Affirmed as modified. Amdahl, C. J.

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

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

Affirmed. Amdahl, C. J.

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

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

Affirmed. Amdahl, C. J.

STATE CONTRACTS

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

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

Department of Administration Contract Management Division

Notice of Request for Proposals for Court Reporting and Transcription Services

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

1. Court reporting services to provide an accurate and verbatim record of proceedings and depositions required by state and federal laws, and

2. Transcription services to prepare an accurate and verbatim typewritten record from proceedings recorded on single track or four track audio magnetic recording devices; such as 5" reel-to-reel tapes and standard cassette tapes.

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

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

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

Office of Administrative Hearings

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

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

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

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

Department of Energy, Planning and Development
Energy Division

Notice of Request for Proposals for Superinsulated Remodeling Demonstration Project Grants

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

To obtain a copy of the request proposal contact:

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

Deadline for submissoin of proposals is May 10, 1982.

Department of Health
Health Systems Division
Emergency Medical Services Section

Notice of Request for Proposals for Minnesota Poison Information Center

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

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

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

Minnesota Higher Education Coordinating Board

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

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

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

Those interested in receiving requests for proposals should contact:

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

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

Department of Public Welfare
Faribault State Hospital

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

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

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

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

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

Direct inquiries to:

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

Department of Transportation
Surveying and Mapping

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

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

1. Aerial Vertical Photography

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

2. Aerial Oblique Photography

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

3. Photographic Laboratory Services

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

4. Map Compilation

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

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

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

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

OFFICIAL NOTICES

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

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

Department of Education
Instruction Division

Notice of Public Meeting

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

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

Minnesota Pollution Control Agency

Notice of Intent to Act on a Proposed Operating Permit

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

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

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

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

1. Why you feel the agency should hold a public hearing on the proposed permit as a whole or specific terms or conditions of the permit, and the specific questions or issues you would like the agency to address at the public hearing;

2. Your interest in the proposed permit;

3. A statement describing the action you wish the agency to take, including specific references to any section of the proposed permit which you believe should be changed;

4. The specific reasons supporting your position.

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

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

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

Dated this 5th day of April, 1982.

Louis J. Breimhurst
Executive Director
Minnesota Pollution Control Agency

Office of the Secretary of State

Notice of Vacancies in Multi-member State Agencies

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

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

Minnesota State Retirement System

Regular Meeting, Board of Directors

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

Pollution Control Agency
Water Quality Division

Behind-Schedule and Substandard Project Lists

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

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

Louis J. Breimhurst
Executive Director

BEHIND SCHEDULE PROJECTS
1981 FINAL LIST

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

Another entry withheld pending the outcome of hearings

SUBSTANDARD PROJECTS
1981 FINAL LIST

FIRM	MUNICIPALITY OR SANITARY DISTRICT	NATURE OF DEFICIENCY	PROJECT DESCRIPTION	NATURE OF CORRECTION

Entries withheld pending outcome of hearings

Errata

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

STATE OF MINNESOTA

State Register and Public Documents Division
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FOR LEGISLATIVE NEWS

Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

Briefly/Preview—Senate news and committee calendar; published weekly during legislative sessions. Contact Senate Public Information Office, Room B29 State Capitol, St. Paul MN 55155, (612) 296-0504.

Perspectives—Publication about the Senate. Contact Senate Information Office.

Weekly Wrap-Up—House committees, committee assignments of individual representatives, news on committee meetings and action, House action and bill introductions. Contact House Information Office, Room 8 State Capitol, St. Paul, MN, (612) 296-2146.

This Week—weekly interim bulletin of the House. Contact House Information Office.

STATE OF MINNESOTA

DEPARTMENT OF TRANSPORTATION

DIVISION OF PUBLIC TRANSPORTATION/PLANNING

In the Matter of the Proposed Adoption of Rules Pertaining to the State Rail Bank Program.	)))	STATEMENT OF NEED AND REASONABLENESS

- -

The proposed rules pertaining to the State Rail Bank Program contain all new material. These rules are to be permanent rules of the Department of Transportation. The Commissioner of Transportation has the authority to adopt these rules pursuant to Minn. Stat. §222.63, subd. 7.

The purpose of the State Rail Bank Program and these rules is to acquire and preserve abandoned rail lines for future public use, or for disposition for commerical use in serving the public. These future public or commercial uses include providing for the transportation of individuals or freight, or the transmission of energy, fuel or other commodities.

This Statement of Need and Reasonableness in support of the Department of Transportation's proposed rules will be presented section by section and by subsections therein.

14 MCAR §1.4010 Definitions

Many of the definitions listed are self explanatory and the remainder are used to clarify terms that may have different meanings when used in another context. The definitions are necessary to allow the use of single words or phrases and therefore they are reasonable because they eliminate the redundant use of citations and explanations.

A. Acquire. This definition is self explanatory.

B. Betterments. This definition clarifies the meaning of "betterments" and limits the expenditure of funds for betterments to a specific purpose. Rail lines that qualify for the expenditure of funds for betterments are those that need repairs so that safe rail operations can be continued on a line. For example, replacing ties and ballast, or repairing bridges and grade crossing signals are considered as improvements that may be necessary to continue to

provide rail service that is safe. Each rail line that is acquired for continued rail operations will be unique in terms of specific betterments that will be required. After a rail line is acquired and betterments have been made, the ongoing maintenance of the rail line will not be considered as betterments to the property.

C. Commissioner. This definition is self explanatory.

D. Continued rail operations. This definition limits continued rail operations to mean using a rail line for providing rail service as soon as it is practically possible after the line is acquired. A lapse in time may occur if a line needs to be taken out of service temporarily so that betterments can be made, or so that someone can be found to operate over the line and provide the rail service.

E. Convey. Minn. Stat. §222.63, subd. 4, permits the commissioner to convey acquired rail lines to governmental subdivisions of the state for the purposes of the program cited in Minn. Stat. §222.63, subd. 2, 2a, 2b and 2c. This definition clarifies the meaning of convey as it relates to the commissioner's authority.

F. Department. This definition is self explanatory.

G. Dispose. This definition explains the ways of disposing of rail bank property as provided in the program's legislation. One of the ways of disposing of property is permitted, the other is required. The commissioner is permitted to dispose of property by conveying it to political subdivisions of the state under Minn. Stat. §222.63, subd. 4. The commissioner is required to dispose of property that has not been utilized for the purposes of the program nor conveyed to a political subdivision. This required disposition is mandated in Minn. Stat. §222.63, subd. 5.

H. Other uses. This definition provides that when property is used for purposes other than those cited in Minn. Stat. §222.63, subd. 2b, that the use shall be called an other use. An example of "other use" is when a utility company had an agreement with the owning railroad to have utility poles and lines on their right-of-way and the commissioner agrees to let the utility company continue to do so when the property is acquired for the state rail bank.

I. Preserve. This definition is self explanatory.

J. Project. This definition is self explanatory.

K. Program. This definition is self explanatory.

L. Rail line. This definition is self explanatory.

M. Railroad. This definition is established by federal law in the Interstate Commerce Act.

N. Utilize. This definition clarifies the term utilize to mean that acquired property is being used for the purposes intended in the program's legislation.

14 MCAR §1.4011 Program Criteria.

A. Eligibility for acquisition and preservation. This subsection is necessary because it provides that an abandoned rail line is eligible for being acquired and preserved in the state rail bank if it meets the requirements of the state rail bank legislation and these rules. It is reasonable to expect a rail line to meet the requirements of the program's legislation and rules.

B. Funding criteria. This subsection is necessary because it lists criteria that will be considered in determining whether or not projects will be funded. The reasonableness of this subsection is supported by the need to have funding criteria so that priorities can be established among proposed projects competing for a limited source of funds. The first part of this subsection, B.1., lists criteria that will be considered for all projects. The second part, B.2., lists criteria which will give certain kinds of projects priority over other projects.

B.1.a. Program funds must be available to fund eligible projects.

B.1.b. The more probable it is that a rail line will be utilized for the purpose for which it is being acquired will increase the department's interest in a project proposed for funding. For example, suppose that rail line A and rail line B are being abandoned at the same time. Each line could be used in the future to provide rail service to two different power plants. However, line A's power plant is in the process of being built and is scheduled for completion in one year. Line B's power plant is proposed for construction

in five years, but no firm commitment has been made to build it. Therefore, it is more probable that rail service will be required on line A as opposed to line B, and line A would receive more consideration.

B.1.c. Because rail lines are located in a variety of settings, such as rural, urban, farmland and forests, the difficulty of reestablishing a similar right-of-way at some future date is one of the criteria that will be considered. Once a rail line is abandoned and sold by the railroad it is usually gone forever. Generally the property is sold in parcels to the adjacent landowners and they use the property to suit their needs. After this process occurs, reestablishing the right-of-way is next to impossible because the rail bank program does not include the power of eminent domain. Even if eminent domain is used by entities with the power to condemn it would be very costly to reestablish a corridor.

B.1.d. In the past the state has encountered difficulties with the title to railroad property. Title to railroad property is usually in the form of easements with reversionary clauses, quit claim deeds or warranty deeds. Each line is unique in terms of how many miles long it is and the percentage of property that has a certain type of title. In some cases, it may be too costly for the state to clear the title sufficiently to allow use of the property for a rail bank purpose.

B.1.e. When an entity other than the state is taking action to acquire an abandoned rail line for purposes similar to those of this program, the state will allow such programs priority. For example, regional rail authorities have the powers to acquire abandoned lines and provide rail service. If a regional rail authority wants to do so, there is no need for the state to interfere with the authority's actions.

B.2.a. Rail lines that are to be utilized for continued rail operations are of the highest priority because the right-of-way already exists for the purpose of providing rail transportation, and it is least disruptive to the rail users and adjacent land uses to continue to use the property as it has been for decades.

B.2.b. The second priority for consideration is rail lines that are to be preserved for rail service in the future, because the right-of-way exists for providing rail service and it again would be least disruptive to reuse the property for the purpose of providing rail transportation.

B.2.c. This refers to the level of benefits that are expected to be accomplished through the proposed future use of the property. If the proposed future use on one line will benefit more people than the proposed use of another line, the one with the greatest benefits would receive a higher priority.

B.2.d. Finally, a rail line that could be utilized for more than one transportation or transmission purpose would receive a higher priority than a line that has only one proposed use. Buying one rail line that can be utilized for multiple purposes would provide more services to the public than buying one line for one purpose.

C. Continued rail operations projects. This subsection is necessary because it lists the information that will be required to determine the priority of continued rail operations projects. It is reasonable to prioritize these projects because they will be more costly than other types of projects. Higher costs are due to acquiring the land with the rail in place and possible needs for betterments to the property.

C.1. This refers to the necessity of completing a cost/benefit analysis on a project to determine its financial viability.

C.2. A detailed plan of how the rail line would be operated is necessary to determine if the entity proposing to provide rail operations would be able to do so.

C.3. This refers to the necessity of knowing how funds will be raised so that continued rail service can be accomplished. The financial plan should explain how the operations will be paid for.

14 MCAR ¢1.4012 Acquisition of rail bank property.

A. Published list of proposed projects. The program's legislation requires that a notice must be published in the State Register and newspaper if the commissioner desires to acquire property, see Minn. Stat. §222.63, subd. 3. This subsection is necessary to provide for the publication of a list of proposed projects so that the public can be made aware of what they are. This subsection also lists the kind of information that will be provided in published notices. The reasonableness of this subsection is supported by the need to clarify to the public which rail lines the department may desire to purchase.

B. Initiation of title search. This subsection provides that after the procedures under A. have been completed, and after an abandonment application is filed, the title search will be initiated. The department will publish a notice informing the public that it has initiated a title search. In some cases there may be a considerable lapse of time between the published notice under part A. and the time that a title search is conducted. In this way the public will be aware that the department is still considering acquiring the property. This subsection is necessary to keep the public informed and it is reasonable for the department to do so.

C. Public information meeting. Minn. Stat. §222.63, subd. 3, requires that at least one public meeting or hearing be held in the area where the line is located. This subsection is needed to provide for a public meeting after the title search has been completed. By having the meeting at that time the department will be able to provide the public with more information. Also, the quality of the title will have an impact on the department's interest in acquiring the property. Therefore, it is reasonable that the public meeting be held after the title search.

D. Decision to acquire. This subsection is necessary because it provides that the decision of whether or not to acquire a line will be made after the public meeting. It is reasonable for the department to decide what to do after the meeting so that the public's comments and concerns can be considered in making a decision. The decision will be published as required by Minn. Stat. §222.63, subd. 3.

E. Simultaneous implementation of 14 MCAR §§1.4012 - 1.4014. This subsection provides that the procedures for acquisition, utilization and disposition shall be implemented simultaneously when possible. This is necessary because it is probable that a decision to acquire and utilize or dispose of property may be made at the same time. For example, if the proposed plan for a line is to acquire it and then lease it to a utility company for a transmission line as soon as it is acquired, the procedures for acquisition and utilization would be implemented simultaneously. This type of situation demonstrates the reasonableness of this subsection.

14 MCAR §1.4013 Utilization of rail bank property.

A. Notice to utilize rail bank property. The program's legislation requires that a notice is to be published in the State Register and newspaper if the commissioner desires to utilize banked property. This subsection is necessary and reasonable because it provides for the publication of such a notice and the kinds of information the notice will include.

B. Public information meeting. This subsection is necessary because it provides for the public meeting that must be held under Minn. Stat. §222.63, subd. 3. It is reasonable because it provides a procedure for how the public will be notified of meetings.

C. Decision to utilize. This subsection provides that the decision of whether or not to utilize the property as proposed will be made after the public meeting. This is necessary so that public input can be considered in the decision. The decision will be published in the newspaper to notify the public. This subsection is reasonable, as it provides for notifying the public of what decision has been made.

14 MCAR §1.4014 Disposition of rail bank property.

A. Notice to dispose of rail bank property. This subsection is necessary because it provides for the publication of notice to the public for the purpose of disposing of banked property. The notice is required under Minn. Stat. §222.63, subd. 3. and it is reasonable to provide the public with information on the plans for disposing of the property.

B. Public information meeting. This subsection is necessary because it provides for the public meeting that must be held under Minn. Stat. §222.63, subd. 3. It is reasonable because it provides a procedure for how the public will be notified of meetings.

C. Decision to dispose of property. This subsection is necessary because it provides that the decision to dispose of property will be made after the public meeting. It is reasonable for the department to decide what to do after the meeting so that the public's comments and concerns can be considered in making a decision. A notice of the decision will be published. If the disposition is required because the property has not been utilized, the

notice will cite the time period during which adjacent landowners may make offers to purchase the property. This time period is required by Minn. Stat. §222.63, subd. 5. This subsection is reasonable because it provides for notifying the public of the department's decision.

14 MCAR §1.4015 Management of banked property.

A. Maintenance and other uses during preservation of property. This subsection is necessary because it discusses how banked property will be managed. While property is being preserved and not being utilized, the commissioner is required to maintain the property under Minn. Stat. §222.63, subd. 2c. By leasing out property for other uses while it is being preserved, the commissioner can raise funds to help pay for the maintenance of other banked property. The conditions under which other uses of property will be considered are listed in this subsection. It is reasonable to list what the conditions are in the rules so that the public will know what the conditions are.

A.1. On some rail lines the grain elevators are currently leasing the property they are on from the railroad. If the state has to buy this property as a part of the right-of-way it would be appropriate to continue to lease the property to the grain elevator.

A.2. Through leasing property to a grain elevator the state is not responsible for the maintenance of that property. Also, the leasing fee can be used to maintain other property that is being preserved.

A.3. A use considered to be in conflict with adjacent land uses is one totally inconsistent and inappropriate to its surroundings.

A.4. A use that provides a benefit to the state is one where the benefits of the use are greater than the liabilities.

B. Other uses during utilization of property. This subsection is necessary because it provides that other uses of the property will be allowed during utilization of the property as long as the other uses do not hamper utilization. It is reasonable to allow other uses that do not interfere with the intent of the program.

14 MCAR ¢1.4016 Administration of the rail bank program.

A. Provision of information for continued rail service projects. This subsection requires the entity proposing a continued rail operations project to provide the commissioner with data. The provision of data is necessary because it will be used to conduct a benefit/cost analysis, and to evaluate the operational and financial aspects of proposed projects. The provision of this data is reasonable because it relates directly to the information used to establish the priority of these types of projects, see 14 MCAR §1.4011, C.

B. Contracts. This subsection provides that any commitments of program funds or authority to use property will be handled through the execution of written contracts. This subsection is necessary and reasonable because it is required by statute to handle such matters through written contracts.

C. Variance. This sub-section allows the commissioner to grant variances from these rules. A provision allowing the granting of variances is necessary because all of the rail bank projects will not be alike, and yet the rules must be uniform in their application. The provision for granting a variance will allow the commissioner to treat a unique circumstance differently. The applicant for a variance must show affirmatively that the rule in question can be met or exceeded through a variance, that the rule in question imposes an excessive burden on implementing a project, and that the health and safety of the public will not be jeopardized. If the circumstance which justified the variance changes, the applicant must notify the department. The department will then impose the requirement stated in the rule. This is necessary so that alternative practices which do not comply with the language of the rules will only be permitted when the circumstances justify them. The reasonableness of this subsection is supported by the need to have a process that allows unique circumstances to be considered in light of the intent of the rules.

for Richard P. Braun
Commissioner

March 30, 1982

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

In the Matter of the Proposed Adoption) of Rules of the Department of Trans-) portation Relating to Implementation) of the State Rail Bank Program.)	STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

- -

I, GILBERT S. BUFFINGTON, Special Assistant Attorney General, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Gilbert S. Buffington
Special Assistant Attorney General

Dated: 26 May 1982

In the Matter of the Proposed Adoption) of Rules of the Department of Transportation Relating to Implementation) of the State Rail Bank Program.)

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Kenneth H. Bjork, Manager - Administrative Procedures and Documentation Section, being first duly sworn, deposes and says:

That on the 27th day of May, 1982, in the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

Kenneth H. Bjork
Authorized Signature

Subscribed and sworn to before me

this 27th day of May, 1982.

Margaret M. Hansen
Notary Public

Ramsey County, Minnesota.

My Commission expires 4/15/85.

MARGARET M. HANSEN
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires April 15, 1985

STATE OF MINNESOTA

DEPARTMENT OF TRANSPORTATION

In the Matter of the Proposed Adoption of Rules of the Department of Transportation Relating to Implementation of the State Rail Bank Program.	NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

- -

Pursuant to your expressed interest or request and in accordance with Minnesota Statutes, section 15.0412:

PLEASE TAKE NOTICE that the above-captioned rules have been submitted to the Office of the Attorney General on this date, May 27, 1982, for review as to form and legality. Pursuant to 1 MCAR §1.206 B., the Attorney General will not approve the rules for at least twenty (20) calendar days after receipt to allow any person or association time to comment on the legality of the rules, after which that Office will complete its review. If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Office of the Attorney General, 204 State Administration Building, 50 Sherburne Avenue, Saint Paul, Minnesota 55155, telephone (612) 296-7030. Please note that the above-cited rule of the Attorney General also provides that a copy of any written comments submitted to the Attorney General must be submitted simultaneously to this agency.

If you are interested in determining what changes, if any, were made in the proposed rules after publication in the State Register and before submission to the Attorney General, you may contact Mr. Cecil Selness, Office of Railroads and Waterways, Program Management Division, Transportation Building, Saint Paul, Minnesota 55155, telephone (612) 296-4888 during normal business hours.

Richard P. Braun
Commissioner of Transportation