

1 Senator Cohen from the Committee on Finance, to which was  
2 re-referred

3 S.F. No. 1211: A bill for an act relating to child  
4 protection; providing for a background check of an individual  
5 being considered as a custodian; modifying requirements for  
6 adoption consents and placement resources for children who are  
7 in the legal custody of a social services agency; amending  
8 Minnesota Statutes 2004, sections 259.24, subdivisions 1, 2a, 5,  
9 6a; 260C.201, subdivision 11; 260C.212, subdivision 4; proposing  
10 coding for new law in Minnesota Statutes, chapter 260C.

11 Reports the same back with the recommendation that the bill  
12 be amended as follows:

13 Page 17, after line 16, insert:

14 "Sec. 8. [APPROPRIATION.]

15 \$57,000 is appropriated from the general fund to the  
16 commissioner of human services to carry out the duties imposed  
17 by this act. \$43,000 is available for the fiscal year ending  
18 June 30, 2006, and \$14,000 is available for the fiscal year  
19 ending June 30, 2007."

20 Amend the title as follows:

21 Page 1, line 6, after the semicolon, insert "appropriating  
22 money;"

23 And when so amended the bill do pass. Amendments adopted.  
24 Report adopted.

25 .....  
26 (Committee Chair)

27  
28 May 5, 2005.....  
29 (Date of Committee recommendation)

1 A bill for an act

2 relating to child protection; providing for a  
3 background check of an individual being considered as  
4 a custodian; modifying requirements for adoption  
5 consents and placement resources for children who are  
6 in the legal custody of a social services agency;  
7 amending Minnesota Statutes 2004, sections 259.24,  
8 subdivisions 1, 2a, 5, 6a; 260C.201, subdivision 11;  
9 260C.212, subdivision 4; proposing coding for new law  
10 in Minnesota Statutes, chapter 260C.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

12 Section 1. Minnesota Statutes 2004, section 259.24,  
13 subdivision 1, is amended to read:

14 Subdivision 1. [EXCEPTIONS.] No child shall be adopted  
15 without the consent of the child's parents and the child's  
16 guardian, if there be one, except in the following instances:

17 (a) Consent shall not be required of a parent not entitled  
18 to notice of the proceedings.

19 (b) Consent shall not be required of a parent who has  
20 abandoned the child, or of a parent who has lost custody of the  
21 child through a divorce decree or a decree of dissolution, and  
22 upon whom notice has been served as required by section 259.49.

23 (c) Consent shall not be required of a parent whose  
24 parental rights to the child have been terminated by a juvenile  
25 court or who has lost custody of a child through a final  
26 commitment of the juvenile court or through a decree in a prior  
27 adoption proceeding.

28 (d) If there be no parent or guardian qualified to consent

1 to the adoption, the consent ~~may~~ shall be given by the  
2 commissioner. After the court accepts a parent's consent to the  
3 adoption under section 260C.201, subdivision 11, consent by the  
4 commissioner or commissioner's delegate is also necessary.  
5 Agreement to the identified prospective adoptive parent by the  
6 responsible social services agency under section 260C.201,  
7 subdivision 11, does not constitute the required consent.

8 (e) The commissioner or agency having authority to place a  
9 child for adoption pursuant to section 259.25, subdivision 1,  
10 shall have the exclusive right to consent to the adoption of  
11 such child. The commissioner or agency shall make every effort  
12 to place siblings together for adoption. Notwithstanding any  
13 rule to the contrary, the commissioner may delegate the right to  
14 consent to the adoption or separation of siblings, if it is in  
15 the child's best interest, to a local social services agency.

16 Sec. 2. Minnesota Statutes 2004, section 259.24,  
17 subdivision 2a, is amended to read:

18 Subd. 2a. [TIME OF CONSENT; NOTICE OF INTENT TO CONSENT TO  
19 ADOPTION.] (a) Not sooner than 72 hours after the birth of a  
20 child and not later than 60 days after the child's placement in  
21 a prospective adoptive home, a person whose consent is required  
22 under this section shall execute a consent.

23 (b) Unless all birth parents from whom consent is required  
24 under this section are involved in making the adoptive placement  
25 and intend to consent to the adoption, a birth parent who  
26 intends to execute a consent to an adoption must give notice to  
27 the child's other birth parent of the intent to consent to the  
28 adoption prior to or within 72 hours following the placement of  
29 the child, if the other birth parent's consent to the adoption  
30 is required under subdivision 1. The birth parent who receives  
31 notice shall have 60 days after the placement of the child to  
32 either consent or refuse to consent to the adoption. If the  
33 birth parent who receives notice fails to take either of these  
34 actions, that parent shall be deemed to have irrevocably  
35 consented to the child's adoption. The notice provisions of  
36 chapter 260C and the rules of juvenile protection procedure

1 shall apply to both parents when the consent to adopt is  
2 executed under section 260C.201, subdivision 11.

3 (c) When notice is required under this subdivision, it  
4 shall be provided to the other birth parent according to the  
5 Rules of Civil Procedure for service of a summons and complaint.

6 Sec. 3. Minnesota Statutes 2004, section 259.24,  
7 subdivision 5, is amended to read:

8 Subd. 5. [EXECUTION.] All consents to an adoption shall be  
9 in writing, executed before two competent witnesses, and  
10 acknowledged by the consenting party. In addition, all consents  
11 to an adoption, except those by the commissioner, the  
12 commissioner's agent, a licensed child-placing agency, an adult  
13 adoptee, or the child's parent in a petition for adoption by a  
14 stepparent, shall be executed before a representative of the  
15 commissioner, the commissioner's agent, or a licensed  
16 child-placing agency. All consents by a parent:

17 (1) shall contain notice to the parent of the substance of  
18 subdivision 6a, providing for the right to withdraw  
19 consent unless the parent will not have the right to withdraw  
20 consent because consent was executed under section 260C.201,  
21 subdivision 11, following proper notice that consent given under  
22 that provision is irrevocable upon acceptance by the court as  
23 provided in section 259.24, subdivision 6a; and

24 (2) shall contain the following written notice in all  
25 capital letters at least one-eighth inch high:

26 "This agency will submit your consent to adoption to the  
27 court. The consent itself does not terminate your parental  
28 rights. Parental rights to a child may be terminated only by an  
29 adoption decree or by a court order terminating parental  
30 rights. Unless the child is adopted or your parental rights are  
31 terminated, you may be asked to support the child."

32 Consents shall be filed in the adoption proceedings at any  
33 time before the matter is heard provided, however, that a  
34 consent executed and acknowledged outside of this state, either  
35 in accordance with the law of this state or in accordance with  
36 the law of the place where executed, is valid.

1           Sec. 4. Minnesota Statutes 2004, section 259.24,  
2 subdivision 6a, is amended to read:

3           Subd. 6a. [WITHDRAWAL OF CONSENT.] Except for consents  
4 executed under section 260C.201, subdivision 11, a parent's  
5 consent to adoption may be withdrawn for any reason within ten  
6 working days after the consent is executed and acknowledged.  
7 Written notification of withdrawal of consent must be received  
8 by the agency to which the child was surrendered no later than  
9 the tenth working day after the consent is executed and  
10 acknowledged. On the day following the tenth working day after  
11 execution and acknowledgment, the consent shall become  
12 irrevocable, except upon order of a court of competent  
13 jurisdiction after written findings that consent was obtained by  
14 fraud. A consent to adopt executed under section 260C.201,  
15 subdivision 11, is irrevocable upon proper notice to both  
16 parents of the effect of a consent to adopt and acceptance by  
17 the court, except upon order of the same court after written  
18 findings that the consent was obtained by fraud. In proceedings  
19 to determine the existence of fraud, the adoptive parents and  
20 the child shall be made parties. The proceedings shall be  
21 conducted to preserve the confidentiality of the adoption  
22 process. There shall be no presumption in the proceedings  
23 favoring the birth parents over the adoptive parents.

24           Sec. 5. Minnesota Statutes 2004, section 260C.201,  
25 subdivision 11, is amended to read:

26           Subd. 11. [REVIEW OF COURT-ORDERED PLACEMENTS; PERMANENT  
27 PLACEMENT DETERMINATION.] (a) This subdivision and subdivision  
28 11a do not apply in cases where the child is in placement due  
29 solely to the child's developmental disability or emotional  
30 disturbance, where legal custody has not been transferred to the  
31 responsible social services agency, and where the court finds  
32 compelling reasons under section 260C.007, subdivision 8, to  
33 continue the child in foster care past the time periods  
34 specified in this subdivision. Foster care placements of  
35 children due solely to their disability are governed by section  
36 260C.141, subdivision 2b. In all other cases where the child is

1 in foster care or in the care of a noncustodial parent under  
2 subdivision 1, the court shall conduct a hearing to determine  
3 the permanent status of a child not later than 12 months after  
4 the child is placed in foster care or in the care of a  
5 noncustodial parent.

6 For purposes of this subdivision, the date of the child's  
7 placement in foster care is the earlier of the first  
8 court-ordered placement or 60 days after the date on which the  
9 child has been voluntarily placed in foster care by the child's  
10 parent or guardian. For purposes of this subdivision, time  
11 spent by a child under the protective supervision of the  
12 responsible social services agency in the home of a noncustodial  
13 parent pursuant to an order under subdivision 1 counts towards  
14 the requirement of a permanency hearing under this subdivision  
15 or subdivision 11a.

16 For purposes of this subdivision, 12 months is calculated  
17 as follows:

18 (1) during the pendency of a petition alleging that a child  
19 is in need of protection or services, all time periods when a  
20 child is placed in foster care or in the home of a noncustodial  
21 parent are cumulated;

22 (2) if a child has been placed in foster care within the  
23 previous five years under one or more previous petitions, the  
24 lengths of all prior time periods when the child was placed in  
25 foster care within the previous five years are cumulated. If a  
26 child under this clause has been in foster care for 12 months or  
27 more, the court, if it is in the best interests of the child and  
28 for compelling reasons, may extend the total time the child may  
29 continue out of the home under the current petition up to an  
30 additional six months before making a permanency determination.

31 (b) Unless the responsible social services agency  
32 recommends return of the child to the custodial parent or  
33 parents, not later than 30 days prior to this hearing, the  
34 responsible social services agency shall file pleadings in  
35 juvenile court to establish the basis for the juvenile court to  
36 order permanent placement of the child according to paragraph

1 (d). Notice of the hearing and copies of the pleadings must be  
2 provided pursuant to section 260C.152. If a termination of  
3 parental rights petition is filed before the date required for  
4 the permanency planning determination and there is a trial under  
5 section 260C.163 scheduled on that petition within 90 days of  
6 the filing of the petition, no hearing need be conducted under  
7 this subdivision.

8 (c) At the conclusion of the hearing, the court shall order  
9 the child returned to the care of the parent or guardian from  
10 whom the child was removed or order a permanent placement in the  
11 child's best interests. The "best interests of the child" means  
12 all relevant factors to be considered and evaluated. Transfer  
13 of permanent legal and physical custody, termination of parental  
14 rights, or guardianship and legal custody to the commissioner  
15 through a consent to adopt are preferred permanency options for  
16 a child who cannot return home.

17 (d) If the child is not returned to the home, the court  
18 must order one of the following dispositions:

19 (1) permanent legal and physical custody to a relative in  
20 the best interests of the child according to the following  
21 conditions:

22 (i) an order for transfer of permanent legal and physical  
23 custody to a relative shall only be made after the court has  
24 reviewed the suitability of the prospective legal and physical  
25 custodian;

26 (ii) in transferring permanent legal and physical custody  
27 to a relative, the juvenile court shall follow the standards  
28 applicable under this chapter and chapter 260, and the  
29 procedures set out in the juvenile court rules;

30 (iii) an order establishing permanent legal and physical  
31 custody under this subdivision must be filed with the family  
32 court;

33 (iv) a transfer of legal and physical custody includes  
34 responsibility for the protection, education, care, and control  
35 of the child and decision making on behalf of the child;

36 (v) the social services agency may bring a petition or

1 motion naming a fit and willing relative as a proposed permanent  
2 legal and physical custodian. The commissioner of human  
3 services shall annually prepare for counties information that  
4 must be given to proposed custodians about their legal rights  
5 and obligations as custodians together with information on  
6 financial and medical benefits for which the child is eligible;  
7 and

8 (vi) the juvenile court may maintain jurisdiction over the  
9 responsible social services agency, the parents or guardian of  
10 the child, the child, and the permanent legal and physical  
11 custodian for purposes of ensuring appropriate services are  
12 delivered to the child and permanent legal custodian or for the  
13 purpose of ensuring conditions ordered by the court related to  
14 the care and custody of the child are met;

15 (2) termination of parental rights according to the  
16 following conditions:

17 (i) unless the social services agency has already filed a  
18 petition for termination of parental rights under section  
19 260C.307, the court may order such a petition filed and all the  
20 requirements of sections 260C.301 to 260C.328 remain applicable;  
21 and

22 (ii) an adoption completed subsequent to a determination  
23 under this subdivision may include an agreement for  
24 communication or contact under section 259.58;

25 (3) long-term foster care according to the following  
26 conditions:

27 (i) the court may order a child into long-term foster care  
28 only if it finds compelling reasons that neither an award of  
29 permanent legal and physical custody to a relative, nor  
30 termination of parental rights is in the child's best interests;  
31 and

32 (ii) further, the court may only order long-term foster  
33 care for the child under this section if it finds the following:

34 (A) the child has reached age 12 and reasonable efforts by  
35 the responsible social services agency have failed to locate an  
36 adoptive family for the child; or

1 (B) the child is a sibling of a child described in subitem  
2 (A) and the siblings have a significant positive relationship  
3 and are ordered into the same long-term foster care home;

4 (4) foster care for a specified period of time according to  
5 the following conditions:

6 (i) foster care for a specified period of time may be  
7 ordered only if:

8 (A) the sole basis for an adjudication that the child is in  
9 need of protection or services is the child's behavior;

10 (B) the court finds that foster care for a specified period  
11 of time is in the best interests of the child; and

12 (C) the court finds compelling reasons that neither an  
13 award of permanent legal and physical custody to a relative, nor  
14 termination of parental rights is in the child's best interests;

15 (ii) the order does not specify that the child continue in  
16 foster care for any period exceeding one year; or

17 (5) guardianship and legal custody to the commissioner of  
18 human services under the following procedures and conditions:

19 (i) there is an identified prospective adoptive home that  
20 has agreed to adopt the child, agreed to by the responsible  
21 social services agency having legal custody of the child  
22 pursuant to court order under this section, and the court  
23 accepts the parent's voluntary consent to adopt under section  
24 259.24;

25 (ii) if the court accepts a consent to adopt in lieu of  
26 ordering one of the other enumerated permanency dispositions,  
27 the court must review the matter at least every 90 days. The  
28 review will address the reasonable efforts of the agency to  
29 achieve a finalized adoption;

30 (iii) a consent to adopt under this clause vests all legal  
31 authority regarding the child, including guardianship and legal  
32 custody of the child, with the commissioner of human services as  
33 if the child were a state ward after termination of parental  
34 rights;

35 (iv) the court must forward a copy of the consent to adopt,  
36 together with a certified copy of the order transferring

1 guardianship and legal custody to the commissioner, to the  
2 commissioner; and

3 (v) if an adoption is not finalized by the identified  
4 prospective adoptive parent within 12 months of the execution of  
5 the consent to adopt under this clause, the commissioner of  
6 human services or the commissioner's delegate shall pursue  
7 adoptive placement in another home unless the commissioner  
8 certifies that the failure to finalize is not due to either an  
9 action or a failure to act by the prospective adoptive parent;  
10 and

11 (vi) notwithstanding item (v), the commissioner of human  
12 services or the commissioner's designee must pursue adoptive  
13 placement in another home as soon as the commissioner or  
14 commissioner's designee determines that finalization of the  
15 adoption with the identified prospective adoptive parent is not  
16 possible, that the identified prospective adoptive parent is not  
17 willing to adopt the child, that the identified prospective  
18 adoptive parent is not cooperative in completing the steps  
19 necessary to finalize the adoption, or upon the commissioner's  
20 determination to withhold consent to the adoption.

21 (e) In ordering a permanent placement of a child, the court  
22 must be governed by the best interests of the child, including a  
23 review of the relationship between the child and relatives and  
24 the child and other important persons with whom the child has  
25 resided or had significant contact.

26 (f) Once a permanent placement determination has been made  
27 and permanent placement has been established, further court  
28 reviews are necessary if:

29 (1) the placement is long-term foster care or foster care  
30 for a specified period of time;

31 (2) the court orders further hearings because it has  
32 retained jurisdiction of a transfer of permanent legal and  
33 physical custody matter;

34 (3) an adoption has not yet been finalized; or

35 (4) there is a disruption of the permanent or long-term  
36 placement.

1 (g) Court reviews of an order for long-term foster care,  
2 whether under this section or section 260C.317, subdivision 3,  
3 paragraph (d), or foster care for a specified period of time  
4 must be conducted at least yearly and must review the child's  
5 out-of-home placement plan and the reasonable efforts of the  
6 agency to:

7 (1) identify a specific long-term foster home for the child  
8 or a specific foster home for the time the child is specified to  
9 be out of the care of the parent, if one has not already been  
10 identified;

11 (2) support continued placement of the child in the  
12 identified home, if one has been identified;

13 (3) ensure appropriate services are provided to the child  
14 during the period of long-term foster care or foster care for a  
15 specified period of time;

16 (4) plan for the child's independence upon the child's  
17 leaving long-term foster care living as required under section  
18 260C.212, subdivision 1; and

19 (5) where placement is for a specified period of time, a  
20 plan for the safe return of the child to the care of the parent.

21 (h) An order under this subdivision must include the  
22 following detailed findings:

23 (1) how the child's best interests are served by the order;

24 (2) the nature and extent of the responsible social service  
25 agency's reasonable efforts, or, in the case of an Indian child,  
26 active efforts to reunify the child with the parent or parents;

27 (3) the parent's or parents' efforts and ability to use  
28 services to correct the conditions which led to the out-of-home  
29 placement; and

30 (4) whether the conditions which led to the out-of-home  
31 placement have been corrected so that the child can return home.

32 (i) An order for permanent legal and physical custody of a  
33 child may be modified under sections 518.18 and 518.185. The  
34 social services agency is a party to the proceeding and must  
35 receive notice. A parent may only seek modification of an order  
36 for long-term foster care upon motion and a showing by the

1 parent of a substantial change in the parent's circumstances  
2 such that the parent could provide appropriate care for the  
3 child and that removal of the child from the child's permanent  
4 placement and the return to the parent's care would be in the  
5 best interest of the child.

6 (j) The court shall issue an order required under this  
7 section within 15 days of the close of the proceedings. The  
8 court may extend issuing the order an additional 15 days when  
9 necessary in the interests of justice and the best interests of  
10 the child.

11 Sec. 6. [260C.209] [BACKGROUND CHECKS.]

12 Subdivision 1. [SUBJECTS.] (a) The responsible social  
13 services agency must conduct a background check under this  
14 section of the following:

15 (1) a noncustodial parent or nonadjudicated parent who is  
16 being assessed for purposes of providing day-to-day care of a  
17 child temporarily or permanently under section 260C.212,  
18 subdivision 4, and any member of the parent's household who is  
19 over the age of 13 when there is reasonable cause to believe  
20 that the parent or household member over age 13 has a criminal  
21 history or a history of maltreatment of a child or vulnerable  
22 adult which would endanger the child's health, safety, or  
23 welfare;

24 (2) an individual whose suitability for relative placement  
25 under section 260C.212, subdivision 5, is being determined, and  
26 any member of the relative's household who is over the age of 13  
27 when:

28 (i) the relative must be licensed for foster care; or

29 (ii) the agency must conduct a background study under  
30 section 259.53, subdivision 2; or

31 (iii) the agency has reasonable cause to believe the  
32 relative or household member over the age of 13 has a criminal  
33 history which would not make transfer of permanent legal and  
34 physical custody to the relative under section 260C.201,  
35 subdivision 11, in the child's best interest; and

36 (3) a parent, following an out-of-home placement:

1 (i) when the responsible social service agency has  
2 reasonable cause to believe that the parent has been convicted  
3 of a crime directly related to the parent's capacity to maintain  
4 the child's health, safety, or welfare; or

5 (ii) the parent is the subject of an open investigation of,  
6 or has been the subject of a substantiated allegation of, child  
7 or vulnerable-adult maltreatment within the past ten years.

8 (b) "Reasonable cause" means that the agency has received  
9 information or a report from the subject or a third person that  
10 creates an articulable suspicion that the individual has a  
11 history that may pose a risk to the health, safety, or welfare  
12 of the child. The information or report must be specific to the  
13 potential subject of the background check and shall not be based  
14 on the race, religion, ethnic background, age, class, or  
15 lifestyle of the potential subject.

16 Subd. 2. [GENERAL PROCEDURES.] (a) When conducting a  
17 background check under subdivision 1, the agency may require the  
18 individual being assessed to provide sufficient information to  
19 ensure an accurate assessment under this section, including:

20 (1) the individual's first, middle, and last name and all  
21 other names by which the individual has been known;

22 (2) home address, zip code, city, county, and state of  
23 residence for the past ten years;

24 (3) sex;

25 (4) date of birth; and

26 (5) driver's license number or state identification number.

27 (b) When notified by the responsible social services agency  
28 that it is conducting an assessment under this section, the  
29 Bureau of Criminal Apprehension, commissioners of health and  
30 human services, law enforcement, and county agencies must  
31 provide the responsible social services agency or county  
32 attorney with the following information on the individual being  
33 assessed: criminal history data, reports about the maltreatment  
34 of adults substantiated under section 626.557, and reports of  
35 maltreatment of minors substantiated under section 626.556.

36 Subd. 3. [MULTISTATE INFORMATION.] (a) For any assessment

1 completed under this section, if the responsible social services  
2 agency has reasonable cause to believe that the individual is a  
3 multistate offender, the individual must provide the responsible  
4 social services agency or the county attorney with a set of  
5 classifiable fingerprints obtained from an authorized law  
6 enforcement agency. The responsible social services agency or  
7 county attorney may obtain criminal history data from the  
8 National Criminal Records Repository by submitting the  
9 fingerprints to the Bureau of Criminal Apprehension.

10 (b) For purposes of this subdivision, the responsible  
11 social services agency has reasonable cause when, but not  
12 limited to:

13 (1) information from the Bureau of Criminal Apprehension  
14 indicates that the individual is a multistate offender;

15 (2) information from the Bureau of Criminal Apprehension  
16 indicates that multistate offender status is undetermined;

17 (3) the social services agency has received a report from  
18 the individual or a third party indicating that the individual  
19 has a criminal history in a jurisdiction other than Minnesota;  
20 or

21 (4) the individual is or has been a resident of a state  
22 other than Minnesota at any time during the prior ten years.

23 Subd. 4. [NOTICE UPON RECEIPT.] The responsible social  
24 services agency must provide the subject of the background study  
25 with the results of the study under this section within 15  
26 business days of receipt or at least 15 days prior to hearing at  
27 which the results will be presented, whichever comes first. The  
28 subject may provide written information to the agency that the  
29 results are incorrect and may provide additional or clarifying  
30 information to the agency and to the court through a party to  
31 the proceeding. This provision does not apply to any background  
32 study conducted under chapters 245A and 245C.

33 Sec. 7. Minnesota Statutes 2004, section 260C.212,  
34 subdivision 4, is amended to read:

35 Subd. 4. [RESPONSIBLE SOCIAL SERVICE AGENCY'S DUTIES FOR  
36 CHILDREN IN PLACEMENT.] (a) When a child is in placement, the

1 responsible social services agency shall make diligent efforts  
2 to identify, locate, and, where appropriate, offer services to  
3 both parents of the child.

4 (1) If The responsible social services agency shall assess  
5 whether a noncustodial or nonadjudicated parent is willing and  
6 capable of providing for the day-to-day care of the child  
7 temporarily or permanently. An assessment under this clause may  
8 include, but is not limited to, obtaining information under  
9 section 260C.209. If after assessment, the responsible social  
10 services agency determines that a noncustodial or nonadjudicated  
11 parent is willing and capable of providing day-to-day care of  
12 the child, the responsible social services agency may seek  
13 authority from the custodial parent or the court to have that  
14 parent assume day-to-day care of the child. If a parent is not  
15 an adjudicated parent, the responsible social services agency  
16 shall require the nonadjudicated parent to cooperate with  
17 paternity establishment procedures as part of the case plan.

18 (2) If, after assessment, the responsible social services  
19 agency determines that the child cannot be in the day-to-day  
20 care of either parent:

21 (i) the agency shall prepare an out-of-home placement plan  
22 addressing the conditions that each parent must meet before the  
23 child can be in that parent's day-to-day care;

24 (ii) provide a parent who is the subject of a background  
25 study under section 260C.209, 15 days' notice that it intends to  
26 use the study to recommend against putting the child with that  
27 parent, as well as the notice provided in section 260C.209,  
28 subdivision 4, and the court shall afford the parent an  
29 opportunity to be heard concerning the study; and

30 (iii) the results of a background study of a noncustodial  
31 parent shall not be used by the agency to determine that the  
32 parent is incapable of providing day-to-day care of the child  
33 unless the agency reasonably believes that placement of the  
34 child into the home of that parent would endanger the child's  
35 health, safety, or welfare.

36 (3) If, after the provision of services following an

1 out-of-home placement plan under this section, the child cannot  
2 return to the care of the parent from whom the child was removed  
3 or who had legal custody at the time the child was placed in  
4 foster care, the agency may petition on behalf of a noncustodial  
5 parent to establish legal custody with that parent under section  
6 260C.201, subdivision 11. If paternity has not already been  
7 established, it may be established in the same proceeding in the  
8 manner provided for under chapter 257.

9 (4) The responsible social services agency may be relieved  
10 of the requirement to locate and offer services to both parents  
11 by the juvenile court upon a finding of good cause after the  
12 filing of a petition under section 260C.141.

13 (b) The responsible social services agency shall give  
14 notice to the parent or parents or guardian of each child in a  
15 residential facility, other than a child in placement due solely  
16 to that child's developmental disability or emotional  
17 disturbance, of the following information:

18 (1) that residential care of the child may result in  
19 termination of parental rights or an order permanently placing  
20 the child out of the custody of the parent, but only after  
21 notice and a hearing as required under chapter 260C and the  
22 juvenile court rules;

23 (2) time limits on the length of placement and of  
24 reunification services, including the date on which the child is  
25 expected to be returned to and safely maintained in the home of  
26 the parent or parents or placed for adoption or otherwise  
27 permanently removed from the care of the parent by court order;

28 (3) the nature of the services available to the parent;

29 (4) the consequences to the parent and the child if the  
30 parent fails or is unable to use services to correct the  
31 circumstances that led to the child's placement;

32 (5) the first consideration for placement with relatives;

33 (6) the benefit to the child in getting the child out of  
34 residential care as soon as possible, preferably by returning  
35 the child home, but if that is not possible, through a permanent  
36 legal placement of the child away from the parent;

1 (7) when safe for the child, the benefits to the child and  
2 the parent of maintaining visitation with the child as soon as  
3 possible in the course of the case and, in any event, according  
4 to the visitation plan under this section; and

5 (8) the financial responsibilities and obligations, if any,  
6 of the parent or parents for the support of the child during the  
7 period the child is in the residential facility.

8 (c) The responsible social services agency shall inform a  
9 parent considering voluntary placement of a child who is not  
10 developmentally disabled or emotionally disturbed of the  
11 following information:

12 (1) the parent and the child each has a right to separate  
13 legal counsel before signing a voluntary placement agreement,  
14 but not to counsel appointed at public expense;

15 (2) the parent is not required to agree to the voluntary  
16 placement, and a parent who enters a voluntary placement  
17 agreement may at any time request that the agency return the  
18 child. If the parent so requests, the child must be returned  
19 within 24 hours of the receipt of the request;

20 (3) evidence gathered during the time the child is  
21 voluntarily placed may be used at a later time as the basis for  
22 a petition alleging that the child is in need of protection or  
23 services or as the basis for a petition seeking termination of  
24 parental rights or other permanent placement of the child away  
25 from the parent;

26 (4) if the responsible social services agency files a  
27 petition alleging that the child is in need of protection or  
28 services or a petition seeking the termination of parental  
29 rights or other permanent placement of the child away from the  
30 parent, the parent would have the right to appointment of  
31 separate legal counsel and the child would have a right to the  
32 appointment of counsel and a guardian ad litem as provided by  
33 law, and that counsel will be appointed at public expense if  
34 they are unable to afford counsel; and

35 (5) the timelines and procedures for review of voluntary  
36 placements under subdivision 3, and the effect the time spent in

1 voluntary placement on the scheduling of a permanent placement  
2 determination hearing under section 260C.201, subdivision 11.

3 (d) When an agency accepts a child for placement, the  
4 agency shall determine whether the child has had a physical  
5 examination by or under the direction of a licensed physician  
6 within the 12 months immediately preceding the date when the  
7 child came into the agency's care. If there is documentation  
8 that the child has had an examination within the last 12 months,  
9 the agency is responsible for seeing that the child has another  
10 physical examination within one year of the documented  
11 examination and annually in subsequent years. If the agency  
12 determines that the child has not had a physical examination  
13 within the 12 months immediately preceding placement, the agency  
14 shall ensure that the child has an examination within 30 days of  
15 coming into the agency's care and once a year in subsequent  
16 years.

**Consolidated Fiscal Note – 2005-06 Session**

**Bill #: S1211-1E (R) Complete Date: 05/04/05**

**Chief Author: BETZOLD, DON**

**Title: CHILD CUSTODIANS BACKGROUND CHECKS**

Fiscal Impact	Yes	No
State	X	
Local	X	
Fee/Departmental Earnings	X	
Tax Revenue		X

**Agencies:** Human Services Dept (05/04/05)  
Public Safety Dept (04/18/05)

Supreme Court (04/21/05)

This table reflects fiscal impact to state government. Local government impact is reflected in the narrative only.

Dollars (in thousands)	FY05	FY06	FY07	FY08	FY09
<b>Net Expenditures</b>					
General Fund	0	43	14	14	14
Human Services Dept	0	43	14	14	14
Misc Special Revenue Fund		12	12	12	12
Public Safety Dept		12	12	12	12
<b>Revenues</b>					
General Fund	0	20	6	6	6
Human Services Dept	0	20	6	6	6
Misc Special Revenue Fund		12	12	12	12
Public Safety Dept		12	12	12	12
<b>Net Cost &lt;Savings&gt;</b>					
General Fund	0	23	8	8	8
Human Services Dept	0	23	8	8	8
Misc Special Revenue Fund		0	0	0	0
Public Safety Dept		0	0	0	0
<b>Total Cost &lt;Savings&gt; to the State</b>	0	23	8	8	8

	FY05	FY06	FY07	FY08	FY09
<b>Full Time Equivalents</b>					
General Fund	0.00	0.25	0.25	0.25	0.25
Human Services Dept	0.00	0.25	0.25	0.25	0.25
<b>Total FTE</b>	0.00	0.25	0.25	0.25	0.25

**Consolidated EBO Comments**

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: DOUG GREEN  
Date: 05/04/05 Phone: 286-5618

**Fiscal Note – 2005-06 Session**

**Bill #:** S1211-1E (R) **Complete Date:** 05/04/05

**Chief Author:** BETZOLD, DON

**Title:** CHILD CUSTODIANS BACKGROUND CHECKS

<b>Fiscal Impact</b>	<b>Yes</b>	<b>No</b>
State	X	
Local	X	
Fee/Departmental Earnings		X
Tax Revenue		X

**Agency Name:** Human Services Dept

This table reflects fiscal impact to state government. Local government impact is reflected in the narrative only.

<b>Dollars (in thousands)</b>	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Expenditures</b>					
General Fund	0	43	14	14	14
<b>Less Agency Can Absorb</b>					
-- No Impact --					
<b>Net Expenditures</b>					
General Fund	0	43	14	14	14
<b>Revenues</b>					
General Fund	0	20	6	6	6
<b>Net Cost &lt;Savings&gt;</b>					
General Fund	0	23	8	8	8
<b>Total Cost &lt;Savings&gt; to the State</b>	0	23	8	8	8

	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Full Time Equivalents</b>					
General Fund	0.00	0.25	0.25	0.25	0.25
<b>Total FTE</b>	0.00	0.25	0.25	0.25	0.25

**Narrative: SF 1211-1E**

Bill Description:

Only section 6 of SF1211-1E is expected to have a fiscal impact for DHS. See underlined text for amendments to SF1211.

Section 6 amends chapter 260C by adding a new section 260C.209 which requires the responsible social services agency to conduct a background study on the following individuals:

(1) a noncustodial parent or nonadjudicated parent who is being assessed for purposes of providing day-to-day care of a child temporarily or permanently under section 260C.212, subd. 4, and any member of the parent's household who is over the age of 13 when there is reasonable cause to believe that the parent or household member over age 13 has a criminal history or a history of maltreatment of a child or vulnerable adult which would endanger the child's health, safety or welfare;

(2) an individual whose suitability for relative placement under section 260C.212, subd. 5 is being determined, and any member of the relative's household who is over the age of 13 when (i) the relative must be licensed for foster care; or (ii) the agency must conduct a background study under section 259.53, subdivision 2; or (iii) the agency has reasonable cause to believe the relative or household member over the age of 13 has a criminal history which would not make transfer of permanent legal and physical custody to the relative under section 260C.201, subdivision 11, in the child's best interest; and

(3) a parent, following an out-of-home placement, ~~when the responsible social services agency has reasonable cause to believe that further pertinent information may exist on the custodial parent that may relate to the health, safety, or welfare of the child in that parent's care;~~ (i) when the responsible social service agency has reasonable cause to believe that the parent has been convicted of a crime directly related to the parent's capacity to maintain the child's health, safety, or welfare; or (ii) the parent is the subject of an open investigation of, or has been the subject of a substantiated allegation of, child or vulnerable-adult maltreatment within the past ten years.

When notified by the responsible social services agency that it is conducting an assessment under this section, the Bureau of Criminal Apprehension, commissioners of health and human services, law enforcement, and county agencies must provide the responsible social services agency or county attorney with the following information on the individual being assessed: criminal history data, reports about the maltreatment of adults substantiated under section 626.557, and reports of maltreatment of minors substantiated under section 626.556.

Assumptions

Licensing Division – Identifying Individuals & Notifying Counties

DHS does not know the number of background studies that will be initiated by the responsible social services agencies under this legislation. In 2002, both relative and non-relative foster parents provided temporary care to approximately 11,300 children in family foster care in Minnesota. Of the children in out-of-home care, approximately 78% were reunited with their birth parents or found permanency with relatives. (DHS Website on Foster care/out of home placement).

78% of 11,300 is 8,814 children who were reunited with their birth parents or found permanency with relatives. Some of these children would include siblings. For purposes of this fiscal note, it is estimated that background studies could be conducted on 8,000 potential placements or reunifications. However, background studies will only be conducted when there is "reasonable cause" to do so. It is estimated that social service agencies will have reasonable cause to initiate a background study for 25% of the placements (2,000 placements). For each placement, it is estimated that an average of two and one-half background studies will be completed on each placement or 5,000 background studies.

DHS will be requested to check maltreatment records to determine if any of the 5,000 individuals have a report of substantiated maltreatment. If the individual has a report of substantiated maltreatment, DHS will provide a copy of the investigation memorandum to the responsible social services agency. If DHS has information about a maltreatment substantiated by a county, DHS will refer the social services agency to that county for information regarding the substantiated maltreatment.

DHS estimates that 1% of the studies checked for the social services agencies to have a report of substantiated maltreatment, and will require DHS to send a copy of the investigation memorandum to the social services agency (5,000 checks times .01 = 50 reports).

DHS review of its records: (Staff time)

- 5 minutes per study to obtain identifying information and check database (5 minutes times 5,000 studies = 417 hours of staff time)
- 50 reports times 30 minutes per report to review file, copy investigation memorandum, and send report to the social services agency = 25 hours of staff time

Based on 2080 hours per FTE per year, 442 hours (417 plus 25) will require two-tenths of one FTE.

Social Service Information System – SSIS

SSIS is a state computer system which helps Minnesota’s county social service workers record case information, data necessary for state/federal reporting, information for performance measurement. SSIS also tracks children who have been maltreated and are in out-of-home placement awaiting adoption. SSIS would need to be updated to store as data the outcome of background checks.

Expenditure and/or Revenue Formula

Licensing Changes

FTE costs are based on DHS Licensor position (MAPE Range 10 – Step 6).

Salary \$43,159; Fringe (11.65%) \$5,028; Insurance (Family) \$12,420; Nonsalary 1<sup>st</sup> year \$22,790  
 First year costs per FTE are \$83,397

Nonsalary costs 2<sup>nd</sup> year \$8,230  
 Second year costs per FTE are \$68,837

Estimated cost .2 FTE x \$83,397 the first year and .2 FTE x \$68,837 the second year and subsequent years

2/10 FTE x \$83,397 = \$16,679 40% FFP = \$6,672  
 2/10 FTE x \$68,837 = \$13,767 40% FFP = \$5,535

SSIS Changes

Analysis - 120 hrs @ \$40/hr =	\$ 4800
Design - 120 hrs @ \$40/hr =	\$ 4800
Programming - 80 hrs @ \$100/hr	\$ 8000
Testing - 80 hrs @ \$25/hr =	\$ 2000
Training (time, materials)	\$ 7000
<b>TOTAL</b>	<b>\$26,600</b>

\$26,600 reflects the total SSIS cost for implementing this change in FY '06. 50% of this cost will be from the General Fund with the remaining share from federal funds. Net cost to general fund is \$13,300.

Long-Term Fiscal Considerations

None

Local Government Costs

It is estimated that responsible social services agencies will conduct 5,000 additional background studies per year and will need to coordinate those studies with DHS to determine whether the subjects of the studies have reports of substantiated maltreatment. Assuming it will cost social services agencies \$25 per study, the additional studies will result in \$125,000 in new costs to the social services agencies.

References/Sources

Children in out-of-home placement 2002 (DHS website)  
 Human Services Licensor salary - MAPE contract 2004-2005  
 Employee costs – DHS Guidelines for estimating administrative expenses for new staff FY2004-05

Agency Contact Name: Jerry Kerber 296-4473  
FN Coord Signature: STEVE BARTA  
Date: 05/04/05 Phone: 296-5685

**EBO Comments**

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: DOUG GREEN  
Date: 05/04/05 Phone: 286-5618

**Fiscal Note – 2005-06 Session**

**Bill #: S1211-1E (R) Complete Date: 04/18/05**

**Chief Author: BETZOLD, DON**

**Title: CHILD CUSTODIANS BACKGROUND CHECKS**

Fiscal Impact	Yes	No
State	X	
Local		X
Fee/Departmental Earnings	X	
Tax Revenue		X

**Agency Name: Public Safety Dept**

This table reflects fiscal impact to state government. Local government impact is reflected in the narrative only.

Dollars (in thousands)	FY05	FY06	FY07	FY08	FY09
<b>Expenditures</b>					
Misc Special Revenue Fund		12	12	12	12
<b>Less Agency Can Absorb</b>					
-- No Impact --					
<b>Net Expenditures</b>					
Misc Special Revenue Fund		12	12	12	12
<b>Revenues</b>					
Misc Special Revenue Fund		12	12	12	12
<b>Net Cost &lt;Savings&gt;</b>					
Misc Special Revenue Fund		0	0	0	0
<b>Total Cost &lt;Savings&gt; to the State</b>					

	FY05	FY06	FY07	FY08	FY09
<b>Full Time Equivalents</b>					
-- No Impact --					
<b>Total FTE</b>					

**Bill Description**

SF 1211-1E authorizes county attorneys and social services agencies to obtain state and national background checks on individuals with whom a child is being placed following an out of home placement. To obtain a national background check, the individual must supply a set of classifiable fingerprints which will be submitted to the BCA and forwarded to the FBI.

**Assumptions**

There is a \$29 fee for each national background check. An estimated 400 FBI record check will be made per year.

**Expenditure and/or Revenue Formula**

An estimate of 400 FBI record checks per year @ \$29.00 per record check equals \$11,600.

**Long-Term Fiscal Considerations**

**Local Government Costs**

**References/Sources**

Agency Contact Name: Julie LeTourneau 651 793-2480  
FN Coord Signature: FRANK AHRENS  
Date: 04/14/05 Phone: 296-9484

**EBO Comments**

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: NORMAN FOSTER  
Date: 04/18/05 Phone: 215-0594

**Fiscal Note – 2005-06 Session**

**Bill #:** S1211-1E (R) **Complete Date:** 04/21/05

**Chief Author:** BETZOLD, DON

**Title:** CHILD CUSTODIANS BACKGROUND CHECKS

<b>Fiscal Impact</b>	<b>Yes</b>	<b>No</b>
State		X
Local		X
Fee/Departmental Earnings		X
Tax Revenue		X

**Agency Name:** Supreme Court

This table reflects fiscal impact to state government. Local government impact is reflected in the narrative only.

<b>Dollars (in thousands)</b>	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Expenditures</b>					
-- No Impact --					
<b>Less Agency Can Absorb</b>					
-- No Impact --					
<b>Net Expenditures</b>					
-- No Impact --					
<b>Revenues</b>					
-- No Impact --					
<b>Net Cost &lt;Savings&gt;</b>					
-- No Impact --					
<b>Total Cost &lt;Savings&gt; to the State</b>					

	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Full Time Equivalent</b>					
-- No Impact --					
<b>Total FTE</b>					

This bill version has no fiscal effect on our agency.

FN Coord Signature: JUDY REHAK  
Date: 04/21/05 Phone: 297-7800

**EBO Comments**

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: JIM KING  
Date: 04/21/05 Phone: 296-7964

1 Senator ..... moves to amend S.F. No. 1211 as follows:

2 Page 17, after line 16, insert:

3 "Sec. 8. [APPROPRIATION.]

4 \$57,000 is appropriated from the general fund to the  
5 commissioner of human services to carry out the duties imposed  
6 by this act. \$43,000 is available for the fiscal year ending  
7 June 30, 2006, and \$14,000 is available for the fiscal year  
8 ending June 30, 2007."

9 Amend the title as follows:

10 Page 1, line 6, after the semicolon, insert "appropriating  
11 money;"

1 Senator Cohen from the Committee on Finance, to which was  
2 re-referred

3 S.F. No. 966: A bill for an act relating to government  
4 data practices; providing a maximum copy fee for certain copies  
5 of data; amending Minnesota Statutes 2004, section 13.03,  
6 subdivision 3.

7 Reports the same back with the recommendation that the bill  
8 do pass. Report adopted.

9

10



11

.....  
(Committee Chair)

12

13

14

May 5, 2005.....  
(Date of Committee recommendation)

15



1 fee for remote access to data under a specific statutory grant  
2 of authority. A government entity may charge a fee for remote  
3 access to data where either the data or the access is enhanced  
4 at the request of the person seeking access.

5 (c) The responsible authority or designee shall provide  
6 copies of public data upon request. If a person requests copies  
7 or electronic transmittal of the data to the person, the  
8 responsible authority may require the requesting person to pay  
9 the actual costs of searching for and retrieving government  
10 data, including the cost of employee time, and for making,  
11 certifying, compiling, and electronically transmitting the  
12 copies of the data or the data, but may not charge for  
13 separating public from not public data. However, if 300 or  
14 fewer paper copies are requested, for readily available  
15 documents actual costs shall not be used, and instead the  
16 responsible authority may assess a set fee per copy, which shall  
17 not exceed 25 cents for each separate page. If the responsible  
18 authority or designee is not able to provide copies at the time  
19 a request is made, copies shall be supplied as soon as  
20 reasonably possible.

21 (d) When a request under this subdivision involves any  
22 person's receipt of copies of public government data that has  
23 commercial value and is a substantial and discrete portion of or  
24 an entire formula, pattern, compilation, program, device,  
25 method, technique, process, database, or system developed with a  
26 significant expenditure of public funds by the agency, the  
27 responsible authority may charge a reasonable fee for the  
28 information in addition to the costs of making, certifying, and  
29 compiling the copies. Any fee charged must be clearly  
30 demonstrated by the agency to relate to the actual development  
31 costs of the information. The responsible authority, upon the  
32 request of any person, shall provide sufficient documentation to  
33 explain and justify the fee being charged.

34 (e) The responsible authority of a state agency, statewide  
35 system, or political subdivision that maintains public  
36 government data in a computer storage medium shall provide to

1 any person making a request under this section a copy of any  
2 public data contained in that medium, in electronic form, if the  
3 government entity can reasonably make the copy or have a copy  
4 made. This does not require a government entity to provide the  
5 data in an electronic format or program that is different from  
6 the format or program in which the data are maintained by the  
7 government entity. The entity may require the requesting person  
8 to pay the actual cost of providing the copy.

9 (f) If the responsible authority or designee determines  
10 that the requested data is classified so as to deny the  
11 requesting person access, the responsible authority or designee  
12 shall inform the requesting person of the determination either  
13 orally at the time of the request, or in writing as soon after  
14 that time as possible, and shall cite the specific statutory  
15 section, temporary classification, or specific provision of  
16 federal law on which the determination is based. Upon the  
17 request of any person denied access to data, the responsible  
18 authority or designee shall certify in writing that the request  
19 has been denied and cite the specific statutory section,  
20 temporary classification, or specific provision of federal law  
21 upon which the denial was based.

1 To: Senator Cohen, Chair

2 Committee on Finance

3 Senator Sams,

4 Chair of the Environment, Agriculture and Economic  
5 Development Budget Division, to which was referred

6 S.F. No. 966: A bill for an act relating to government  
7 data practices; providing a maximum copy fee for certain copies  
8 of data; amending Minnesota Statutes 2004, section 13.03,  
9 subdivision 3.

10 Reports the same back with the recommendation that the bill  
11 do pass and be referred to the full committee.

12

13

14 *O. Sams*.....  
15 (Division Chair)

16  
17 April 19, 2005.....  
18 (Date of Division action)

1 To: Senator Cohen, Chair  
2 Committee on Finance  
3 Senator Kiscaden,

4 Chair of the State Government Budget Division, to which was  
5 referred

6 S.F. No. 966: A bill for an act relating to government  
7 data practices; providing a maximum copy fee for certain copies  
8 of data; amending Minnesota Statutes 2004, section 13.03,  
9 subdivision 3.

10 Reports the same back with the recommendation that the bill  
11 do pass and be referred to the full committee.

12  
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.....

(Division Chair)

April 14, 2005.....

(Date of Division action)

**Fiscal Note – 2005-06 Session**

**Bill #: S0966-2A Complete Date: 04/19/05**

**Chief Author: BETZOLD, DON**

**Title: GOVT DATA COPIES MAXIMUM SET FEE**

<b>Fiscal Impact</b>	<b>Yes</b>	<b>No</b>
State	X	
Local		X
Fee/Departmental Earnings	X	
Tax Revenue		X

**Agency Name: Labor & Industry**

This table reflects fiscal impact to state government. Local government impact is reflected in the narrative only.

<b>Dollars (in thousands)</b>	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Expenditures</b>					
Workers Compensation Fund					
<b>Less Agency Can Absorb</b>					
– No Impact –					
<b>Net Expenditures</b>					
Workers Compensation Fund					
<b>Revenues</b>					
Workers Compensation Fund		(145)	(145)	(145)	(145)
<b>Net Cost &lt;Savings&gt;</b>					
Workers Compensation Fund		145	145	145	145
<b>Total Cost &lt;Savings&gt; to the State</b>		145	145	145	145

	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Full Time Equivalents</b>					
– No Impact –					
<b>Total FTE</b>					

## **Bill Description**

Minnesota Statutes section 13.03, subdivision 3(c) states that the responsible authority or designee shall provide copies of public data upon request. If a person requests copies or electronic transmittal of the data to the person, the responsible authority may require the requesting person to pay the actual costs of searching for and retrieving government data, including the cost of employee time, and for making, certifying, compiling, and transmitting the data.

This bill establishes a maximum fee of 25 cents per page that an agency may charge for providing paper copies of documents if the quantity of requested documents are 100 or fewer rather than using the actual costs of producing the copies.

## **Assumptions**

The Department of Labor and Industry's Copy File Review (CFR) unit provides copies of workers' compensation documents to requesting parties. CFR receives 400 to 450 requests for paper copies of documents per month. Total estimated number of pages per year is 408,000. DLI assumes that the requesting parties will make a concerted effort to keep the number of copies per request to a maximum of 100 pages. CFR recovers its costs by charging the requesting parties a fee of 65 cents per page. By reducing the fee collected, the CFR unit will no longer recover 100% of its costs and would require supplemental funding from the workers' compensation fund.

## **Expenditure and/or Revenue Formula**

Based on an analysis of copy requests received in Fiscal Year 2004:

Cost of providing copies	\$260,000
Recovery @ 25 cents (100 or fewer copies requested)	-80,635
Recovery @ 65 cents (greater than 100 copies requested)	<u>-34,129</u>
Additional funds required	\$145,236

## **References/Sources**

Copy File Review

Agency Contact Name: Michael Gaustad (651-284-5464)  
FN Coord Signature: CINDY FARRELL  
Date: 04/19/05 Phone: 284-5528

## **EBO Comments**

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: KEITH BOGUT  
Date: 04/19/05 Phone: 296-7642

1 Senator Cohen from the Committee on Finance, to which was  
2 re-referred

3 S.F. No. 1298: A bill for an act relating to environment;  
4 enacting the Minnesota Electronics Recycling Act of 2005;  
5 authorizing rulemaking; providing penalties; amending Minnesota  
6 Statutes 2004, section 16C.03, by adding a subdivision;  
7 proposing coding for new law in Minnesota Statutes, chapter 116F.

8 Reports the same back with the recommendation that the bill  
9 be amended as follows:

10 Page 2, line 16, before the period, insert "and may charge  
11 a fee of no more than \$5"

12 Page 3, line 30, after the period, insert "The term "video  
13 display device" does not include a video display device that is  
14 part of or contained in a motor vehicle; industrial, commercial,  
15 or medical equipment; or any appliance."

16 Page 3, line 32, delete "person" and insert "retailer or  
17 manufacturer"

18 Page 4, lines 5 and 8, delete "person" and insert "retailer  
19 or manufacturer"

20 Page 4, line 9, delete "(h)" and insert "(i)"

21 Page 4, line 10, delete "person" and insert "retailer or  
22 manufacturer"

23 Page 4, line 15, after the period, insert "A retailer is  
24 not responsible for an unlawful sale under this paragraph if the  
25 registration expired or was revoked and the retailer took  
26 possession of the video display device prior to the expiration  
27 or revocation of the registration and the unlawful sale occurred  
28 within six months after the expiration or revocation."

29 Page 4, line 20, delete "(m)" and insert "(n)"

30 Page 4, delete lines 35 and 36

31 Page 5, delete lines 1 and 2 and insert:

32 "(f) Each manufacturer who registers under this section  
33 must pay to the office an annual fee, which must be deposited in  
34 the state treasury and credited to an electronic waste account  
35 established in the environmental fund. The fee is equal to  
36 \$2,000 multiplied by the manufacturer's pro rata share of video  
37 display devices as determined under section 116H.55, subdivision  
38 12. A manufacturer registered under this section whose pro rata  
39 share is less than 0.25 percent must pay a minimum fee of \$500.

1 Money in the electronic waste account is appropriated to the  
2 office for the purpose of administering the program.

3 (g) The office shall develop procedures to administer and  
4 implement the registration program under this section and shall  
5 present them to the legislature by January 15, 2006."

6 Page 5, line 3, delete "(g)" and insert "(h)"

7 Page 5, line 9, delete "(h)" and insert "(i)"

8 Page 5, line 14, delete "(i)" and insert "(j)"

9 Page 5, line 18, delete "(j)" and insert "(k)"

10 Page 5, line 22, delete "such persons" and insert "they"

11 Page 5, line 25, delete "(k)" and insert "(l)"

12 Page 5, line 28, delete everything after the period

13 Page 5, delete lines 29 and 30

14 Page 5, line 31, delete everything before "Nothing"

15 Page 5, line 32, delete "such" and insert "video display  
16 recycling" and after "programs" insert "that are in addition to  
17 those provided by manufacturers or registrants"

18 Page 5, line 35, delete "(l)" and insert "(m)"

19 Page 6, lines 9 and 17, delete "such" and insert "the"

20 Page 6, line 27, delete "(m)" and insert "(n)"

21 Page 6, line 35, delete everything after "to" and insert  
22 "procedures developed under paragraph (g),"

23 Page 6, line 36, delete everything before the period and  
24 insert "capable of consolidating a full truckload of video  
25 display devices from households in accordance with all  
26 applicable federal, state, and local laws, rules, regulations,  
27 and ordinances; and

28 (2) arrange for the pickup and recycling of the  
29 registrant's pro rata share of orphan waste by weight from  
30 intermediate consolidation points, pursuant to procedures  
31 developed under paragraph (g)" and before "Registrants" insert:

32 "(o)"

33 Page 7, line 12, delete the semicolon and insert a period

34 Page 7, delete lines 13 to 26

35 Page 7, line 27, delete "(n)" and insert "(p)" and delete  
36 "(l)" and insert "(m)"

1 Page 8, line 17, delete "(1)" and insert "(m)"

2 Page 8, line 29, delete "(1)" and insert "(e)"

3 Page 9, line 7, delete "(2)" and insert "(f)" and delete  
4 "by rule by May 1, 2006" and insert "under section 116H.60,  
5 paragraph (g)"

6 Page 9, line 14, delete "(m)" and insert "(n)"

7 Page 9, line 18, delete "(3)" and insert "(g)"

8 Page 9, delete lines 32 and 33

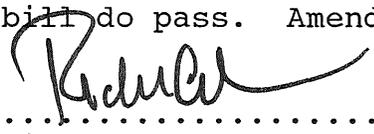
9 Page 10, lines 20 to 23, delete the new language

10 Page 10, line 24, delete everything before "If"

11 Amend the title as follows:

12 Page 1, lines 3 and 4, delete "authorizing rulemaking;"

13 And when so amended the bill do pass. Amendments adopted.  
14 Report adopted.



.....  
(Committee Chair)

May 5, 2005.....  
(Date of Committee recommendation)

15  
16  
17  
18  
19

1

A bill for an act

2

relating to environment; enacting the Minnesota  
Electronics Recycling Act of 2005; authorizing  
rulemaking; providing penalties; proposing coding for  
new law in Minnesota Statutes, chapter 116H.

3

4

5

6

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

7

Section 1. [116H.55] [DEFINITIONS.]

8

Subdivision 1. [SCOPE.] For the purposes of this chapter,

9

the following terms have the meanings given.

10

Subd. 2. [CATHODE RAY TUBE OR CRT.] "Cathode ray tube" or

11

"CRT" means a vacuum tube or picture tube used to convert an

12

electronic signal into a visual image. It is composed primarily

13

of glass, and is the video display component of a television or

14

computer monitor, and includes other items integrally attached

15

to the CRT.

16

Subd. 3. [COMPUTER MONITOR.] "Computer monitor" means an

17

electronic device that is a cathode ray tube or flat panel

18

display primarily intended to display information from a central

19

processing unit or the Internet. Computer monitor includes a

20

laptop computer.

21

Subd. 4. [FULL TRUCKLOAD.] "Full truckload" means a

22

quantity weighing 25,000 pounds or more of video display devices.

23

Subd. 5. [HENNEPIN COUNTY STUDY.] "Hennepin County study"

24

means the Hennepin County Consumer Electronics Brand Tally,

25

published January 2005.

1        Subd. 6. [HOUSEHOLD.] "Household" means an occupant of a  
2 single detached dwelling unit or a single unit of a multiple  
3 dwelling unit who has used a video display device at a dwelling  
4 unit primarily for personal use.

5        Subd. 7. [INTERMEDIATE CONSOLIDATION POINT.] "Intermediate  
6 consolidation point" means a facility in the state approved by  
7 the Office of Environmental Assistance pursuant to section  
8 116H.65, paragraph (d), clause (3), where local governments and  
9 households can deliver for consolidation video display devices  
10 generated by households and destined for recycling,  
11 refurbishment, or reuse. The facility may be operated by a  
12 private entity or a local unit of government, and must be  
13 capable of consolidating a full truckload of video display  
14 devices from households in accordance with all applicable  
15 federal, state, and local laws, rules, regulations, and  
16 ordinances.

17        Subd. 8. [MANUFACTURER.] "Manufacturer" means a person  
18 who: (1) manufactures video display devices to be sold under  
19 its own brand as identified by its own brand label; or (2) sells  
20 video display devices manufactured by others under its own brand  
21 as identified by its own brand label.

22        Subd. 9. [MANUFACTURER'S BRANDS.] "Manufacturer's brands"  
23 means a manufacturer's name, brand name, or brand label, and all  
24 manufacturer's names, brand names, and brand labels for which  
25 the manufacturer has legal responsibility, including those  
26 manufacturer's names, brand names, and brand labels of companies  
27 that have been acquired by the manufacturer.

28        Subd. 10. [OFFICE.] "Office" means the Office of  
29 Environmental Assistance.

30        Subd. 11. [ORPHAN WASTE.] "Orphan waste" means a video  
31 display device covered by this section for which (1) no  
32 manufacturer can be identified, or (2) the manufacturer no  
33 longer exists and no successor can be identified.

34        Subd. 12. [PRO RATA SHARE.] "Pro rata share" means the  
35 percentage that is the proportion, multiplied by 100, of the  
36 total weight of video display devices, of the manufacturer's

1 brands registered by a registrant, as required by section  
2 116H.60, paragraph (e), received at intermediate consolidation  
3 points divided by the total weight of video display devices  
4 received at intermediate consolidation points, as determined by  
5 the sampling program at intermediate consolidation points  
6 pursuant to section 116H.65, paragraph (d), clause (1). The pro  
7 rata share for the first program year shall be based on the  
8 Hennepin County study.

9 Subd. 13. [REGISTRANT.] "Registrant" means a manufacturer  
10 that submits the registration required by section 116H.60,  
11 paragraph (a), or an independent party that submits the  
12 registration required by section 116H.60, paragraph (a), in lieu  
13 of a manufacturer.

14 Subd. 14. [SELL OR SALE.] "Sell" or "sale" means any  
15 transfer for consideration of title or of the right to use, by  
16 lease or sales contract, including, but not limited to,  
17 transactions conducted through sales outlets, catalogs, or the  
18 Internet, or any other similar electronic means either inside or  
19 outside of the state, by a person who conducts the transaction  
20 and controls the delivery of a video display device to a  
21 consumer in the state, but does not include a wholesale  
22 transaction with a distributor or a retailer.

23 Subd. 15. [TELEVISION.] "Television" means an electronic  
24 device that is a cathode ray tube or flat panel display  
25 primarily intended to receive video programming via broadcast,  
26 cable, or satellite transmission or video from surveillance or  
27 other similar cameras.

28 Subd. 16. [VIDEO DISPLAY DEVICE.] "Video display device"  
29 means a computer monitor or television with a screen size  
30 greater than eight inches measured diagonally.

31 Sec. 2. [116H.60] [REGISTRATION PROGRAM.]

32 (a) On and after July 1, 2006, a person may not sell or  
33 offer for sale a new video display device to any person in the  
34 state unless:

35 (1) the video display device is labeled with the  
36 manufacturer's brand, which label is permanently affixed and

1 readily visible; and

2 (2) the video display device is subject to a registration  
3 filed by a registrant with the office according to this section,  
4 with the registration effective upon receipt by the office.

5 (b) A person who sells or offers for sale a new video  
6 display device to a consumer in this state must, before initial  
7 offer for sale of the device, submit to the office a  
8 certification that the person has reviewed the office's Web site  
9 specified in paragraph (h), and has determined that all new  
10 video display devices that the person is then offering for sale  
11 are labeled with manufacturer's brands that are subject to  
12 registration statements filed with the office. After the  
13 initial submittal, the certification must be submitted to the  
14 office annually by July 10 of each year, effective as of July 1  
15 of each year.

16 (c) By February 1, 2006, a manufacturer of video display  
17 devices sold to a consumer in this state must submit a  
18 registration to the office that includes a certification that a  
19 registrant will participate in the intermediate consolidation  
20 point program as specified in paragraph (m) beginning July 1,  
21 2006. A manufacturer who begins to sell or offer for sale video  
22 display devices after February 1, 2006, and has not filed a  
23 registration pursuant to this section must submit a registration  
24 to the office within ten days of beginning to sell or offer for  
25 sale video display devices to consumers in the state. The  
26 registration is effective upon receipt by the office.

27 (d) The registration must list the manufacturer's brands.  
28 The registration must be updated within ten days after a change  
29 in the manufacturer's brands, such as in the event of an  
30 acquisition, merger, or divestiture.

31 (e) A registrant may partner with one or more manufacturers  
32 or other parties, collectively a "registrant," to prepare and  
33 submit to the office a joint video display device recycling,  
34 refurbishment, or reuse program.

35 (f) The office must set a registration fee, not to exceed  
36 \$3,000 per year, the revenues from which are to be used only to

1 pay administrative costs of the program. This fee-setting  
2 process is subject to rulemaking under section 14.389.

3 (g) The office must review each registration and notify the  
4 registrant if the registration does not include the information  
5 required by this section. Within 30 days of receipt of a  
6 notification from the office, the registrant must file with the  
7 office a revised registration providing the information noted by  
8 the office.

9 (h) The office must maintain on its Web site the names of  
10 the registrants and the manufacturers' brands that are listed in  
11 registrations filed with the office. The office must update the  
12 Web site information promptly upon receipt of a new registration  
13 or an updated registration.

14 (i) The obligations of a manufacturer or registrant apply  
15 only to video display devices received from households in this  
16 state and do not apply to video display devices received from  
17 owners other than households.

18 (j) Persons who receive a video display device for  
19 recycling, refurbishment, or reuse pursuant to a registration  
20 may recycle, refurbish, or reuse, including resell, the video  
21 display device. Except to the extent otherwise required by law,  
22 ~~such persons~~<sup>they</sup> have no responsibility for any data that may be on  
23 the video display device if an information storage device is  
24 included with the video display device.

25 (k) A city, county, or other public agency may not require  
26 households to use the intermediate consolidation point program  
27 to recycle their video display devices to the exclusion of other  
28 programs legally available. This chapter anticipates that video  
29 display device recycling programs, in addition to those provided  
30 by manufacturers and registrants under this section, will be  
31 available to households in the state. Nothing in this chapter  
32 prohibits or restricts any such programs or prohibits or  
33 restricts any persons from receiving, storing, transporting, or  
34 recycling video display devices.

35 (l) By October 1 of each year, each registrant must submit  
36 a report to the office that describes the implementation of the

1 program during the preceding program year. The program year is  
2 July 1 through June 30. The first report must be submitted by  
3 October 1, 2007. The report must:

4 (1) identify the total weight of the video display devices  
5 that the registrant has arranged for pickup from intermediate  
6 consolidation points during the preceding year, and the total  
7 weight of video display devices that the registrant has received  
8 from households through other methods during the preceding year  
9 and for which the registrant has used <sup>the</sup> such video display devices  
10 to satisfy all or a portion of its pro rata share responsibility  
11 during the preceding year; and

12 (2) describe the processes and methods used to recycle,  
13 refurbish, or reuse video display devices that the registrant  
14 has arranged for pickup from intermediate collection points  
15 during the preceding year and that the registrant has received  
16 from households through other methods, and for which the  
17 registrant has used <sup>the</sup> such video display devices to satisfy all or  
18 a portion of its pro rata share responsibility during the  
19 preceding year; and, in particular, identify any disassembly,  
20 physical recovery operation including crushing, shredding,  
21 grinding, or glass to glass recycling, or any other operation  
22 that was used and describe where it took place. The report must  
23 also discuss whether these activities included procedures  
24 described in the United States Environmental Protection Agency's  
25 guidelines for the environmentally sound management of  
26 electronic equipment.

27 (m) Participation in the intermediate consolidation point  
28 program requires that a registrant must:

29 (1) arrange for the pickup and recycling of a full  
30 truckload or full truckloads of computer monitor video display  
31 devices or television video display devices received by  
32 intermediate consolidation points after July 1, 2006, up to the  
33 registrant's pro rata share of computer monitor video display  
34 devices or television video display devices, from intermediate  
35 consolidation points, pursuant to rules adopted by the office  
36 under section 116H.65, paragraph (e). Registrants are

1 responsible for the costs of pickup and recycling of the video  
2 display devices. A registrant may satisfy a portion or all of  
3 its pro rata share responsibility by receipt of video display  
4 devices from households through other methods if the registrant  
5 has not charged for the recycling, refurbishment, or reuse of  
6 the video display devices that the registrant has received from  
7 households in this state through the other methods. A  
8 registrant who intends to satisfy a portion or all of its pro  
9 rata share responsibility by receipt of the video display  
10 devices from households through other methods must provide the  
11 office with a report of its receipt of video display devices  
12 through the other methods on a quarterly basis;

13 (2) arrange for the pickup and recycling of the  
14 registrant's pro rata share of orphan waste by weight from  
15 intermediate consolidation points, pursuant to rules adopted by  
16 the office under section 116H.65, paragraph (e). Registrants  
17 are responsible for the costs of pickup and recycling of the  
18 video display devices. A registrant may satisfy a portion or  
19 all of its additional pro rata share responsibility by receipt  
20 of video display devices from households through other methods  
21 if the registrant has not charged for the recycling,  
22 refurbishment, or reuse of the video display devices that the  
23 registrant received from households in this state through the  
24 other methods. Collectively, the registrants must arrange for  
25 the pickup and recycling of the orphan waste collected during  
26 this period.

27 (n) After receipt of the report required by paragraph (1)  
28 to be filed on October 1, 2009, the office must review the  
29 performance of the program and may issue performance standards  
30 related to the number of units collected per household.

31 Sec. 3. [116H.65] [DUTIES OF OFFICE.]

32 (a) The office must administer and enforce this chapter.

33 (b) The office must establish procedures for:

34 (1) receipt and maintenance of the registration statements  
35 and certifications filed with the office pursuant to section  
36 116H.60; and

1       (2) making the statements and certifications easily  
2 available to registrants, manufacturers, distributors,  
3 retailers, and members of the public.

4       (c) On or before December 1, 2010, and every three years  
5 thereafter, the office must provide a report to the governor and  
6 the legislature on the implementation of this chapter. For each  
7 of the preceding three program years, the report must discuss  
8 the total weight of video display devices received by all  
9 registrants from intermediate consolidation points, the total  
10 weight of video display devices received by each registrant from  
11 intermediate consolidation points, the total weight of video  
12 display devices that the registrant has received from households  
13 through other methods during the preceding year and which the  
14 registrant has used to satisfy all or a portion of its pro rata  
15 share responsibility during the preceding year, and a summary of  
16 information in the report submitted by registrants pursuant to  
17 section 116H.60, paragraph (1). The report must also discuss  
18 the various collection programs used to collect video display  
19 devices and information received by the office regarding video  
20 display devices that are not being collected by the  
21 registrants. The report must include a description of  
22 enforcement actions under this chapter and information about  
23 video display devices, if any, being disposed of in landfills in  
24 this state. The office may include in its report other  
25 information received by the office regarding the implementation  
26 of the chapter.

27       (d) The office must administer the intermediate  
28 consolidation point program.

29       (1) The office must calculate pro rata shares for video  
30 display devices on an annual program year basis for each  
31 registrant. Pro rata shares for the first program year must be  
32 determined by the office by May 1, 2006, using the Hennepin  
33 County study. For each subsequent year, pro rata shares must be  
34 determined by May 1 of the preceding year based upon an annual  
35 sampling survey conducted by the office at intermediate  
36 consolidation points during that preceding year. The sampling

1 survey must identify televisions and computer monitors  
2 separately, and calculate the weight of televisions and computer  
3 monitors separately. The office may provide registrants with  
4 projections or estimates of the amount by weight of video  
5 display devices for which the registrant may be responsible  
6 during a given program year.

7 (2) The office must establish by rule by May 1, 2006, a  
8 system to coordinate among registrants pickups from intermediate  
9 consolidation points after an intermediate consolidation point  
10 has notified the office that a full truckload of video display  
11 devices from households has been consolidated. The office must  
12 provide a program year accounting of the extent to which each  
13 registrant met its pro rata share responsibility as established  
14 pursuant to section 116H.60, paragraph (m), and methods for  
15 addressing amounts greater than or less than a registrant's pro  
16 rata share responsibility that were picked up and recycled by a  
17 registrant during the program year.

18 (3) By February 1, 2006, the office must receive  
19 applications for the establishment of intermediate consolidation  
20 points. The director must seek to receive at least 15  
21 applications with at least ten of the applications from outside  
22 the metropolitan area. By April 30, 2006, the office must  
23 establish a list of approved intermediate consolidation points  
24 and must provide the list on its Web site. Manufacturers and  
25 registrants have no responsibility for any costs of the  
26 intermediate consolidation points. Applications for the  
27 establishment of intermediate consolidation points must specify  
28 any method that will be used to ensure that video display  
29 devices will be collected only from households or that video  
30 display devices from households will be segregated from other  
31 video display devices.

32 (e) The office may adopt rules for the purpose of  
33 administering and enforcing this chapter.

34 Sec. 4. [116H.75] [REQUIREMENTS FOR PURCHASES BY STATE  
35 AGENCIES.]

36 (a) The Department of Administration must ensure that

1 acquisitions of video display devices under chapter 16C are  
2 certified by the vendor to be in compliance with section 116H.60.

3 (b) The bid solicitation documents must specify that the  
4 prospective bidder is required to cooperate fully in providing  
5 reasonable access to its records and documents that evidence  
6 compliance with paragraph (a) and section 116H.60.

7 (c) Any person awarded a contract under chapter 16C for  
8 purchase or lease of video display devices that is found to be  
9 in violation of paragraph (a) or section 116H.60 is subject to  
10 the following sanctions:

11 (1) the contract must be voided;

12 (2) the contractor is ineligible to bid on any state  
13 contract for a period of three years; and

14 (3) if the attorney general establishes that any money,  
15 property, or benefit was obtained by a contractor as a result of  
16 violating paragraph (a) or section 116H.60, the court may, in  
17 addition to any other remedy, order the disgorgement of the  
18 unlawfully obtained money, property, or benefit.

19 Sec. 5. [116H.80] [REGULATION OF CRT DEVICES.]

20 Rules adopted by the office or by the Pollution Control  
21 Agency regarding the handling, storage, and treatment of cathode  
22 ray tube devices or video display devices being recycled may not  
23 be more restrictive than regulations adopted by the United  
24 States Environmental Protection Agency. If the United States  
25 Environmental Protection Agency adopts regulations under the  
26 Resource Conservation and Recovery Act regarding the handling,  
27 storage, or treatment of cathode ray tube devices or video  
28 display devices being recycled, those regulations are  
29 automatically effective in this state on the same date and  
30 supersede any rules previously adopted by the office or the  
31 Pollution Control Agency regarding the handling, storage, or  
32 treatment of cathode ray tube devices or video display devices  
33 being recycled.

34 Sec. 6. [116H.85] [ENFORCEMENT.]

35 This chapter shall be enforced in the manner provided by  
36 sections 115.071, subdivisions 1, 3, 4, 5, and 6; and 116.072.

1           Sec. 7. [116H.90] [LIMITATIONS.]

2           This chapter expires if a federal law, or combination of  
3 federal laws, takes effect that is applicable to all video  
4 display devices sold in the United States and establishes a  
5 program for the collection and recycling or reuse of video  
6 display devices that is applicable to all video display devices  
7 discarded by households.

1 Senator ..... moves to amend S.F. No. 1298 as follows:

2 Page 2, line 16, before the period, insert "and may charge  
3 a fee of no more than \$5"

4 Page 3, line 30, after the period, insert "The term "video  
5 display device" does not include a video display device that is  
6 part of or contained in a motor vehicle; industrial, commercial,  
7 or medical equipment; or any appliance."

8 Page 3, line 32, delete "person" and insert "retailer or  
9 manufacturer"

10 Page 4, line 5, delete "person" and insert "retailer or  
11 manufacturer"

12 Page 4, line 8, delete "person" and insert "retailer or  
13 manufacturer"

14 Page 4, line 9, delete "(h)" and insert "(i)"

15 Page 4, line 10, delete "person" and insert "retailer or  
16 manufacturer"

17 Page 4, line 15, after the period, insert "A retailer is  
18 not responsible for an unlawful sale under this paragraph if the  
19 registration expired or was revoked and the retailer took  
20 possession of the video display device prior to the expiration  
21 or revocation of the registration and the unlawful sale occurred  
22 within six months after the expiration or revocation."

23 Page 4, line 20, delete "(m)" and insert "(n)"

24 Page 4, delete lines 35 to 36

25 Page 5, delete lines 1 to 2 and insert:

26 "(f) Each manufacturer who registers under this section  
27 must pay<sup>to the office</sup> an annual fee, which <sup>must be</sup> is deposited in<sup>the State Treasury & credited to</sup> an electronic waste  
28 account established in the environmental fund. The fee is equal  
29 to \$2,000 multiplied by the manufacturer's pro rata share of  
30 video display devices as determined under section 116H.55,  
31 subdivision 12. A manufacturer registered under this section  
32 whose pro rata share is less than 0.25 percent must pay a  
33 minimum fee of \$500. Money in the electronic waste account is  
34 appropriated to the office for the purpose of administering the  
35 program.

36 (g) The office shall develop procedures to administer and

1 implement the registration program under this section and shall  
2 present them to the legislature by January 15, 2006."

3 Page 5, line 3, delete "(g)" and insert "(h)"

4 Page 5, line 9, delete "(h)" and insert "(i)"

5 Page 5, line 14, delete "(i)" and insert "(j)"

6 Page 5, line 18, delete "(j)" and insert "(k)"

7 Page 5, line 25, delete "(k)" and insert "(l)"

8 Page 5, line 28, delete everything after the period

9 Page 5, delete lines 29 and 30

10 Page 5, line 31, delete everything before "Nothing"

11 Page 5, line 32, delete "such" and insert "video display  
12 recycling" and after "programs" insert "that are in addition to  
13 those provided by manufacturers or registrants"

14 Page 5, line 35, delete "(l)" and insert "(m)"

15 Page 6, line 27, delete "(m)" and insert "(n)"

16 Page 6, line 35, delete everything after "to" and insert  
17 "procedures developed under paragraph (g),"

18 Page 6, line 36, delete everything before the period, and  
19 insert "capable of consolidating a full truckload of video  
20 display devices from households in accordance with all  
21 applicable federal, state, and local laws, rules, regulations,  
22 and ordinances; and

23 (2) arrange for the pickup and recycling of the  
24 registrant's pro rata share of orphan waste by weight from  
25 intermediate consolidation points, pursuant to procedures  
26 developed under paragraph (g)" and before "Registrants" insert:

27 "(o)"

28 Page 7, line 12, delete the semicolon, and insert a period

29 Page 7, delete lines 13 to 26

30 Page 7, line 27, delete "(n)" and insert "(p)" and delete  
31 "(l)" and insert "(m)"

32 Page 8, line 17, delete "(l)" and insert "(m)"

33 Page 8, line 29, delete "(l)" and insert "(e)"

34 Page 9, line 7, delete "(2)" and insert "(f)" and delete  
35 "by rule by May 1, 2006" and insert "under section 116H.60,  
36 paragraph (g)"

- 1 Page 9, line 14, delete "m" and insert "n"
- 2 Page 9, line 18, delete "3" and insert "g"
- 3 Page 9, delete lines 32 and 33
- 4 Page 10, delete lines 20 to 23
- 5 Page 10, line 24, delete everything before "If"

**Consolidated Fiscal Note – 2005-06 Session**

Bill #: S1298-2A Complete Date: 04/21/05

Chief Author: HIGGINS, LINDA

Title: MN ELECTRONICS RECYCLING ACT OF 2005

Fiscal Impact	Yes	No
State	X	
Local	X	
Fee/Departmental Earnings	X	
Tax Revenue		X

Agencies: Environmental Assistance (04/21/05)  
Pollution Control Agency (04/21/05)

Administration Dept (04/21/05)

This table reflects fiscal impact to state government. Local government impact is reflected in the narrative only.

Dollars (in thousands)	FY05	FY06	FY07	FY08	FY09
<b>Net Expenditures</b>					
General Fund	0	250	205	127	127
Environmental Assistance	0	250	205	127	127
<b>Revenues</b>					
General Fund	0	120	120	120	120
Environmental Assistance	0	120	120	120	120
<b>Net Cost &lt;Savings&gt;</b>					
General Fund	0	130	85	7	7
Environmental Assistance	0	130	85	7	7
<b>Total Cost &lt;Savings&gt; to the State</b>	0	130	85	7	7

	FY05	FY06	FY07	FY08	FY09
<b>Full Time Equivalents</b>					
General Fund	0.00	2.00	2.00	1.25	1.25
Environmental Assistance	0.00	2.00	2.00	1.25	1.25
<b>Total FTE</b>	0.00	2.00	2.00	1.25	1.25

**Consolidated EBO Comments**

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: LEONIE HUANG  
Date: 04/21/05 Phone: 296-5779

**Fiscal Note – 2005-06 Session**

Bill #: S1298-2A Complete Date: 04/21/05

Chief Author: HIGGINS, LINDA

Title: MN ELECTRONICS RECYCLING ACT OF 2005

Fiscal Impact	Yes	No
State	X	
Local		X
Fee/Departmental Earnings	X	
Tax Revenue		X

Agency Name: Environmental Assistance

This table reflects fiscal impact to state government. Local government impact is reflected in the narrative only.

Dollars (in thousands)	FY05	FY06	FY07	FY08	FY09
<b>Expenditures</b>					
General Fund	0	250	205	127	127
<b>Less Agency Can Absorb</b>					
General Fund	0	0	0	0	0
<b>Net Expenditures</b>					
General Fund	0	250	205	127	127
<b>Revenues</b>					
General Fund	0	120	120	120	120
<b>Net Cost &lt;Savings&gt;</b>					
General Fund	0	130	85	7	7
<b>Total Cost &lt;Savings&gt; to the State</b>	0	130	85	7	7

	FY05	FY06	FY07	FY08	FY09
<b>Full Time Equivalents</b>					
General Fund	0.00	2.00	2.00	1.25	1.25
<b>Total FTE</b>	0.00	2.00	2.00	1.25	1.25

## **Bill Description**

SF 1298-2A establishes product stewardship requirements for manufacturers of video display devices (televisions and computer monitors). The manufacturers of these products are required to ensure that they are transported and recycled from consolidation points located across the state. Video display devices (VDDs) commonly contain enough heavy metals (lead, copper etc.) for the commercially generated units to qualify as a hazardous waste using standard tests.

A statutory ban on disposal of residential CRTs is already in law, and takes effect July 1, 2005 (Minn. Stat. 115A.9565).

Following local collection of video displays into "consolidation points," manufacturers are to transport, reuse and recycle old electronics, educate the public on the program, and pay any costs on their own. Manufacturers can participate individually or as groups. It requires video display manufacturers to register into the program with the OEA annually beginning in February 1 2006, and to provide a certification of compliance. The OEA is to make available electronically the list of brands belonging to those manufacturers in compliance.

The OEA is charged with establishing the consolidation points, implementing a system to coordinate pickups from consolidation points and conducting an annual sort and pro rata share calculation to determine the specific responsibilities for manufacturers.

## **Assumptions**

SF1298-2A would require several main tasks to be performed by the OEA:

### **1) Registration and certification**

The registration by manufacturers would begin in early 2006. The estimated number of registrations would be approximately 40 per year (based on a similar program in Maine). The OEA would prepare a web-based entry system for manufacturers to provide the needed information. The OEA would need to:

- review electronically submitted forms;
- notify the registrant within 30 days of receiving each certification;
- publish the list of certified manufacturers, contact information, and their brand labels;
- re-register manufacturers at one-year intervals;
- make compliance checks if necessary; and
- revisit prior certification determinations if necessary.

SF1298-2A also requires that all sellers of VDDs submit an annual certification to the OEA that all sales are in compliance. The OEA is not able to estimate, at this time, the number of potential entities that would be required to submit certifications. However, several hundred is likely.

### **2) Consolidation points program**

The OEA would administer the consolidation points program by:

- selecting a minimum of 15 consolidation points based upon applications to the OEA;
- establishing a list of approved consolidation points;
- conducting an annual brand sort starting in 2007 to calculate the pro rata share of video display devices; and
- establishing a system to coordinate pickups from consolidation points

### **3) Rulemaking**

The OEA is authorized to conduct rulemaking to determine the system to coordinate the pick up of VDDs from consolidation points by registrants. The OEA may also conduct rulemaking for any other issues associated with implementation of the program including the setting of fees associated with the registration program.

### **4) Reporting**

Starting December 1, 2010 and every three years thereafter, the OEA reports on implementation of the program.

At the outset, the OEA's registration and compliance determination would be based exclusively on information submitted by the manufacturer. In FY 2007 there would be enough information for OEA to review the submitted information and revoke determinations for manufacturers not in compliance.

The OEA staff person for all purposes would be a Pollution Control Specialist Senior.

**Expenditure and/or Revenue Formula**

The OEA estimates that the registration and certification responsibilities would require .5 FTE annually.

The consolidation points program would require .5 FTE in addition to approximately \$40,000 annually to administer the brand sort and pro rata share calculation.

The rulemaking would require approximately 1 FTE in addition to specific costs for rulemaking such as publishing in the State Register. The OEA estimates that staff time and associated rulemaking costs would total \$125,000 for FY 06 and FY 07. The OEA would also need to implement emergency rulemaking to establish the registration fee in Sec. 3. The OEA estimates that such an emergency rulemaking would cost \$80,000 for FY 06.

The reporting responsibilities would require .25 FTE

The staff time estimate assumes that the program would not require extensive compliance checks. HF1391-2E permits the imposition of an optional registration fee of up to \$3,000 per registrant. The OEA estimates that such a fee would raise up to \$120,000 based on the expected registrants.

**SF1298-2A Expenditure Formula:**

<b>PCS Sr/ Annual Cost</b>	Salary (midrange)	\$20.67/hr	\$43,159
	Fringe	28%	\$12,084
	Initial Computer Costs (first year only)		\$ 2,500
	Space Costs		\$ 9,823
	Misc Office Costs (phones, supplies, PCA services etc.)		\$ 5,000
<b>Total Annual Staff Cost of 1FTE First Year</b>			<b>\$72,566</b>
<b>Cost of 1 FTE Subsequent Yrs</b>			<b>\$70,066</b>

**ITEMIZED COSTS:**

<b>FY 2006</b>			<b>In Thousands</b>
Registration and Certification	FTE .5		\$ 36
Consolidation Points Program	FTE .5		\$ 36
Rulemaking	FTE 1.0		\$ 73
		Cost of Public Hearings (room rentals, public notices, travel etc.)	\$ 25
Emergency Rulemaking		Cost of Public Hearings (room rentals, public notices, travel etc.)	\$ 80
<b>Total 2006</b>	<b>FTE 2.0</b>		<b>\$250</b>

<b>FY 2007</b>			
Registration and Certification	FTE .5		\$ 35
Brand Sort and Pro Rata Share Calculation		Consultant Costs	\$ 40
Consolidation Points Program	FTE .5		\$ 35
Rulemaking	FTE 1.0		\$ 70
		Cost of Public Hearings (room rentals, public notices, travel etc.)	\$ 25
<b>Total 2007</b>	<b>FTE 2.0</b>		<b>\$205</b>

<b>FY 2008</b>			
Registration and Certification	FTE .5		\$ 35
Brand Sort and Pro Rata Share Calculation		Consultant Costs	\$ 40
Consolidation Points Program	FTE .5		\$ 35
Reporting Responsibilities (to OEA)	FTE .25		\$ 17
<b>Total 2008</b>	<b>FTE 1.25</b>		<b>\$ 127</b>

<b>FY 2009</b>			
Registration and Certification	FTE .5		\$ 35
Brand Sort and Pro Rata Share Calculation		Consultant Costs	\$ 40
Consolidation Points Program	FTE .5		\$ 35
Reporting Responsibilities (to OEA)	FTE .25		\$ 17
<b>Total 2009</b>	<b>FTE 1.25</b>		<b>\$127</b>

**Long-Term Fiscal Considerations**

The program is open-ended in time, but sunsets if a national program is implemented. Display devices would continue to come into the program for years because the bill covers both the older-style CRTs (which have begun to phase out) as well as the newer flat-panel displays, which are likely to be manufactured for years to come.

**Local Government Costs**

This bill contains no defined costs to local governments; however local governments at their discretion could incur costs.

**References/Sources**

David Benke, OEA, 651-215-0196  
 Garth Hickie, OEA, 651-215-0224

Agency Contact Name: David Benke (651-215-0196)  
 FN Coord Signature: MARY PALMER  
 Date: 04/21/05 Phone: 215-0238

**EBO Comments**

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: LEONIE HUANG  
 Date: 04/21/05 Phone: 296-5779

**Fiscal Note – 2005-06 Session**

**Bill #:** S1298-2A **Complete Date:** 04/21/05

**Chief Author:** HIGGINS, LINDA

**Title:** MN ELECTRONICS RECYCLING ACT OF 2005

<b>Fiscal Impact</b>	<b>Yes</b>	<b>No</b>
State		X
Local	X	
Fee/Departmental Earnings		X
Tax Revenue		X

**Agency Name:** Pollution Control Agency

This table reflects fiscal impact to state government. Local government impact is reflected in the narrative only.

<b>Dollars (in thousands)</b>	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Expenditures</b>					
-- No Impact --					
<b>Less Agency Can Absorb</b>					
-- No Impact --					
<b>Net Expenditures</b>					
-- No Impact --					
<b>Revenues</b>					
-- No Impact --					
<b>Net Cost &lt;Savings&gt;</b>					
-- No Impact --					
<b>Total Cost &lt;Savings&gt; to the State</b>					

	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Full Time Equivalents</b>					
-- No Impact --					
<b>Total FTE</b>					

**Bill Description**

S1298-2A establishes product stewardship requirements for manufacturers of video display devices (televisions and computer monitors). The manufacturers of these products are required to ensure that they are transported and recycled from consolidation points located across the state. Video display devices (VDDs) commonly contain enough heavy metals (lead, copper etc.) for the commercially generated units to qualify as a hazardous waste using standard tests.

A statutory ban on disposal of residential CRTs is already in law, and takes effect July 1, 2005 (Minn. Stat. 115A.9565).

Following local collection of video displays into "consolidation points," manufacturers are to transport, reuse and recycle old electronics, educate the public on the program, and pay any costs on their own. Manufacturers can participate individually or as groups. It requires video display manufacturers to register into the program with the OEA annually beginning in February 1 2006, and to provide a certification of compliance. The Office of Environmental Assistance (OEA) is to make available electronically the list of brands belonging to those manufacturers in compliance.

The OEA is charged with establishing the consolidation points, implementing a system to coordinate pickups from consolidation points and conducting an annual sort and pro rata share calculation to determine the specific responsibilities for manufacturers.

**Assumptions**

The Minnesota Pollution Control Agency has no direct involvement in the implementation of the program described above.

**Expenditure and/or Revenue Formula**

None

**Long-Term Fiscal Considerations**

None

**Local Government Costs**

This bill contains no defined costs to local governments; however local governments at their discretion could incur costs.

**References/Sources**

Agency Contact Name: MYRNA HALBACH (651-296-8399)  
FN Coord Signature: GLENN OLSON  
Date: 04/21/05 Phone: 297-1609

**EBO Comments**

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: LEONIE HUANG  
Date: 04/21/05 Phone: 296-5779

**Fiscal Note – 2005-06 Session**

**Bill #:** S1298-2A **Complete Date:** 04/21/05

**Chief Author:** HIGGINS, LINDA

**Title:** MN ELECTRONICS RECYCLING ACT OF 2005

<b>Fiscal Impact</b>	<b>Yes</b>	<b>No</b>
State		X
Local		X
Fee/Departmental Earnings		X
Tax Revenue		X

**Agency Name:** Administration Dept

This table reflects fiscal impact to state government. Local government impact is reflected in the narrative only.

<b>Dollars (in thousands)</b>	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Expenditures</b>					
-- No Impact --					
<b>Less Agency Can Absorb</b>					
-- No Impact --					
<b>Net Expenditures</b>					
-- No Impact --					
<b>Revenues</b>					
-- No Impact --					
<b>Net Cost &lt;Savings&gt;</b>					
-- No Impact --					
<b>Total Cost &lt;Savings&gt; to the State</b>					

	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Full Time Equivalents</b>					
-- No Impact --					
<b>Total FTE</b>					

### **Bill Description**

Section 4 requires Admin to purchase video display devices only from manufacturers that are certified to comply with the registration, pickup and recycling program for household CRTs. Vendors who fail to comply will have their contracts for sale of CRTs to state agencies voided.

### **Assumptions**

This fiscal note addresses the administrative costs to Admin for implementing Section 4 of the bill. Those costs are real and include (1) adding new boilerplate language to solicitation documents and contracts, (2) assuring due process including appeal rights under Minnesota Rules to vendors that are being suspended and debarred for non-compliance, and (3) re-bidding contracts that have been voided. However, they probably do not reach the level of .25 FTE and are being considered negligible for purposes of this fiscal note.

This fiscal note does not attempt to guess how vendors will respond to this new condition for doing business with the state. Internal discussions within Admin have suggested the following as possibilities that would involve fiscal consequences to state and local units of government:

- Vendors might choose to raise their prices to state and local government customers in Minnesota to recover some of their costs associated with program compliance.
- Vendors might opt out of selling to government in Minnesota, rather than comply with the registration, pickup and recycling program. This could raise prices through reduced competition.

State agencies will continue to use environmentally responsible means to dispose of video display devices and other hazardous electronics. Currently, state agencies can transfer or sell used equipment to other units of government, including transfer to Admin's Surplus Services section for redistribution to eligible parties. Alternatively, under existing state contracts, state agencies and local units can require manufacturers to take back electronic equipment at the end of its useful life for a recycling charge. The state also administers its own contract for the recycling of electronic hazardous wastes by state and local governmental units. (Relevant usage and cost data is cited under "expenditure and/or revenue formula" below.) A bill progressing through the legislative process would also authorize state agencies to donate used computers to the Computers for Schools program.

### **Expenditure and/or Revenue Formula**

Admin experience shows that manufacturers charge the state more to take back used equipment than we have been paying through our hazardous electronic waste disposal contract. For example, manufacturers have indicated the following range of prices for taking back various types of equipment:

Apple - \$30 - \$40  
Dell - \$53 - \$59  
Gateway - \$30 - \$60  
Hewlett Packard - \$13 - \$34  
MPC - \$35

However, through our hazardous waste recycling contract it costs \$10 on average to recycle a CRT. That's the contract price of \$0.25 per pound times an average weight of 40 pounds (or \$10.00 per laptop or CRT).

In calendar year 2004, the hazardous waste recycling contract was used to recycle the following video display devices for state agencies:

LCDs- laptops - 200  
CRTs, the cathode ray tubes that are in both TVs and computer monitors - 5,534  
Total laptops and CRTs - 5,734

Video display devices recycled in 2004 for Cooperative Purchasing Venture members (primarily local units of government):

LCDs- laptops - 98  
CRTs, the cathode ray tubes that are in both TVs and computer monitors - 3,250  
Total: 3,348

Grand total: 9,082 video display devices recycled. The approximate cost to recycle these video display devices at \$10.00 each was \$90,820.

Approximately half that many video display devices (4541) were saved for resale/reuse.

**Long-Term Fiscal Considerations**

There could be long-term fiscal consequences depending on how vendors choose to respond to these new requirements.

**Local Government Costs**

There could be impacts on local government costs depending on how vendors choose to respond to these new requirements.

**References/Sources**

- Existing contracts with computer manufacturers
- Usage data from Asset Recovery Corporation regarding hazardous waste contract

Agency Contact Name: Kent Allin (651-296-1442)

FN Coord Signature: LARRY FREUND

Date: 04/21/05 Phone: 296-5857

**EBO Comments**

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: TIM JAHNKE

Date: 04/21/05 Phone: 296-6237

**Consolidated Fiscal Note – 2005-06 Session**

**Bill #:** H1391-4E **Complete Date:** 04/22/05

**Chief Author:** COX, RAY

**Title:** WASTE ELECTRONIC PRODUCTS RECOVERY

<b>Fiscal Impact</b>	<b>Yes</b>	<b>No</b>
State	X	
Local	X	
Fee/Departmental Earnings	X	
Tax Revenue		X

**Agencies:** Environmental Assistance (04/22/05)  
Pollution Control Agency (04/22/05)

Administration Dept (04/21/05)

This table reflects fiscal impact to state government. Local government impact is reflected in the narrative only.

Dollars (in thousands)	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Net Expenditures</b>					
Environmental Fund	0	133	137	137	137
Environmental Assistance	0	133	137	137	137
<b>Revenues</b>					
Environmental Fund	0	160	160	160	160
Environmental Assistance	0	160	160	160	160
<b>Net Cost &lt;Savings&gt;</b>					
Environmental Fund	0	(27)	(23)	(23)	(23)
Environmental Assistance	0	(27)	(23)	(23)	(23)
<b>Total Cost &lt;Savings&gt; to the State</b>	0	(27)	(23)	(23)	(23)

	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Full Time Equivalents</b>					
Environmental Fund	0.00	1.50	1.25	1.25	1.25
Environmental Assistance	0.00	1.50	1.25	1.25	1.25
<b>Total FTE</b>	0.00	1.50	1.25	1.25	1.25

**Consolidated EBO Comments**

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: LEONIE HUANG

Date: 04/22/05 Phone: 296-5779

**Fiscal Note – 2005-06 Session**

**Bill #:** H1391-4E **Complete Date:** 04/22/05

**Chief Author:** COX, RAY

**Title:** WASTE ELECTRONIC PRODUCTS RECOVERY

<b>Fiscal Impact</b>	<b>Yes</b>	<b>No</b>
State	X	
Local		X
Fee/Departmental Earnings	X	
Tax Revenue		X

**Agency Name:** Environmental Assistance

This table reflects fiscal impact to state government. Local government impact is reflected in the narrative only.

Dollars (in thousands)	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Expenditures</b>					
Environmental Fund	0	133	137	137	137
<b>Less Agency Can Absorb</b>					
-- No Impact --					
<b>Net Expenditures</b>					
Environmental Fund	0	133	137	137	137
<b>Revenues</b>					
Environmental Fund	0	160	160	160	160
<b>Net Cost &lt;Savings&gt;</b>					
Environmental Fund	0	(27)	(23)	(23)	(23)
<b>Total Cost &lt;Savings&gt; to the State</b>	0	(27)	(23)	(23)	(23)

	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Full Time Equivalent</b>					
Environmental Fund	0.00	1.50	1.25	1.25	1.25
<b>Total FTE</b>	0.00	1.50	1.25	1.25	1.25

## **Bill Description**

HF 1391-4E establishes product stewardship requirements for manufacturers of video display devices (televisions and computer monitors). The manufacturers of these products are required to ensure that they are transported and recycled from consolidation points located across the state. Video display devices (VDDs) commonly contain enough heavy metals (lead, copper etc.) for the commercially generated units to qualify as a hazardous waste using standard tests.

A statutory ban on disposal of residential CRTs is already in law, and takes effect July 1, 2005 (Minn. Stat. 115A.9565).

Following local collection of video displays into "consolidation points," manufacturers are to transport, reuse and recycle old electronics, educate the public on the program, and pay any costs on their own. Manufacturers can participate individually or as groups. It requires video display manufacturers to register into the program with the OEA annually beginning in February 1 2006, and to provide a certification of compliance. The OEA is to make available electronically the list of brands belonging to those manufacturers in compliance.

The OEA is charged with establishing the consolidation points, implementing a system to coordinate pickups from consolidation points and conducting an annual sort and pro rata share calculation to determine the specific responsibilities for manufacturers.

## **Assumptions**

HF 1391-4E would require several main tasks to be performed by the OEA:

### **1) Registration and certification**

The registration by manufacturers would begin in early 2006. The estimated number of registrations would be approximately 40 per year (based on a similar program in Maine). The OEA would prepare a web-based entry system for manufacturers to provide the needed information. The OEA would need to:

- review electronically submitted forms;
- notify the registrant within 30 days of receiving each certification;
- publish the list of certified manufacturers, contact information, and their brand labels;
- re-register manufacturers at one-year intervals;
- make compliance checks if necessary; and
- revisit prior certification determinations if necessary.

HF 1391-4E also requires that all sellers of VDDs submit an annual certification to the OEA that all sales are in compliance. The OEA is not able to estimate, at this time, the number of potential entities that would be required to submit certifications. However, several hundred is likely.

### **2) Consolidation points program**

The OEA would administer the consolidation points program by:

- selecting a minimum of 15 consolidation points based upon applications to the OEA;
- establishing a list of approved consolidation points;
- conducting an annual brand sort starting in 2007 to calculate the pro rata share of video display devices; and
- establishing a system to coordinate pickups from consolidation points

### **3) Procedures**

The OEA would be required to develop procedures to administer and implement the program and present them to the legislature by January 15, 2006.

### **4) Reporting**

Starting December 1, 2010 and every three years thereafter, the OEA reports on implementation of the program.

At the outset, the OEA's registration and compliance determination would be based exclusively on information submitted by the manufacturer. In FY 2007 there would be enough information for OEA to review the submitted information and revoke determinations for manufacturers not in compliance.

The OEA staff person for all purposes would be a Pollution Control Specialist Senior.

**Expenditure and/or Revenue Formula**

The OEA estimates that the registration and certification responsibilities would require .5 FTE annually.

The consolidation points program would require .5 FTE in addition to approximately \$50,000 annually to administer the brand sort and pro rata share calculation.

The reporting responsibilities would require .25 FTE

The staff time estimate assumes that the program would not require extensive compliance checks. HF1391-4E requires each manufacturer who registers under this section to pay an annual fee equal to \$2,000 multiplied by the manufacturer's pro rata share of video display devices as determined under section 116H.55 subd. 12, or a minimum fee of \$500. These fees are deposited into the environmental fund and are used by OEA to administer the program. The OEA estimates that such a fee would raise up to \$160,000 per year based on the expected registrants.

**HF 1391-4E Expenditure Formula:**

<b>PCS Sr/ Annual Cost</b>	Salary (midrange)	\$20.67/hr	\$43,159
	Fringe	28%	\$12,084
	Initial Computer Costs (first year only)		\$ 2,500
	Space Costs		\$ 9,823
	Misc Office Costs (phones, supplies, PCA services etc.)		\$ 5,000
<b>Total Annual Staff Cost of 1FTE First Year</b>			<b>\$72,566</b>
<b>Cost of 1 FTE Subsequent Yrs</b>			<b>\$70,066</b>

**ITEMIZED COSTS:**

<b>FY 2006</b>			<b>In Thousands</b>
Registration and Certification	FTE .5		\$ 36
Consolidation Points Program	FTE .5		\$ 36
Procedure Development	FTE .5		\$ 36
		Cost of Public Hearings (room rentals, public notices, travel etc.)	\$ 25
<b>Total 2006</b>	<b>FTE 1.5</b>		<b>\$133</b>

<b>FY 2007</b>			
Registration and Certification	FTE .5		\$ 35
Brand Sort and Pro Rata Share Calculation		Consultant Costs	\$ 50
Consolidation Points Program	FTE .5		\$ 35
Reporting Responsibilities (to OEA)	FTE .25		\$ 17

<b>Total 2007</b>	<b>FTE 1.25</b>		<b>\$137</b>
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<b>FY 2008</b>			
Registration and Certification	FTE .5		\$ 35
Brand Sort and Pro Rata Share Calculation		Consultant Costs	\$ 50
Consolidation Points Program	FTE .5		\$ 35
Reporting Responsibilities (to OEA)	FTE .25		\$ 17
<b>Total 2008</b>	<b>FTE 1.25</b>		<b>\$ 137</b>

<b>FY 2009</b>			
Registration and Certification	FTE .5		\$ 35
Brand Sort and Pro Rata Share Calculation		Consultant Costs	\$ 50
Consolidation Points Program	FTE .5		\$ 35
Reporting Responsibilities (to OEA)	FTE .25		\$ 17
<b>Total 2009</b>	<b>FTE 1.25</b>		<b>\$137</b>

**Long-Term Fiscal Considerations**

The program is open-ended in time, but sunsets if a national program is implemented. Display devices would continue to come into the program for years because the bill covers both the older-style CRTs (which have begun to phase out) as well as the newer flat-panel displays, which are likely to be manufactured for years to come.

**Local Government Costs**

This bill contains no defined costs to local governments; however local governments at their discretion could incur costs.

**References/Sources**

David Benke, OEA, 651-215-0196  
 Garth Hickle, OEA, 651-215-0224

Agency Contact Name: David Benke (651-215-0196)  
 FN Coord Signature: MARY PALMER  
 Date: 04/20/05 Phone: 215-0238

**EBO Comments**

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: LEONIE HUANG  
 Date: 04/22/05 Phone: 296-5779

**Fiscal Note – 2005-06 Session**

**Bill #:** H1391-4E **Complete Date:** 04/22/05

**Chief Author:** COX, RAY

**Title:** WASTE ELECTRONIC PRODUCTS RECOVERY

<b>Fiscal Impact</b>	<b>Yes</b>	<b>No</b>
State		X
Local	X	
Fee/Departmental Earnings		X
Tax Revenue		X

**Agency Name:** Pollution Control Agency

This table reflects fiscal impact to state government. Local government impact is reflected in the narrative only.

Dollars (in thousands)	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Expenditures</b>					
-- No Impact --					
<b>Less Agency Can Absorb</b>					
-- No Impact --					
<b>Net Expenditures</b>					
-- No Impact --					
<b>Revenues</b>					
-- No Impact --					
<b>Net Cost &lt;Savings&gt;</b>					
-- No Impact --					
<b>Total Cost &lt;Savings&gt; to the State</b>					

	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Full Time Equivalents</b>					
-- No Impact --					
<b>Total FTE</b>					

**Bill Description**

HF 1391 establishes product stewardship requirements for manufacturers of video display devices (televisions and computer monitors). The manufacturers of these products are required to ensure that they are transported and recycled from consolidation points located across the state. Video display devices (VDDs) commonly contain enough heavy metals (lead, copper etc.) for the commercially generated units to qualify as a hazardous waste using standard tests.

A statutory ban on disposal of residential CRTs is already in law, and takes effect July 1, 2005 (Minn. Stat. 115A.9565).

Following local collection of video displays into "consolidation points," manufacturers are to transport, reuse and recycle old electronics, educate the public on the program, and pay any costs on their own. Manufacturers can participate individually or as groups. This bill requires video display manufacturers to register into the program with the Office of Environmental Assistance (OEA) annually beginning in February 1 2006, and to provide a certification of compliance. The OEA is to make available electronically the list of brands belonging to those manufacturers in compliance.

The OEA is charged with establishing the consolidation points, implementing a system to coordinate pickups from consolidation points and conducting an annual sort and pro rata share calculation to determine the specific responsibilities for manufacturers.

**Assumptions**

The Minnesota Pollution Control Agency has no direct involvement in the implementation of the program described above.

**Expenditure and/or Revenue Formula**

None

**Long-Term Fiscal Considerations**

None

**Local Government Costs**

This bill contains no defined costs to local governments; however local governments at their discretion could incur costs.

**References/Sources**

Agency Contact Name: MYRNA HALBAH (651-296-8399)  
FN Coord Signature: GLENN OLSON  
Date: 04/21/05 Phone: 297-1609

**EBO Comments**

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: LEONIE HUANG  
Date: 04/22/05 Phone: 296-5779

**Fiscal Note – 2005-06 Session**

**Bill #:** H1391-4E **Complete Date:** 04/21/05

**Chief Author:** COX, RAY

**Title:** WASTE ELECTRONIC PRODUCTS RECOVERY

<b>Fiscal Impact</b>	<b>Yes</b>	<b>No</b>
State		X
Local		X
Fee/Departmental Earnings		X
Tax Revenue		X

**Agency Name:** Administration Dept

This table reflects fiscal impact to state government. Local government impact is reflected in the narrative only.

Dollars (in thousands)	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Expenditures</b>					
-- No Impact --					
<b>Less Agency Can Absorb</b>					
-- No Impact --					
<b>Net Expenditures</b>					
-- No Impact --					
<b>Revenues</b>					
-- No Impact --					
<b>Net Cost &lt;Savings&gt;</b>					
-- No Impact --					
<b>Total Cost &lt;Savings&gt; to the State</b>					

	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Full Time Equivalent</b>					
-- No Impact --					
<b>Total FTE</b>					

**Bill Description**

Section 4 requires Admin to purchase video display devices only from manufacturers that are certified to comply with the registration, pickup and recycling program for household CRTs. Vendors who fail to comply will have their contracts for sale of CRTs to state agencies voided.

**Assumptions**

This fiscal note addresses the administrative costs to Admin for implementing Section 4 of the bill. Those costs are real and include (1) adding new boilerplate language to solicitation documents and contracts, (2) assuring due process including appeal rights under Minnesota Rules to vendors that are being suspended and debarred for non-compliance, and (3) re-bidding contracts that have been voided. However, they probably do not reach the level of .25 FTE and are being considered negligible for purposes of this fiscal note.

This fiscal note does not attempt to guess how vendors will respond to this new condition for doing business with the state. Internal discussions within Admin have suggested the following as possibilities that would involve fiscal consequences to state and local units of government:

- Vendors might choose to raise their prices to state and local government customers in Minnesota to recover some of their costs associated with program compliance.
- Vendors might opt out of selling to government in Minnesota, rather than comply with the registration, pickup and recycling program. This could raise prices through reduced competition.

State agencies will continue to use environmentally responsible means to dispose of video display devices and other hazardous electronics. Currently, state agencies can transfer or sell used equipment to other units of government, including transfer to Admin's Surplus Services section for redistribution to eligible parties. Alternatively, under existing state contracts, state agencies and local units can require manufacturers to take back electronic equipment at the end of its useful life for a recycling charge. The state also administers its own contract for the recycling of electronic hazardous wastes by state and local governmental units. (Relevant usage and cost data is cited under "expenditure and/or revenue formula" below.) A bill progressing through the legislative process would also authorize state agencies to donate used computers to the Computers for Schools program.

**Expenditure and/or Revenue Formula**

Admin experience shows that manufacturers charge the state more to take back used equipment than we have been paying through our hazardous electronic waste disposal contract. For example, manufacturers have indicated the following range of prices for taking back various types of equipment:

- Apple - \$30 - \$40
- Dell - \$53 - \$59
- Gateway - \$30 - \$60
- Hewlett Packard - \$13 - \$34
- MPC - \$35

However, through our hazardous waste recycling contract it costs \$10 on average to recycle a CRT. That's the contract price of \$0.25 per pound times an average weight of 40 pounds (or \$10.00 per laptop or CRT).

In calendar year 2004, the hazardous waste recycling contract was used to recycle the following video display devices for state agencies:

- LCDs- laptops - 200
- CRTs, the cathode ray tubes that are in both TVs and computer monitors – 5,534
- Total laptops and CRTs – 5,734

Video display devices recycled in 2004 for Cooperative Purchasing Venture members (primarily local units of government):

- LCDs- laptops - 98
- CRTs, the cathode ray tubes that are in both TVs and computer monitors - 3,250
- Total: 3,348

Grand total: 9,082 video display devices recycled. The approximate cost to recycle these video display devices at \$10.00 each was \$90,820.

Approximately half that many video display devices (4541) were saved for resale/reuse.

**Long-Term Fiscal Considerations**

There could be long-term fiscal consequences depending on how vendors choose to respond to these new requirements.

**Local Government Costs**

There could be impacts on local government costs depending on how vendors choose to respond to these new requirements.

**References/Sources**

- Existing contracts with computer manufacturers
- Usage data from Asset Recovery Corporation regarding hazardous waste contract

Agency Contact Name: Kent Ailin (651-296-1442)

FN Coord Signature: LARRY FREUND

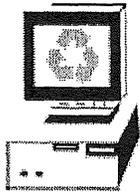
Date: 04/21/05 Phone: 296-5857

**EBO Comments**

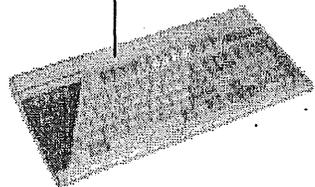
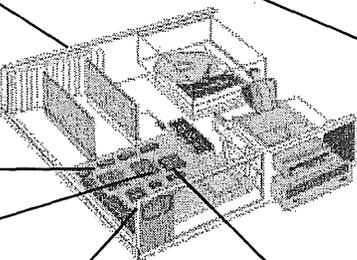
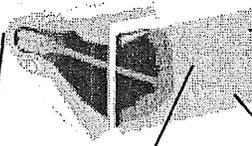
I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: TIM JAHNKE

Date: 04/21/05 Phone: 296-6237



**Clean Computer Campaign**  
**Silicon Valley Toxics Coalition**  
 760 North 1st St. San Jose, CA 95112 svtc@svtc.org http://www.svtc.org 408-287-6707



**Phosphor**

Phosphor is applied as a coat to the interior of the CRT face plate. The hazards of phosphor are not well known, but the Navy warns this substance is "extremely toxic".

**Barium**

Barium is used in the front panel of the CRT to protect users from radiation. Studies show that short-term exposure to barium can cause brain swelling, muscle weakness, and damage to the heart, liver and spleen.

**Brominated Flame Retardants**

Polybrominated Diphenylethers (PBDE) are frequently used flame retardants & are likely endocrine disruptors. Research has revealed that levels of PBDEs in human breast milk are doubling every five years. PBDEs, like many halogenated organics, reduce levels of the hormone thyroxin in exposed animals & can potentially harm the developing fetus. Thyroxin is an essential hormone needed to regulate the normal development of all animal species, including humans.

**Hexavalent Chromium**

Used for corrosion protection of untreated & galvanized steel plates & hardener for steel housing. It can cause DNA damage & asthmatic bronchitis.

**Plastics**

Plastics, including PVC make up to 13.8 pounds of an average computer. Dioxin can be formed when PVC is burned within a certain temperature range. Combinations of plastics are used in printed circuit boards, in components such as connectors, plastic covers & cables. Recyclers have difficulty identifying and separating different types of plastic.

**Lead**

Cathode Ray Tubes (CRT) displays contain 4-8 lbs of lead & most solder used in circuit boards is leaded. CRTs are banned from landfills in Calif. & Mass., since US EPA determined possibility for lead to leach from equipment in landfills. Lead is toxic to the kidneys, nervous & reproductive systems & inhibits mental development of young children and fetuses.

**Cadmium**

Surface Mount Device (SMD) chip resistors, infrared detectors, semiconductors and older types of cathode ray tubes contain cadmium. Furthermore, cadmium is used as a plastic stabilizer. It concentrates in the body & can cause kidney damage & harm to fragile bones.

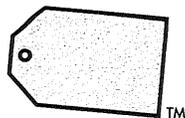
**Mercury**

Light bulbs in flat panel displays, switches, & printed wiring boards all contain mercury. High levels of exposure contribute to brain & kidney damage, harm the developing fetus & can be passed down through breast milk. A recently issued fish advisory warns young children & pregnant women to two meals of fish caught in San Francisco Bay because of high levels of mercury found in San Francisco Bay fish. Mercury is stored in the fat of animals.

**Beryllium**

Beryllium is commonly found on motherboards and connectors. Beryllium has recently been classified as a human carcinogen.

Images courtesy of Materials for Future Foundation



April 11, 2005

**BEST BUY**<sup>TM</sup>

Members of the Committee  
Senate State & Local Government Operations Committee  
75 Rev. Dr. Martin Luther King Jr. Blvd., Room 328  
St. Paul, MN 55155-1606

Re: **Electronic Waste (E-waste) Management**

Dear Senators:

As part of the Minnesota community with our corporate headquarters and nearly 8,000 employees in the State, Best Buy stands ready to work with you in finding a successful solution for effective electronic waste management. Best Buy is actively working at the federal level to find a national solution to the issue of electronics waste. However, we understand that the Minnesota Legislature and the Governor are eager to pass a state solution and in doing so, we ask that you support a **manufacturer responsibility model**, putting the initial responsibility for end-use disposal on the entities that designed and manufactured the covered products.

**Best Buy is a retailer and a manufacturer.** In considering the various e-waste models, Best Buy believes that a no-fee producer responsibility model is the best way to encourage recycling by providing consumers with a variety of options. As a manufacturer, we understand that we will incur costs in implementing a recycling plan. As a retailer, we understand that we will need to play a large role in educating our customers about their options for recycling. We also understand that by selling a wide variety of products from multiple manufacturers, we play a large role in ensuring that manufacturers are cooperating with the program.

**Best Buy is active in recycling.** Best Buy started its recycling program in 2001 to provide a simple, fun and convenient program for recycling electronics that protects the environment while raising awareness of recycling options. Best Buy has helped consumers nation-wide recycle over 2 million pounds of electronics in an environmentally responsible way since the program began. In addition to our recycling events, we offer kiosks in every store that accept cell phones, batteries and ink jet cartridges. This has become an important part of our commitment to our customers and the manufacturer responsibility model supports our current direction as opposed to an advance recovery model which has proved problematic for our business and our customers.

**Best Buy has found the advanced recovery fee (ARF) in California costly and confusing-- placing responsibility unfairly on retailers and consumers.** The CA Board of Equalization has made it clear that they have no enforcement authority on out-of-state manufacturers and retailers. This has presented problems for us in two areas. First, it hits directly at our ability to compete. Out-of-state sellers already hold a 5-8% tax advantage and now also hold up to a \$10 price advantage. In addition, in-state retailers are solely responsible for correctly labeling the products with the correct fee, adding an administrative burden to retailers that was intended to fall on manufacturers. The collection allowance permitted in CA does not begin to cover the set up costs or the ongoing costs of compliance. Finally, the ARF system is confusing for our customers. We are on the front lines for educating our customers. At this point, we are collecting a fee with no real understanding of how the fee works or if it can support the system.

**A hybrid system that incorporates the two models only adds to customer confusion and does not account for the convergence of technologies.** While integrating the manufacturer responsibility model and the ARF seems on the surface to address concerns for manufacturers, it does not address the concerns of retailers and consumers. By having to identify what is and is not covered under the system, only adds confusion in explaining the system to customers and will add costs for retailers. In addition, the system fails to take into account the growth and convergence of technologies. Already we are seeing televisions that can be hooked up to computers and monitors that act as televisions. This area of technology will only continue to grow making the ability to differentiate between products a serious issue for retailers.

Best Buy Corporate Campus • 7601 Penn Avenue South, Richfield, MN, USA 55423-3645 • (612) 291-1000 • NYSE symbol: BBY

As a retailer and manufacturer, we believe that the manufacturer responsibility model is the best approach because it involves all parties in a solution. Thank you for your consideration and for your on-going support of Best Buy.

Sincerely,

A handwritten signature in black ink, appearing to read "Paula Prahl". The signature is fluid and cursive, with the first name "Paula" and last name "Prahl" clearly distinguishable.

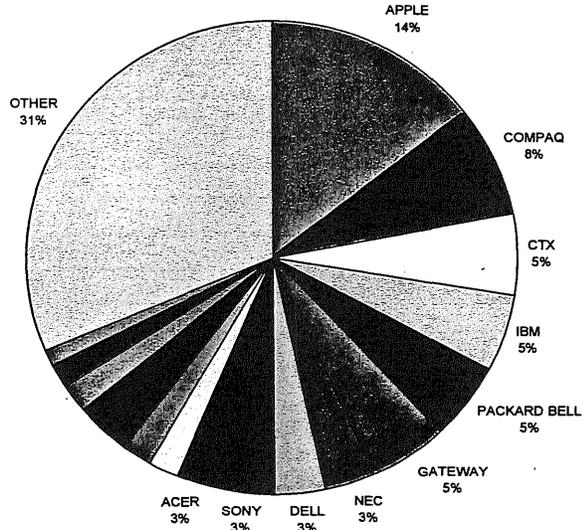
Paula J. Prahl  
Vice President, Public Affairs

## Collected Material by Brand

The OEA conducted an analysis of brands and product vintage for electronics collected during an event in September 2004. The following data illustrates the brands that are being collected for recycling as well as how the return share for a particular manufacturer may help shape their preferred financing option.

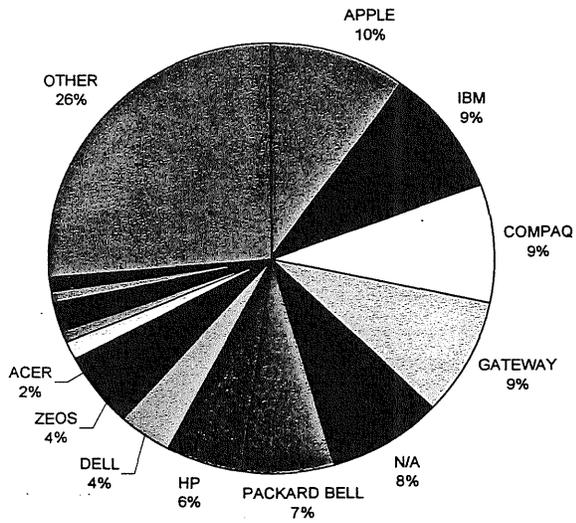
### Monitors

Brand	Collected	Share	Weight (pounds)
APPLE	67	14.4%	2,006
COMPAQ	35	7.5%	1,100
CTX	25	5.4%	722
IBM	25	5.4%	649
PACKARD BELL	25	5.4%	670
GATEWAY	24	5.2%	844
NEC	16	3.4%	570
DELL	15	3.2%	596
SONY	15	3.2%	500
ACER	14	3.0%	390
N/A	10	2.1%	324
SAMSUNG	9	1.9%	252
VIEWSONIC	9	1.9%	332
GOLD STAR	8	1.7%	208
HP	8	1.7%	260
ZENITH	8	1.7%	214
MICRON	5	1.1%	188
OTHER	146	31.3%	4,347
<b>TOTAL</b>	<b>466</b>		<b>14,254</b>



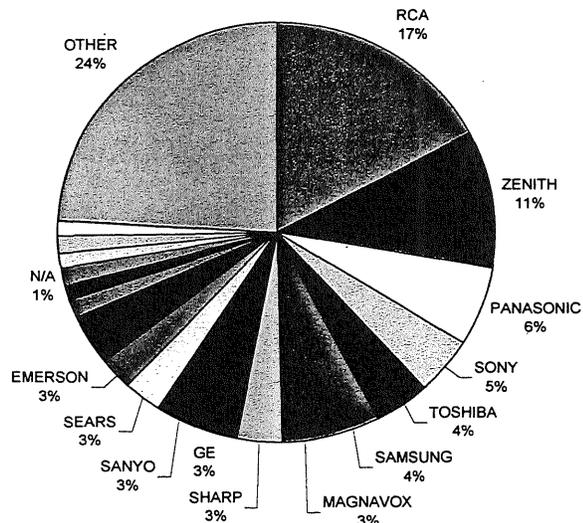
### Desktop PCs

Brand	Collected	Share	Weight (pounds)
APPLE	30	10.0%	612
IBM	28	9.4%	668
COMPAQ	27	9.0%	696
GATEWAY	26	8.7%	678
N/A	25	8.4%	686
PACKARD BELL	20	6.7%	434
HP	17	5.7%	543
DELL	11	3.7%	310
ZEOS	11	3.7%	378
ACER	6	2.0%	130
EPSON	4	1.3%	104
NEC	3	1.0%	92
NORTHGATE	3	1.0%	106
PORTICO	3	1.0%	50
TANDY	3	1.0%	74
TIGER	3	1.0%	66
OTHER	79	26.4%	2,100
<b>TOTAL</b>	<b>299</b>		<b>7,727</b>



### Televisions

Brand	Collected	Share	Weight (pounds)
RCA	41	17.3%	2,583
ZENITH	25	10.5%	1,552
PANASONIC	14	5.9%	386
SONY	11	4.6%	640
TOSHIBA	10	4.2%	408
SAMSUNG	9	3.8%	338
MAGNAVOX	8	3.4%	504
SHARP	8	3.4%	294
GE	7	3.0%	216
SANYO	7	3.0%	274
SEARS	7	3.0%	274
EMERSON	6	2.5%	152
MITSUBISHI	5	2.1%	326
JVC	4	1.7%	136
FUNAI	3	1.3%	82
MONTGOMERY WARD	3	1.3%	64
N/A	3	1.3%	104
SYLVANIA	3	1.3%	222
SYMPHONIC	3	1.3%	110
WARD	3	1.3%	146
OTHER	57	24.1%	2,851
<b>TOTAL</b>	<b>237</b>		<b>11,662</b>



## Consumer Electronics Retailers Coalition



[www.ceretailers.org](http://www.ceretailers.org)

April 11, 2005

The Honorable Linda Higgins  
Chair – Senate State & Local Government Operations Committee  
75 Rev. Dr. Martin Luther King Jr. Blvd., Room 328  
St. Paul, MN 55155-1606

**Re: Minnesota Legislature Action Surrounding Electronic Device Management**

Dear Senator Higgins:

I am writing on behalf of the Consumer Electronics Retailers Coalition (CERC) – a national organization of major consumer electronics retailers and general retailers who sell consumer electronics, many whom have numerous stores located throughout the state of Minnesota. In point of fact, two of our members, Target Corporation and Best Buy, are headquartered in the state.

While CERC strongly believes a nationwide approach to the management of electronics is the ultimate solution, we understand that policymakers in the State of Minnesota are ready to take action on this matter now. In doing so, we urge you to please support a producer responsibility model for the management of electronic waste. CERC members collectively believe that a no-fee producer responsibility system will continue to encourage innovation and provide consumers with a variety of choices. Such a system will allow manufacturers flexibility to implement electronics recycling programs that make sense to and can be easily understood and implemented by – consumers, government, retailers and manufacturers. We believe that this approach is more balanced because it places the initial responsibility of end-use disposal on the entities that designed and manufactured the covered products in the first place, as opposed to instituting a new and expensive bureaucratic structure and forcing constituents to pay a new tax –an Advance Recovery Fee (ARF) – that is also being discussed by the Minnesota legislature.

**CERC members oppose any “Point-of-Sale|Advance Recovery Fee” system** because we know from first hand experience that such an approach does not accomplish its goals, is administratively burdensome for all parties, and only guarantees a new revenue source for government without guaranteeing that an effective recycling system is put into place. Consumer electronic (CE) retailers are concerned that though ARF legislation is intended to promote electronic waste management, encourage greater recycling efforts, and incentivize some of the stakeholders to provide solutions, it falls short of attaining these worthy goals. Rather than providing a solution, as we have found in California, point of sale recycling collection fees add burdensome administrative structures and are harmful to CE retailers, as well as adding a confusing administrative structure for consumers to figure and state agencies to administer. There is no incentive on the manufacturer to develop any environmental recycling compliance plan.

The recent institution of such a fee/tax program in California has proven complicated for all parties – government, businesses and consumers – to understand and administer; incredibly costly for both the governmental agencies and retailers to implement; impracticable to bring sufficient dollars down to the local level to implement enough local collection and disposal facilities; impossible to impose on out-of-state online/mail order retailers; impractical, by asking the government to set up a new administrative structure to collect the fees, manage the program and disperse the revenue for effective recycling; and impossible to know how high the taxes/fees charged to consumers needs to be in order to adequately fund a successfully electronics device recycling program.

In short, a POS|ARF approach – particularly given significant budget cutting at all levels of government – will not adequately fund an effective recycling program, and will only serve to confuse and burden the consumer with the imposition of new fees and perceived new taxes without any direct benefits.

Thank you for the opportunity to share the industry's positions concerning eWaste legislative efforts in the state. We hope to work closely with the members of the Minnesota legislature in developing a fair and equitable electronics recycling management plan that will be good for the state, its businesses, and most of all, its constituents--our customers. Please do not hesitate to contact me if we can be of further assistance.

Sincerely,



Marc A. Pearl, Executive Director

cc: Vice Chair Charles Wiger; Ranking Member Claire Robling; and Senators Dick Day, D. Scott Dibble, Michelle L. Fischbach, Debbie J. Johnson, Gary W. Kubly, Sharon Marko, David H. Senjem, Yvonne Prettner Solon, David J. Tomassoni, Jim Vickerman and Betsy Wergin

*Attached: CERC Position Paper on an Electronic Device Management System*

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*The Consumer Electronics Retailers Coalition (CERC) represents small, medium and large consumer electronic retail businesses and associations operating in all 50 states and worldwide, all of whom employ hundreds of Minnesota residents. Member companies, in addition to Best Buy and Target, include Circuit City, RadioShack, Wal-Mart, the North American Retail Dealers Association and the Retail Industry Leaders Association. Our goal is to educate, advocate and instill continued consumer and market confidence through our interactions with government agencies, state legislatures and the U.S. Congress.*



## Consumer Electronics Retailers Coalition (CERC) Position on the Need for a National Electronics Management System

- Consumer electronics (CE) retailers strongly believe that developing a national electronics management system that effectively encourages the collection and recycling of electronic waste is far more preferable if handled as a “federal solution” rather than by individual states.
- CE retailers realize that they have an important role in working with and being active participants with other interested stakeholders in developing a successful federal model that will have to be implemented at the local level.
- CE retailers believe a successful national system for electronics recycling can be established without imposing fees at the point-of-sale; without having to create a new complex administrative structure; and without mandates that discourage innovation.
- CE retailers believe that a no-fee system will not only continue to encourage innovation, but will also provide consumers with a variety of choices and manufacturers with flexibility to implement electronics recycling programs that make sense – to consumers, government, retailers and manufacturers.
- CE retailers also believe that the U.S. can learn from and build on the lessons of other countries that have implemented recycling programs. Our nation has a unique opportunity to create a progressive producer responsibility system that encourages the market to drive an effective, efficient and environmentally sound solution.

---

**Federal Legislation** – A comprehensive nationwide approach to the financing, collection, transportation and recycling of electronic devices that preempts individual state action is ultimately the best solution for all parties – manufacturers, distributors, retailers, collection agencies, recyclers, governments at all levels and consumers.

- Consumer electronic retailers view the implementation of the **Producer Responsibility** model as the most efficient and comprehensive electronics waste management plan. Such an approach will encourage effective recycling while, at the same time, be the least burdensome to the consumer. In order to be successful, however, the **Producer Responsibility** approach must include –
  - A **limited number of types and clear definition** of covered devices.
  - That any **retailer ‘take-back’ programs** – if mentioned at all – must remain **voluntary**.
  - A **‘safe harbor’** for a consumer electronics retailer that sells a product not covered under an approved management plan absent actual knowledge.
  - Programs that help **educate** and are easily understood by **consumers**.
  - A **flexible system** that allows manufacturers the ability to provide services to consumers and encourages the market to drive efficiencies and choices.
  - Encouraging **voluntary collection initiatives** by manufacturers to partner with retailers, charities and/or local governments.

- Establishing manufacturers' **financial responsibility based on the products that consumers return to the system** – not fees at the point-of-sale or other financial models that do not reflect the true costs and realities of the return system.
- The ability of **manufacturers to work independently or collaborate with others** to meet the established responsibility goals.

**State Action** – Though a successful electronic waste management solution must be nationwide in scope, CE retailers, in coalition with other interested stakeholders, will actively work with states that remain desirous of moving their own legislative solution as a transitional step to the implementation of a nationwide system – focusing their attention on the **Producer Responsibility** model. If a state does move such legislation, it should recognize the need to include certain key principles –

- A **sunset provision** that allows for federal preemption in the event that Congress passes a national electronic device recycling law.
- Provisions that **include all means by which a covered device is sold for retail** in the state – whether sold in-store, by telephone or over the Internet.

For practical and administrative reasons, a **nationwide PRODUCER RESPONSIBILITY approach is the most efficient and optimal answer** because it will –

- Place responsibility for the effective recycling of electronic devices where it belongs – on those stakeholders, including producers, distributors, retailers and consumers, who benefit from the sale of electronic products.
- Encourage producers to design products for ease of recycling, and could encourage manufacturers to design products with less materials of concern, if laws are designed to exempt those products that are safe for landfills.
- Establish a system that – unlike the point-of-sale advance recovery fee approach instituted in California – is easy to administer, is not complicated, is inexpensive for consumers, retailers and governments, and does not unfairly burden the residents of one state.
- Provide a level playing field that applies to all types of sale at the state level – whether the covered consumer electronic product is sold via the Internet, catalogue, over the telephone, or in a traditional brick-and-mortar/in-store operation.

**THE POINT-OF-SALE | ADVANCE RECOVERY FEE APPROACH WILL NOT WORK** – Consumer electronic retailers oppose any “point-of-sale|advance recovery fee” (POS|ARF) approach because such an approach has been shown to not accomplish its goals; is administratively burdensome for all parties; and will only guarantee a new revenue source for government without guaranteeing that an effective recycling system will be put into place.

The recent institution of such a fee/tax program in California has already been shown to be:

- Too complicated for all parties – government, businesses and consumers – to understand and administer;
- Incredibly costly for both the governmental agencies and retailers to implement;
- Impracticable to bring sufficient dollars down to the local level to implement enough local collection and disposal facilities;
- Impossible to impose on out-of-state online/mail order retailers;
- Impractical, by asking the government to set up a new administrative structure to collect the fees, manage the program and disperse the revenue for effective recycling; and
- Impossible to know how high the taxes/fees charged to consumers needs to be in order to adequately fund a successfully electronics device recycling program.

**In short, a POS|ARF approach – particularly given significant budget cutting at all levels of government – will not adequately fund an effective recycling program, and will only serve to confuse and burden the consumer with the imposition of new fees and perceived new taxes without any direct benefits.**



April 20, 2005

Representative Ozment:

The Association of Minnesota Counties (AMC) appreciates the opportunity to inform you and members of the House Agriculture, Environment and Natural Resource Finance Committee about concerns related to House File 1391 – Manufacturer Responsibility of electronic waste.

The counties' main concern is that there needs to be a statewide plan in place by the time the ban on placement of cathode ray tubes (CRTs) goes into effect. Ideally any plan that is put in place to address the ban should cover all the costs associated with compliance. However, counties realize that some costs may be incurred and we are willing to work with state agencies and neighboring local units of government to come up with the most effective, and cost efficient means to carry out the tasks this bill calls for.

On Friday April 8, 2005, the AMC Legislative Steering Committee met. During this meeting the two different methods (Advanced Recycling Fee and Manufacturer Responsibility) of funding E-waste recycling were discussed. The Committee determined that the most important issue with both of the bills was that counties need a bill to pass that will address the ban, regardless of the funding mechanism. The Committee also noted that whichever program is chosen, it should cover all the costs associated with collecting, transporting, storing and recycling the E-waste. This includes any orphan waste should it be addressed in the bill. The Committee expressed a preference for the Manufacturer Responsibility method; however, the members provided direction to AMC to remain open to other funding options.

The Solid Waste Administrator Association (SWAA) has been working to identify information that would indicate not only how much counties may anticipate paying in relation to orphan waste, but also the initial collection, storage, and transportation that may need to be done even before the waste arrives at an intermediate collection point. Currently, counties do not know what facility expansion or staff additions will specifically be needed to accommodate the additional waste they may be collecting. If the county is not a designated consolidation point there are concerns that the transportation costs to and from points may be costly to the more remote counties. These activities will most likely have to be done by counties regardless of which program structure is chosen.

According to the Office of Environmental Assistance, 35 out of 87 counties do not have a permanent Household Hazardous Waste (HHW) facility. Of the 52 that have a facility, about 15 to 20 are only open seasonally (May-October). Most of the HHW facilities were under built due to the high cost of constructing them and most do not have enough room for proper storage of all of the HHW materials that they currently collect. Depending on the specifications needed to accommodate the influx of E-waste costs for some counties could become considerable.

Sincerely,

A handwritten signature in black ink, appearing to read "Annalee Garletz", with a stylized flourish at the end.

Annalee Garletz  
Environment and Natural Resources Policy Analyst

Cc.

Senator Linda Higgins

Duane Bakke, AMC Environment and Natural Resource Committee Chair

Trudy Richter, Richardson, Richter & Associates, Inc.

Ted Troolin, St. Louis County Solid Waste Officer

Art Dunn, Director, Office of Environmental Assistance



# Hennepin County Consumer Electronics Program

Hennepin County is just over 1 million in population and includes the City of Minneapolis and 45 surrounding cities. The County Board of Commissioners is the governing policy board.

Hennepin County utilizes an integrated waste management system to manage municipal solid waste generated in the county. The county established recycling, hazardous waste, and household hazardous waste (HHW) programs and supported the development of two waste-to-energy facilities and two transfer stations as components of that system.

The consumer electronics recycling program began in the fall of 1992 with the goal of removing heavy metals and other materials from municipal solid waste. According to the Minnesota Office of Environmental Assistance, products containing CRTs are considered the largest single source of lead in municipal solid waste. The consumer electronics program removes and reclaims significant amounts of lead, cadmium, scrap metal and other components from municipal solid waste.

The program collects the following consumer electronics: Household televisions, computers and peripherals, VCRs, camcorders, stereos, telephones, rechargeable appliances and other miscellaneous electronic equipment. Photocopiers and fax machines are not accepted.

## Collection

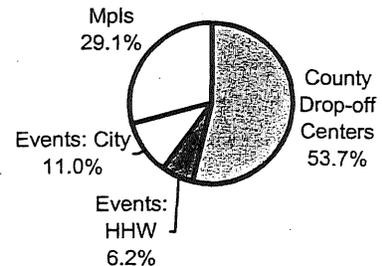
1. **Permanent Drop-off Centers (2):** Brooklyn Park Recycling Center and Transfer Station and South Hennepin Recycling & Problem Waste Drop-Off Center. The drop-off centers are open 43 hours per week, Tuesday through Saturday, and collect recyclable materials, HHW and problem materials. Contractor staff place electronics into roll-off containers located inside the facilities. When the container is full, electronics are transferred to PPL Industries for disassembly.

In 2004, approximately 54% of electronics (1,030 tons) was collected at the drop-off centers from 28,949 residents (Bloomington: 15,612 vehicles, Brooklyn Park: 13,337 vehicles).

2. **Event Collections:** At county HHW events, contractor employees place electronics into roll-off containers located outdoors. The electronics are covered by waterproof tarps at the end of each collection day. At city events ("cleanup days"), electronics are placed into boxes or roll-offs. Electronics collected at events are transferred to PPL Industries as needed or at the end of the collection. Approximately 17% of electronics (330 tons) was collected at events.

**Minneapolis:** The City of Minneapolis provides curbside collection of certain electronics as part of its "large item collection" service to residential customers. The city consolidates electronics at the city transfer station, where they are placed into special roll-offs and fogged to kill cockroaches in all but the coldest months. The

Chart 1: Collection Quantities (2004)



electronics are then transferred to PPL Industries for disassembly. In 2004, the City of Minneapolis collected approximately 29% of electronics (557 tons).

### Consumer Electronics Quantities and Costs

The program collected an average of 3.4 pounds of electronics per capita in 2004. Since the program's inception in 1992, the quantity of electronic waste and the cost to recycle it have increased significantly, as shown in Chart 2 & Table 1. Table 2 compares the types of units collected when the program began to the types collected in 2004.

Chart 2: Consumer Electronics Program Growth

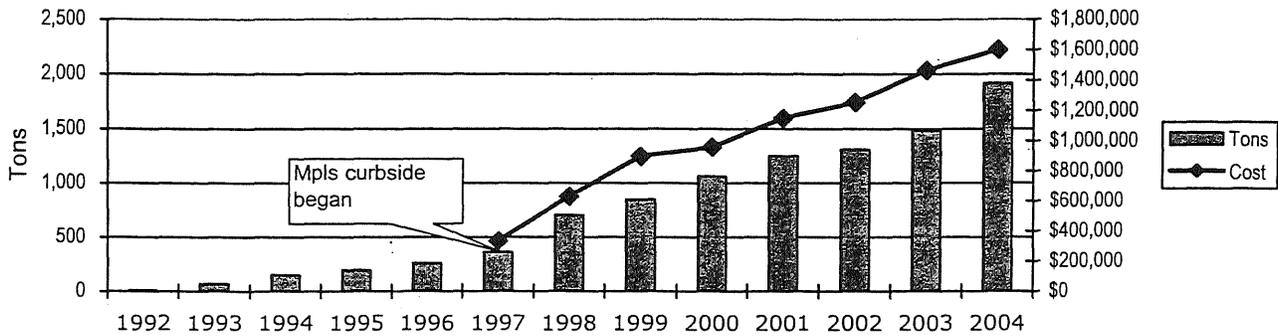


Table 1: Electronics Quantity and Cost

Year	Tons	Approximate Cost*
2004	1,917	\$1,600,000 (estimated)
2003	1,486	\$ 1,453,000
2002	1,314	\$1,254,500
2001	1,252	\$1,149,000
2000	1,066	\$958,000
1999	851	\$898,000
1998	706	\$631,000
1997	366	\$335,000
1996	262	not available
1995	200	not available
1994	152	not available
1993	72	not available
1992	11	not available

\*Costs include transportation, disassembly, component recycling/disposal and program administration. Excludes cities' costs and any nominal revenue gained from the sale of components.

Table 2: Comparison of Units Collected

Type of Unit	Units Collected: Year 1: 1992- 1993	Percent	Units Collected: 2004	Percent
Televisions (TVs, bare CRTs, chassis)	879	70.83	35,442	26.97
Computer Monitors	78	6.29	22,508	17.13
CPUs, Circuit Boards, Disk Drives	0	.00	17,648	13.43
Audio (stereos, etc.)	160	12.89	11,862	9.03
Printers	0	.00	8,500	6.47
Keyboards	15	1.21	9,296	7.07
VCRs	29	2.34	6,047	4.60
Miscellaneous	62	5.00	10,836	8.24
Telephones	18	1.45	6,316	4.81
Computer Scanners*	0	.00	1,722	1.31
Laptop Computers*	0	.00	839	.64
DVD Players*	0	.00	415	.32
Total	1,241	100%	131,431	100%

\*Began tracking as a separate category in year 2003.

### Electronics Reuse, Recycling and Disposal

After collection, certain electronic products that appear to be technically, but not functionally, obsolete are tested for reuse. If the products pass, they are placed on reuse shelves at the drop-off centers. Less than 1% of the units have been found to be reusable.

Electronics that are not offered for reuse are disassembled by PPL Industries in Minneapolis. PPL Industries is a nonprofit organization that employs economically disadvantaged people, and teaches them basic job retention skills such as attendance, punctuality, communication, attitude, work quality, and productivity. After PPL Industries disassembles the electronics, the county arranges for the disposal or recycling of the components as listed in Table 3 below.

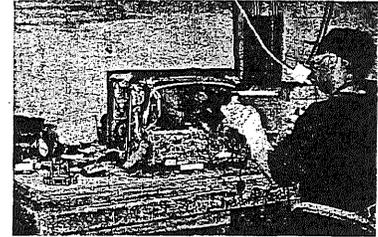


Table 3: Electronics Component Management

Components Removed	Disposal/Recycling Method
Batteries	Transferred to the county's battery program. Lead-acid, lithium ion, mercuric oxide, nickel-cadmium, nickel metal hydride, and silver oxide batteries are sent for metal reclamation.
Cathode ray tubes (CRTs)	Lead reclamation at lead smelter until 2004. In 2004, started processing for use as feedstock in glass products.
Circuit boards	Metals reclamation through state contractor.
Copper, aluminum, tin, wire, and miscellaneous scrap metal	Recycled through scrap metal dealer.
Fluorescent lamps	Transferred to county HHW program for recycling.
Mercury relays and switches	Transferred to county HHW program for metal reclamation.
PCB capacitors	Transferred to county HHW program for hazardous waste incineration.
Wood and plastic	Returned the municipal solid waste stream.

## **Program Benefits**

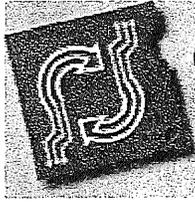
The program keeps electronic wastes that contain lead, cadmium and other heavy metals out of the waste stream and properly disposes of them. A majority of the electronics is recycled.

The program also provides job-training opportunities at PPL Industries, where trainees develop skills that can help them obtain sustainable employment.

### **Contact for more information:**

Amy Roering  
Hennepin County Department of Environmental Services  
417 North Fifth Street, Suite 200  
Minneapolis, Minnesota 55401-1397  
(612) 348-8992  
amy.roering@co.hennepin.mn.us  
www.hennepin.us

February 2, 2005



# Computer TakeBack Campaign

May 3, 2005

To: Senate Rules and Administration Committee –  
Senators D.E. Johnson, Rest, Day, Belanger, Berglin, Cohen, Dille, Frederickson,  
Hottinger, Kiscaden, Kleis, Langseth, Larson, Marty, Metzen, Neuville, Olson, Ourada,  
Pappas, Pariseau, Pogemiller, Ranum, Sams, Stumpf, Vickerman

Re: Electronic Waste Recycling (SF 1298)

“Producer Responsibility” is the better approach to handling waste electronic products. Virtually all electronic products contain some toxic substances. The “Producer Responsibility” approach, if properly implemented, can stimulate greater recycling of waste electronic products, capture toxic substances and eliminate the need for millions of dollars in Minnesota taxpayer subsidies.

In short, Producer Responsibility, where electronics producers pay for the cost associated with collection, reuse and proper recycling of waste electronic products, is better for the environment, human health and taxpayers.

Your decisions about how electronic waste is handled today will have profound effects on Minnesotans for decades to come. Senate File 1298 contains provisions that can address some immediate electronic waste recycling issues, reduce financial burdens on governmental units and decrease taxpayer subsidies. We urge you to support and pass a “Producer Responsibility” bill during this 2005 legislative session.

Senate File 1298, a “Producer Responsibility” bill, is a step in the right direction.

For additional information about the Coalition and Producer Responsibility, please contact Tim Rudnicki, Representing Computer TakeBack Campaign (Cell: 612-801-3266).

1 Senator Cohen from the Committee on Finance, to which was  
2 re-referred

3 S.F. No. 1542: A bill for an act relating to motor  
4 carriers; allowing transportation of equestrian equipment in  
5 recreational vehicle combination; regulating maximum axle  
6 weights allowed on highways; establishing oversize permit fee  
7 for manufactured storage buildings; authorizing issuance of  
8 permits for certain three-unit and two-unit vehicles between  
9 Grand Rapids and Duluth; abolishing certain rules relating to  
10 motor carriers; amending Minnesota Statutes 2004, sections  
11 169.01, subdivision 78; 169.81, subdivision 3c; 169.8261;  
12 169.851, subdivision 5; 169.86, subdivision 5; proposing coding  
13 for new law in Minnesota Statutes, chapter 169; repealing  
14 Minnesota Rules, parts 7800.0600; 7800.3200, subpart 1;  
15 7805.0700; 8850.6900, subpart 20; 8855.0500, subpart 1.

16 Reports the same back with the recommendation that the bill  
17 do pass. Report adopted.

18

19



20

.....

21

(Committee Chair)

22

23

May 5, 2005.....

24

(Date of Committee recommendation)

1 A bill for an act

2 relating to motor carriers; allowing transportation of  
3 equestrian equipment in recreational vehicle  
4 combination; regulating maximum axle weights allowed  
5 on highways; establishing oversize permit fee for  
6 manufactured storage buildings; authorizing issuance  
7 of permits for certain three-unit and two-unit  
8 vehicles between Grand Rapids and Duluth; abolishing  
9 certain rules relating to motor carriers; amending  
10 Minnesota Statutes 2004, sections 169.01, subdivision  
11 78; 169.81, subdivision 3c; 169.8261; 169.851,  
12 subdivision 5; 169.86, subdivision 5; proposing coding  
13 for new law in Minnesota Statutes, chapter 169;  
14 repealing Minnesota Rules, parts 7800.0600; 7800.3200,  
15 subpart 1; 7805.0700; 8850.6900, subpart 20;  
16 8855.0500, subpart 1.

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

18 Section 1. Minnesota Statutes 2004, section 169.01,  
19 subdivision 78, is amended to read:

20 Subd. 78. [RECREATIONAL VEHICLE COMBINATION.]

21 "Recreational vehicle combination" means a combination of  
22 vehicles consisting of a pickup truck as defined in section  
23 168.011, subdivision 29, attached by means of a fifth-wheel  
24 coupling to a camper-semitrailer which has hitched to it a  
25 trailer carrying a watercraft as defined in section 86B.005,  
26 subdivision 18; off-highway motorcycle as defined in section  
27 84.787, subdivision 7; motorcycle; motorized bicycle; snowmobile  
28 as defined in section 84.81, subdivision 3; ~~or~~ all-terrain  
29 vehicle as defined in section 84.92, subdivision 8; or  
30 equestrian equipment and supplies. For purposes of this  
31 subdivision:

1 (a) A "fifth-wheel coupling" is a coupling between a  
2 camper-semitrailer and a towing pickup truck in which a portion  
3 of the weight of the camper-semitrailer is carried over or  
4 forward of the rear axle of the towing pickup.

5 (b) A "camper-semitrailer" is a trailer, other than a  
6 manufactured home as defined in section 327B.01, subdivision 13,  
7 designed for human habitation and used for vacation or  
8 recreational purposes for limited periods.

9 Sec. 2. Minnesota Statutes 2004, section 169.81,  
10 subdivision 3c, is amended to read:

11 Subd. 3c. [RECREATIONAL VEHICLE COMBINATION.]

12 Notwithstanding subdivision 3, a recreational vehicle  
13 combination may be operated without a permit if:

14 (1) the combination does not consist of more than three  
15 vehicles, and the towing rating of the pickup truck is equal to  
16 or greater than the total weight of all vehicles being towed;

17 (2) the combination does not exceed 60 feet in length;

18 (3) the camper-semitrailer in the combination does not  
19 exceed 28 feet in length;

20 (4) the operator of the combination is at least 18 years of  
21 age;

22 (5) the trailer carrying a watercraft, motorcycle,  
23 motorized bicycle, off-highway motorcycle, snowmobile, or  
24 all-terrain vehicle, or equestrian equipment and supplies meets  
25 all requirements of law;

26 (6) the trailers in the combination are connected to the  
27 pickup truck and each other in conformity with section 169.82;  
28 and

29 (7) the combination is not operated within the seven-county  
30 metropolitan area, as defined in section 473.121, subdivision 2,  
31 during the hours of 6:00 a.m. to 9:00 a.m. and 4:00 p.m. to 7:00  
32 p.m. on Mondays through Fridays.

33 Sec. 3. Minnesota Statutes 2004, section 169.8261, is  
34 amended to read:

35 169.8261 [GROSS WEIGHT LIMITATIONS; FOREST PRODUCTS.]

36 (a) A vehicle or combination of vehicles hauling raw or

1 unfinished forest products, including wood chips, by the most  
2 direct route to the nearest highway that has been designated  
3 under section 169.832, subdivision 11, may be operated on any  
4 highway with gross weights permitted under sections 169.822 to  
5 169.829 without regard to load restrictions imposed on that  
6 highway, except that ~~such~~ the vehicles must:

7 (1) comply with seasonal load restrictions in effect  
8 between the dates set by the commissioner under section 169.87,  
9 subdivision 2;

10 (2) comply with bridge load limits posted under section  
11 169.84;

12 (3) be equipped and operated with six axles and brakes;

13 (4) not exceed 90,000 pounds gross weight, or 98,000 pounds  
14 gross weight during the time when seasonal increases are  
15 authorized under section 169.826;

16 (5) not be operated on interstate and defense highways;

17 (6) obtain an annual permit from the commissioner of  
18 transportation; and

19 (7) obey all road postings; and

20 (8) not exceed 20,000 pounds gross weight on any single  
21 axle.

22 (b) A vehicle operated under this section may exceed the  
23 legal axle weight limits listed in section 169.824 by not more  
24 than 12.5 percent; except that, the weight limits may be  
25 exceeded by not more than 22.5 percent during the time when  
26 seasonal increases are authorized under section 169.826,  
27 subdivision 1.

28 Sec. 4. Minnesota Statutes 2004, section 169.851,  
29 subdivision 5, is amended to read:

30 Subd. 5. [EXCEPTION FOR FARM AND FOREST PRODUCTS.] The  
31 maximum-weight-provisions-of-this-section-do Subdivision 4 of  
32 this section does not apply to the first haul of unprocessed or  
33 raw farm products and the transportation of raw and unfinished  
34 forest products, including wood chips, when the prescribed  
35 maximum weight ~~limitation-is~~ limitations permitted under  
36 sections 169.822 to 169.829 are not exceeded by more than ten

1 percent.

2 Sec. 5. Minnesota Statutes 2004, section 169.86,  
3 subdivision 5, is amended to read:

4 Subd. 5. [FEE; PROCEEDS DEPOSITED; APPROPRIATION.] The  
5 commissioner, with respect to highways under the commissioner's  
6 jurisdiction, may charge a fee for each permit issued. All such  
7 fees for permits issued by the commissioner of transportation  
8 shall be deposited in the state treasury and credited to the  
9 trunk highway fund. Except for those annual permits for which  
10 the permit fees are specified elsewhere in this chapter, the  
11 fees shall be:

12 (a) \$15 for each single trip permit.

13 (b) \$36 for each job permit. A job permit may be issued  
14 for like loads carried on a specific route for a period not to  
15 exceed two months. "Like loads" means loads of the same  
16 product, weight, and dimension.

17 (c) \$60 for an annual permit to be issued for a period not  
18 to exceed 12 consecutive months. Annual permits may be issued  
19 for:

20 (1) motor vehicles used to alleviate a temporary crisis  
21 adversely affecting the safety or well-being of the public;

22 (2) motor vehicles which travel on interstate highways and  
23 carry loads authorized under subdivision 1a;

24 (3) motor vehicles operating with gross weights authorized  
25 under section 169.826, subdivision 1a;

26 (4) special pulpwood vehicles described in section 169.863;

27 (5) motor vehicles bearing snowplow blades not exceeding  
28 ten feet in width; and

29 (6) noncommercial transportation of a boat by the owner or  
30 user of the boat.

31 (d) \$120 for an oversize annual permit to be issued for a  
32 period not to exceed 12 consecutive months. Annual permits may  
33 be issued for:

34 (1) mobile cranes;

35 (2) construction equipment, machinery, and supplies;

36 (3) manufactured homes and manufactured storage buildings;

1 (4) implements of husbandry when the movement is not made  
 2 according to the provisions of paragraph (i);  
 3 (5) double-deck buses;  
 4 (6) commercial boat hauling; and  
 5 (7) three-vehicle combinations consisting of two empty,  
 6 newly manufactured trailers for cargo, horses, or livestock, not  
 7 to exceed 28-1/2 feet per trailer; provided, however, the permit  
 8 allows the vehicles to be moved from a trailer manufacturer to a  
 9 trailer dealer only while operating on twin-trailer routes  
 10 designated under section 169.81, subdivision 3, paragraph (c).

11 (e) For vehicles which have axle weights exceeding the  
 12 weight limitations of sections 169.822 to 169.829, an additional  
 13 cost added to the fees listed above. However, this paragraph  
 14 applies to any vehicle described in section 168.013, subdivision  
 15 3, paragraph (b), but only when the vehicle exceeds its gross  
 16 weight allowance set forth in that paragraph, and then the  
 17 additional cost is for all weight, including the allowance  
 18 weight, in excess of the permitted maximum axle weight. The  
 19 additional cost is equal to the product of the distance traveled  
 20 times the sum of the overweight axle group cost factors shown in  
 21 the following chart:

22 Overweight Axle Group Cost Factors

23 Weight (pounds)	24 Cost Per Mile For Each Group Of:		
25 exceeding	Two consec-	Three consec-	Four consec-
26 weight	utive axles	utive axles	utive axles
27 limitations	spaced within	spaced within	spaced within
on axles	8 feet or less	9 feet or less	14 feet or less
28 0-2,000	.12	.05	.04
29 2,001-4,000	.14	.06	.05
30 4,001-6,000	.18	.07	.06
31 6,001-8,000	.21	.09	.07
32 8,001-10,000	.26	.10	.08
33 10,001-12,000	.30	.12	.09
34 12,001-14,000	Not permitted	.14	.11
35 14,001-16,000	Not permitted	.17	.12
36 16,001-18,000	Not permitted	.19	.15

1 18,001-20,000 Not permitted Not permitted .16

2 20,001-22,000 Not permitted Not permitted .20

3 The amounts added are rounded to the nearest cent for each axle  
4 or axle group. The additional cost does not apply to paragraph  
5 (c), clauses (1) and (3).

6 For a vehicle found to exceed the appropriate maximum permitted  
7 weight, a cost-per-mile fee of 22 cents per ton, or fraction of  
8 a ton, over the permitted maximum weight is imposed in addition  
9 to the normal permit fee. Miles must be calculated based on the  
10 distance already traveled in the state plus the distance from  
11 the point of detection to a transportation loading site or  
12 unloading site within the state or to the point of exit from the  
13 state.

14 (f) As an alternative to paragraph (e), an annual permit  
15 may be issued for overweight, or oversize and overweight,  
16 construction equipment, machinery, and supplies. The fees for  
17 the permit are as follows:

18	Gross Weight (pounds) of Vehicle	Annual Permit Fee
19	90,000 or less	\$200
20	90,001 - 100,000	\$300
21	100,001 - 110,000	\$400
22	110,001 - 120,000	\$500
23	120,001 - 130,000	\$600
24	130,001 - 140,000	\$700
25	140,001 - 145,000	\$800

26 If the gross weight of the vehicle is more than 145,000 pounds  
27 the permit fee is determined under paragraph (e).

28 (g) For vehicles which exceed the width limitations set  
29 forth in section 169.80 by more than 72 inches, an additional  
30 cost equal to \$120 added to the amount in paragraph (a) when the  
31 permit is issued while seasonal load restrictions pursuant to  
32 section 169.87 are in effect.

33 (h) \$85 for an annual permit to be issued for a period not  
34 to exceed 12 months, for refuse-compactor vehicles that carry a  
35 gross weight of not more than: 22,000 pounds on a single rear  
36 axle; 38,000 pounds on a tandem rear axle; or, subject to

1 section 169.828, subdivision 2, 46,000 pounds on a tridem rear  
2 axle. A permit issued for up to 46,000 pounds on a tridem rear  
3 axle must limit the gross vehicle weight to not more than 62,000  
4 pounds.

5 (i) For vehicles exclusively transporting implements of  
6 husbandry, an annual permit fee of \$24. A vehicle operated  
7 under a permit authorized by this paragraph may be moved at the  
8 discretion of the permit holder without prior route approval by  
9 the commissioner if:

10 (1) the total width of the transporting vehicle, including  
11 load, does not exceed 14 feet;

12 (2) the vehicle is operated only between sunrise and 30  
13 minutes after sunset, and is not operated at any time after  
14 12:00 noon on Sundays or holidays;

15 (3) the vehicle is not operated when visibility is impaired  
16 by weather, fog, or other conditions that render persons and  
17 other vehicles not clearly visible at 500 feet;

18 (4) the vehicle displays at the front and rear of the load  
19 or vehicle a pair of flashing amber lights, as provided in  
20 section 169.59, subdivision 4, whenever the overall width of the  
21 vehicle exceeds 126 inches; and

22 (5) the vehicle is not operated on a trunk highway with a  
23 surfaced roadway width of less than 24 feet unless such  
24 operation is authorized by the permit.

25 A permit under this paragraph authorizes movements of the  
26 permitted vehicle on an interstate highway, and movements of 75  
27 miles or more on other highways.

28 (j) \$300 for a motor vehicle described in section  
29 169.8261. The fee under this paragraph must be deposited as  
30 follows:

31 (1) in fiscal years 2005 through 2010:

32 (i) the first \$50,000 in each fiscal year must be deposited  
33 in the trunk highway fund for costs related to administering the  
34 permit program and inspecting and posting bridges;

35 (ii) all remaining money in each fiscal year must be  
36 deposited in a bridge inspection and signing account in the

1 special revenue fund. Money in the account is appropriated to  
2 the commissioner for:

3 (A) inspection of local bridges and identification of local  
4 bridges to be posted, including contracting with a consultant  
5 for some or all of these functions; and

6 (B) erection of weight-posting signs on local bridges; and

7 (2) in fiscal year 2011 and subsequent years must be  
8 deposited in the trunk highway fund.

9 Sec. 6. [169.864] [SPECIAL PAPER PRODUCTS VEHICLE PERMIT.]

10 Subdivision 1. [THREE-UNIT VEHICLE.] The commissioner may  
11 issue a permit for a vehicle that meets the following  
12 requirements:

13 (1) is a combination of vehicles, including a truck-tractor  
14 and a semitrailer drawing one additional semitrailer, which may  
15 be equipped with an auxiliary dolly. No semitrailer used in a  
16 three-vehicle combination may have an overall length in excess  
17 of 28-1/2 feet;

18 (2) has a maximum gross vehicle weight of 108,000 pounds;

19 (3) complies with the axle weight limits in section 169.824  
20 or with the federal bridge formula for axle groups not described  
21 in that section;

22 (4) complies with the tire weight limits in section 169.823  
23 or the tire manufacturers' recommended load, whichever is less;

24 (5) is operated only in this state on Trunk Highway marked  
25 2 between Grand Rapids and the port of Duluth; on Trunk Highway  
26 marked 169 between Grand Rapids and its junction with Trunk  
27 Highway marked 53; and on Trunk Highway marked 53 between  
28 Virginia and the port of Duluth; and

29 (6) the seasonal weight increases authorized under section  
30 169.826, subdivision 1, do not apply.

31 Subd. 2. [TWO-UNIT VEHICLE.] The commissioner may issue a  
32 permit for a vehicle that meets the following requirements:

33 (1) is a combination of vehicles consisting of a  
34 truck-tractor and a single semitrailer that may exceed 48 feet,  
35 but not 53 feet if the distance from the kingpin to the  
36 centerline of the rear axle group of the semitrailer does not

1 exceed 43 feet;

2 (2) has a maximum gross vehicle weight of 90,000 pounds;

3 (3) has a maximum gross vehicle weight of 98,000 pounds

4 during the time when seasonal weight increases authorized under

5 section 169.826, subdivision 1, are in effect;

6 (4) complies with the axle weight limits in section 169.824

7 or with the federal bridge formula for axle groups not described

8 in that section; and

9 (5) complies with the tire weight limits in section 169.823

10 or the tire manufacturers' recommended load, whichever is less.

11 Subd. 3. [RESTRICTIONS.] Vehicles issued permits under

12 subdivisions 1 and 2 must comply with the following restrictions:

13 (1) the vehicle must be operated in compliance with

14 seasonal load restrictions under section 169.87;

15 (2) the vehicle may not be operated on the interstate

16 highway system; and

17 (3) the vehicle may be operated on streets or highways

18 under the control of local authorities only upon the approval of

19 the local authority; however, vehicles may have reasonable

20 access to terminals and facilities for food, fuel, repairs, and

21 rest and for continuity of route within one mile of the national

22 network as provided by section 169.81, subdivision 3, and by

23 Code of Federal Regulations, title 23, part 658.19.

24 Subd. 4. [PERMIT FEE.] Vehicle permits issued under

25 subdivision 1, clause (1), must be annual permits. The fee is

26 \$850 for each vehicle and must be deposited in the trunk highway

27 fund. An amount sufficient to administer the permit program is

28 appropriated to the commissioner for the costs of administering

29 the permit program.

30 [EFFECTIVE DATE.] This section is effective the later of

31 August 1, 2006, or the date on which the commissioner determines

32 that building permits have been issued for the construction of a

33 new pulp and paper manufacturing facility at Grand Rapids.

34 Sec. 7. [REPEALER.]

35 Minnesota Rules, parts 7800.0600; 7800.3200, subpart 1;

36 7805.0700; 8850.6900, subpart 20; and 8855.0500, subpart 1, are

1 repealed.

**Consolidated Fiscal Note – 2005-06 Session**

**Bill #: S1542-1E Complete Date: 04/21/05**

**Chief Author: SAXHAUG, TOM**

**Title: MV CARRIERS REGULATION PROVISIONS**

<b>Fiscal Impact</b>	<b>Yes</b>	<b>No</b>
State	X	
Local		X
Fee/Departmental Earnings	X	
Tax Revenue		X

**Agencies: Transportation Dept (04/21/05)**

**Public Safety Dept (04/20/05)**

This table reflects fiscal impact to state government. Local government impact is reflected in the narrative only.

<b>Dollars (in thousands)</b>	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Net Expenditures</b>					
-- No Impact --					
<b>Revenues</b>					
Municipal State Aid Street Fund			1	1	1
Transportation Dept			1	1	1
County State Aid Highway Fund			4	4	4
Transportation Dept			4	4	4
Trunk Highway Fund			24	24	24
Transportation Dept			24	24	24
<b>Net Cost &lt;Savings&gt;</b>					
Municipal State Aid Street Fund			(1)	(1)	(1)
Transportation Dept			(1)	(1)	(1)
County State Aid Highway Fund			(4)	(4)	(4)
Transportation Dept			(4)	(4)	(4)
Trunk Highway Fund			(24)	(24)	(24)
Transportation Dept			(24)	(24)	(24)
<b>Total Cost &lt;Savings&gt; to the State</b>			(29)	(29)	(29)

	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Full Time Equivalents</b>					
-- No Impact --					
<b>Total FTE</b>					

**Consolidated EBO Comments**

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: NORMAN FOSTER

Date: 04/21/05 Phone: 215-0594

**Fiscal Note – 2005-06 Session**

**Bill #: S1542-1E Complete Date: 04/21/05**

**Chief Author: SAXHAUG, TOM**

**Title: MV CARRIERS REGULATION PROVISIONS**

<b>Fiscal Impact</b>	<b>Yes</b>	<b>No</b>
State	X	
Local		X
Fee/Departmental Earnings	X	
Tax Revenue		X

**Agency Name: Transportation Dept**

This table reflects fiscal impact to state government. Local government impact is reflected in the narrative only.

<b>Dollars (in thousands)</b>	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Expenditures</b>					
-- No Impact --					
<b>Less Agency Can Absorb</b>					
-- No Impact --					
<b>Net Expenditures</b>					
-- No Impact --					
<b>Revenues</b>					
Municipal State Aid Street Fund			1	1	1
County State Aid Highway Fund			4	4	4
Trunk Highway Fund			24	24	24
<b>Net Cost &lt;Savings&gt;</b>					
Municipal State Aid Street Fund			(1)	(1)	(1)
County State Aid Highway Fund			(4)	(4)	(4)
Trunk Highway Fund			(24)	(24)	(24)
<b>Total Cost &lt;Savings&gt; to the State</b>			(29)	(29)	(29)

	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Full Time Equivalents</b>					
-- No Impact --					
<b>Total FTE</b>					

## Bill Description

The provisions in Senate File 1542 with a fiscal impact to the Department of Transportation are Section 5, Subd. 5(d3)) that allows carriers of manufactured storage buildings to purchase an annual permit and Section 6, Subd. 2 that provides for an annual special paper products vehicle permit and allow loads of up to 108,000 gross weight on a three-unit vehicle combination.

## Assumptions

1. No two-unit vehicle combinations (as defined in Section 6, Subd. 2) will be used to transport paper products.
2. 18 annual permits for the "three-unit" vehicles (as defined in Section 6, Subd. 2) will be issued.
3. 12 annual permits to transport manufactured storage buildings (Section 5, Subd. 5(d3)) will be issued.
4. Although no preferred local route in the City of Duluth has been identified, this fiscal note assumes the city will approve the use of its local road system. (Section 6, Subd. 3(3)) requires the approval of the local road system.
5. This note assumes no growth in the number of permits issued in future years.

## Expenditure and/or Revenue Formula

There are three areas of revenue impact to the department. They are:

1. Permit Fees (Three-unit vehicles): Per assumption 2 above, the department expects that permits for 18 "three-unit" vehicles will be issued.

18 vehicles x \$850 annual permit fee = **\$15,300** (Trunk Highway Fund)

2. Overweight Tax: M.S. 168.013(c) provides that a \$50 per ton tax be imposed for vehicles in excess of 81,000 lbs. gross weight.

18 vehicles x \$700 (108,000 lbs. – 81,000 lbs. = 14 tons x \$50) = **\$12,600** (Highway User Tax Distribution Fund). This revenue is allocated to the Trunk Highway Fund, County State Aid Fund, and Municipal State Aid Street Fund as shown in the table below.

3. Permit Fees (Manufactured Storage Buildings): Per assumption 3 above, the department expects to issue 12 annual permits for manufactured storage building vehicles.

12 Vehicles x \$120 = **\$1,440** (Trunk Highway Fund)

### *Revenue Summary*

Three-unit Permit Fees	\$15,300	
Trunk Highway Fund		\$15,300
Overweight Tax	\$12,600	
Trunk Highway Fund		\$7,420
County State Aid Highway Fund		\$4,103
Municipal State Aid Street Fund		\$1,077
Manufactured Storage Buildings	\$1,440	
Trunk Highway Fund		\$1,440

Since the effective date of the bill is August 1, 2006, these amounts are reflected for each of the fiscal years 2007 and beyond.

Section 6, Subd. 4 appropriates to the Commissioner of Transportation from the Trunk Highway fund an amount that is sufficient to administer the issuance of the new permits. Since there are relatively few permits expected to be issued, the administrative cost to do so would be nominal and would be absorbed by the department.

### **Long-Term Fiscal Considerations**

The two proposed routes from Grand Rapids to Duluth cross 5 bridges on the TH2 route and 31 bridges on the TH169 - TH53 route.

All of the affected bridges and trunk highways are adequate to carry the 108,000 lb. trucks without overstress or rapid deterioration. The 9-axle, 108,000 pound trucks would actually be less damaging to pavement, by themselves. The total additional weight, over time, eventually will lead to pavement deterioration more quickly than would otherwise be the case. Even at legal loads of 80,000 lbs, trucks consume a portion of a bridge or pavement's life cycle. The proposed heavier trucks will consume these life cycles at an increased rate.

### **Local Government Costs**

Since the local road systems are not designed to the same standards as trunk highways, and a preferred local route has not been determined, there may be substantial costs over time to the city of Duluth to upgrade or replace segments of their streets to accommodate the heavier trucks. No attempt has been made to identify or quantify these costs.

### **References/Sources**

Mn/DOT Bridge Office  
Mn/DOT Office of Freight and Commercial Vehicle Operation  
Blandin Corporation  
Mn/DOT Duluth District

FN Coord Signature: BRUCE BRIESE  
Date: 04/21/05 Phone: 297-1203

### **EBO Comments**

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: NORMAN FOSTER  
Date: 04/21/05 Phone: 215-0594

**Fiscal Note – 2005-06 Session**

**Bill #: S1542-1E Complete Date: 04/20/05**

**Chief Author: SAXHAUG, TOM**

**Title: MV CARRIERS REGULATION PROVISIONS**

<b>Fiscal Impact</b>	<b>Yes</b>	<b>No</b>
State		X
Local		X
Fee/Departmental Earnings		X
Tax Revenue		X

**Agency Name: Public Safety Dept**

This table reflects fiscal impact to state government. Local government impact is reflected in the narrative only.

<b>Dollars (in thousands)</b>	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Expenditures</b>					
– No Impact –					
<b>Less Agency Can Absorb</b>					
– No Impact –					
<b>Net Expenditures</b>					
– No Impact –					
<b>Revenues</b>					
– No Impact –					
<b>Net Cost &lt;Savings&gt;</b>					
– No Impact –					
<b>Total Cost &lt;Savings&gt; to the State</b>					

	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Full Time Equivalents</b>					
– No Impact –					
<b>Total FTE</b>					

**Bill Description**

The bill relates to motor carriers; allowing transportation of equestrian equipment in recreational vehicle combination; regulating maximum axle weights allowed on highways; and establishes oversize permit fee for manufactured storage buildings.

**Assumptions**

**Expenditure and/or Revenue Formula**

No fiscal impact anticipated.

**Long-Term Fiscal Considerations**

**Local Government Costs**

**References/Sources**

Agency Contact Name: Captain Brian Erickson 651 296-6579  
FN Coord Signature: FRANK AHRENS  
Date: 04/20/05 Phone: 296-9484

**EBO Comments**

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: NORMAN FOSTER  
Date: 04/20/05 Phone: 215-0594

# **S.F. 1542 / H.F. 1400 LEGISLATION TO AUTHORIZE A PILOT COMMODITY CORRIDOR ON HIGHWAY 2, HIGHWAY 169 AND HIGHWAY 53 BETWEEN GRAND RAPIDS AND THE PORT OF DULUTH**

## **Purpose of the legislation**

S.F. 1542 / H.F. 1400 authorizes MN DOT to permit trucks up to 108,000 lbs gross vehicle weight (GVW) to transport paper manufactured from a proposed new manufacturing facility in Grand Rapids to the Port of Duluth. Two truck configurations would be authorized to carry increased loads, subject to an annual permit issued by MN DOT:

- Twin 28' trailers, behind one power unit, with 9 axles at 108,000 lbs GVW,
- One 53' trailer, behind one power unit, with 6 axles at 90,000 lbs GVW during the summer, and 98,000 lbs GVW during the winter months.

The permit process would be authorized to begin no sooner than August, 2006 and only if the new manufacturing facility is built in Grand Rapids.

## **Economic Impact**

The proposed expansion at Grand Rapids is the largest economic development project currently under consideration anywhere in Minnesota, with no requirement for public funding. If it is built, the investment is estimated to be in the range of \$500,000,000 and \$1,000,000,000. The investment would secure more than 500 high paying manufacturing jobs at Grand Rapids for a period of at least 30 to 50 years.

## **Background and Need for Legislative Action**

Blandin Paper, owned by UPM, is a leading U.S. manufacturer of printing paper located in Grand Rapids. Blandin is in competition with other UPM sites for investment dollars, and with competitors world-wide for customers' business. UPM is conducting a one year feasibility study and an Environmental Impact Study to determine the viability of a new paper machine in Grand Rapids. Both the feasibility study and the EIS will be completed in December, 2005. Blandin must address the issue of logistics costs as one component of the feasibility study. Other overseas locations are being evaluated concurrently, and an investment decision by UPM is anticipated following completion of the feasibility study and the issuance of environmental permits by the state of Minnesota.

UPM can manufacture paper in central Finland, transport it to port, transport it across the Atlantic Ocean, and ship the paper to customers in the central United States, a 5,000+ mile journey, for the same price that Blandin can deliver paper manufactured in Grand Rapids to the same central U. S. location, a distance of 800 to 900 miles. This because there is competition in transportation on every stage of the journey from Scandinavia to the central U. S., while Grand Rapids is subject to a monopoly operated by a single railroad. As a "captive" shipper, Blandin is charged rail rates in Grand Rapids that are greater than twice those charged shippers in Duluth, which is served by four railroads. (see attached *Rail Price Advisor* chart).

In order to attract the UPM's investment, Blandin must reduce its logistics cost. Blandin desires to move its finished product from Grand Rapids to Lake Superior Warehouse at the Port of Duluth. The Port of Duluth is in a more competitive railroad environment than Grand Rapids. Shipments through the Port of Duluth have access to four railroads: Burlington Northern Santa Fe (BNSF), Canadian Pacific/SOO Line (CP Rail), Canadian National Railway (CN), and Union Pacific Railroad (UP). Grand Rapids is served by only one railroad.

Neighboring states and provinces allow trucks carrying weights far in excess of 80,000 lb., the current limit in Minnesota. North Dakota: 105,500 lb., South Dakota: 129,000 lb., Iowa: 129,000 lb., Michigan: 164,000 lb., Wisconsin: 98,000 lb. (winter months), Ontario: 140,000 lb., Manitoba: 137,500 lb., Saskatchewan: 137,500 lb., British Columbia: 139,700 lb.

### **Safety**

UPM/Blandin will meet or exceed all Minnesota and Federal safety statutes. Blandin executives are currently working with MN DOT and the Minnesota State Patrol to specify extensive additional training and regulations that drivers and the planned Longer Combination Vehicles (LCV) must meet. The US Department of Transportation Truck Size and Weight Study (August, 2000) found that allowing current semi trailers to carry more cargo would result in *fewer accidents* in addition to fuel savings and environmental benefits due to the reduction of truck traffic. A previous study by the federal government's Transportation Research Board (Special Report 255, 1990) also found there would be substantial reductions in highway accidents.

### **Volume and Traffic**

Blandin currently manufactures and plans to transport up to 400,000 tons annually between Grand Rapids and the Port of Duluth, and up to 750,000 tons if the proposed new paper manufacturing facility is sited in Grand Rapids. If the proposed new manufacturing facility is built in Grand Rapids, Blandin estimates it would transport 60 to 70 truck loads per day between Grand Rapids and Duluth at the 80,000 weight limit currently authorized under state law. Using the proposed new truck configuration, the number of daily loads would be reduced to approximately 48 loads per day, or 2 loads per hour. Blandin would ship only on days and during hours of operation specified by MN DOT when it issues the proposed annual permit.

### **MNDOT Preference to Reduce Road Wear**

MNDOT has stated that it would prefer Blandin use 9 axle, or 6 axle vehicles at the proposed higher GVW, rather than the currently legal 5 axle vehicles at 80,000 lbs GVW. The proposed 9 axle or 6 axle vehicles would result in considerably less road wear, because there would be fewer loads and MN DOT would specify in the annual permit axle spacing, tire size and inflation, and other specifications intended to reduce road wear.

### **Restrictions**

All road postings and seasonal weight restrictions would apply to the proposed routes and vehicles. There would be no winter weight increase allowed for the 9 axle tandem trailer configuration.

### **Local Government Approval Required**

The legislation stipulates that local governments must approve the use of any county or city roads by the trucks permitted to carry the proposed heavy loads. Blandin managers are currently meeting with city and county officials representing Duluth, Hermantown, Proctor, St. Louis County, the Port of Duluth and others to find an acceptable route(s), and receive local authority to operate on the route between Highway 2 and the Port.

1 A bill for an act

2 relating to elections; setting standards for and  
3 providing for the acquisition of voting systems;  
4 appropriating money from the Help America Vote Act  
5 account; amending Minnesota Statutes 2004, section  
6 206.80; proposing coding for new law in Minnesota  
7 Statutes, chapter 206.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

9 Section 1. [206.585] [STATE VOTING SYSTEMS CONTRACT.]

10 Subdivision 1. [CONTRACT REQUIRED.] The secretary of  
11 state, in cooperation with the commissioner of administration,  
12 shall establish a state voting systems contract. The contract  
13 should, if practical, include provisions for maintenance of the  
14 equipment purchased. The contract must give the state a  
15 perpetual license to use and modify the software. The contract  
16 must include provisions for escrow of the software source code,  
17 as provided in subdivision 2. Bids for voting systems and  
18 related election services must be solicited from each vendor  
19 selling or leasing voting systems that have been certified for  
20 use by the secretary of state. The contract must be renewed no  
21 later than July 1 of each odd-numbered year. Counties and  
22 municipalities may purchase or lease voting systems and obtain  
23 related election services from the state contract.

24 Subd. 2. [ESCROW OF SOURCE CODE.] The contract must  
25 require the voting system vendor to provide a copy of the source  
26 code for the voting system to an independent third-party

1 evaluator selected by the vendor, the secretary of state, and  
2 the chairs of the major political parties. The evaluator must  
3 examine the source code and certify to the secretary of state  
4 that the voting system will record and count votes as  
5 represented by the vendor. Source code that is trade secret  
6 information must be treated as nonpublic information, in  
7 accordance with section 13.37. Each major political party may  
8 designate an agent to examine the source code to verify that the  
9 voting system will record and count votes as represented by the  
10 vendor; the agent must not disclose the source code to anyone  
11 else.

12       Sec. 2. Minnesota Statutes 2004, section 206.80, is  
13 amended to read:

14       206.80 [ELECTRONIC VOTING SYSTEMS.]

15       (a) An electronic voting system may not be employed unless  
16 it:

17       (1) permits every voter to vote in secret;

18       (2) permits every voter to vote for all candidates and  
19 questions for whom or upon which the voter is legally entitled  
20 to vote;

21       (3) provides for write-in voting when authorized;

22       (4) rejects by means of the automatic tabulating equipment,  
23 except as provided in section 206.84 with respect to write-in  
24 votes, all votes for an office or question when the number of  
25 votes cast on it exceeds the number which the voter is entitled  
26 to cast;

27       (5) permits a voter at a primary election to select  
28 secretly the party for which the voter wishes to vote; and

29       (6) rejects, by means of the automatic tabulating  
30 equipment, all votes cast in a primary election by a voter when  
31 the voter votes for candidates of more than one party; and

32       (7) provides every voter an opportunity to verify votes  
33 electronically and to change votes or correct any error before  
34 the voter's ballot is cast and counted, produces a permanent  
35 paper record of the ballot cast by the voter, and preserves the  
36 paper record as an official record available for use in any

1 recount.

2 (b) An electronic voting system purchased on or after the  
3 effective date of this section may not be employed unless it:

4 (1) has a firmware option that supports cumulative voting  
5 and ranked order voting; and

6 (2) accepts and tabulates, in the precinct or at a counting  
7 center, a marked optical scan ballot or creates a marked optical  
8 scan ballot that can be tabulated in the precinct or at a  
9 counting center by an optical scan machine certified for use in  
10 this state.

11 Sec. 3. [APPROPRIATIONS.]

12 Subdivision 1. [ASSISTED VOTING EQUIPMENT.] \$18,000,000 is  
13 appropriated from the Help America Vote Act account to the  
14 secretary of state for grants to counties to purchase electronic  
15 voting systems equipped for individuals with disabilities that  
16 meet the requirements of Minnesota Statutes, section 206.80, and  
17 have been certified by the secretary of state under Minnesota  
18 Statutes, section 206.57. The secretary of state shall make a  
19 grant to each county in the amount of \$4,400 times the number of  
20 polling places in the county as certified by the county, which  
21 must not be more than the number of polling places used by the  
22 county in the state general election of 2004, plus \$4,400 to  
23 purchase an electronic voting system to be used by the county  
24 auditor for absentee and mail balloting. Each polling place  
25 used after January 1, 2006, must be equipped with an electronic  
26 voting system equipped for individuals with disabilities.

27 Subd. 2. [OPTICAL SCAN EQUIPMENT; OPERATING COSTS.] (a)  
28 \$18,000,000 is appropriated from the Help America Vote Act  
29 account to the secretary of state for grants to counties to  
30 purchase optical scan voting systems that meet the requirements  
31 of Minnesota Statutes, section 206.80, and have been certified  
32 by the secretary of state under Minnesota Statutes, section  
33 206.57, and to pay for operating costs of the systems purchased  
34 under this subdivision or subdivision 1. The amount allocated  
35 to each county must be in proportion to the number of precincts  
36 used by the county in the state general election of 2004.

1       (b) "Operating costs" may include county and municipal  
2 costs for hardware maintenance, election day technical support,  
3 software licensing, voting system testing, training of county or  
4 municipal staff in the use of the voting system, transportation  
5 of the voting systems to and from the polling places, and  
6 storage of the voting systems between elections. Total annual  
7 operating costs of a county or municipality may not exceed \$450  
8 per polling place.

9       (c) To receive a grant, a county must apply to the  
10 secretary of state on forms prescribed by the secretary of state  
11 that set forth how the grant money will be spent. A county may  
12 submit more than one grant application, so long as the  
13 appropriation remains available and the total amount granted to  
14 the county does not exceed the county's allocation.

15       Subd. 3. [LOCAL EQUIPMENT PLANS.] (a) The county auditor  
16 shall convene a working group of the city and town election  
17 officials in each county to create a local equipment plan. The  
18 working group must continue to meet until the plan is completed,  
19 which must be no later than June 30, 2005. The plan must:

20       (1) contain procedures to implement assisted voting  
21 technology for use by disabled voters in each polling location;

22       (2) define who is responsible for any capital or operating  
23 costs related to election equipment not covered by federal money  
24 from the Help America Vote Act account; and

25       (3) outline how the grants under subdivisions 1 and 2 will  
26 be spent.

27       (b) A county plan must provide funding to purchase  
28 precinct-based optical scan equipment for any polling place  
29 whose city or town requests it, if the requesting city or town  
30 agrees with the county on who will be responsible for operating  
31 and replacement costs related to the use of the precinct-based  
32 equipment.

33       (c) The county board of commissioners must adopt the local  
34 equipment plan after a public hearing. Money from the Help  
35 America Vote Act account may not be expended until the plan is  
36 adopted. The county auditor shall file the adopted local

1 equipment plan with the secretary of state.

2 Subd. 4. [REPORT.] Each county receiving a grant under  
3 subdivision 1 or 2 must report to the secretary of state by  
4 January 15, 2006, the amount spent for the purchase of each kind  
5 of electronic voting system and for operating costs of the  
6 systems purchased. The secretary of state shall compile this  
7 information and report it to the legislature by February 15,  
8 2006.

9 Subd. 5. [AVAILABILITY.] The appropriations in this  
10 section are available until June 30, 2009.

11 Sec. 4. [MAIL BALLOTING.]

12 Nothing in this act is intended to preclude the use of mail  
13 balloting in those precincts where it is allowed under state law.

14 Sec. 5. [EFFECTIVE DATE.]

15 This act is effective the day following final enactment.

1 To: Senator Cohen, Chair

2 Committee on Finance

3 Senator Kiscaden,

4 Chair of the State Government Budget Division, to which was  
5 referred

6 S.F. No. 290: A bill for an act relating to elections;  
7 setting standards for and providing for the acquisition of  
8 voting systems; appropriating money from the Help America Vote  
9 Act account; amending Minnesota Statutes 2004, section 206.80;  
10 proposing coding for new law in Minnesota Statutes, chapter 206.

11 Reports the same back with the recommendation that the bill  
12 be amended as follows:

13 Page 1, line 17, after the period, insert "The contract  
14 must provide that, if cumulative voting or ranked order voting  
15 is authorized by law for use in a jurisdiction in this state,  
16 the vendor will then provide any purchaser of equipment  
17 purchased under the contract and used in that jurisdiction with  
18 the necessary firmware to support the authorized methods of  
19 voting."

20 Page 1, line 20, after the period, insert "The commissioner  
21 of administration shall appoint an advisory committee of county  
22 auditors and township, city, and school board clerks who have  
23 had operational experience with the use of electronic voting  
24 systems and a representative of persons with disabilities to  
25 assist the department to review and evaluate the merits of  
26 proposals submitted from the voting equipment vendors for the  
27 state contract. Appointments to the committee must be made in  
28 the manner provided in section 15.0597."

29 Page 3, line 3, delete the colon

30 Page 3, delete lines 4 and 5

31 Page 3, line 6, delete everything before "accepts"

32 Page 3, lines 18 and 34, after the period, insert "This  
33 appropriation is available until June 30, 2009."

34 Page 5, delete lines 9 and 10 and insert:

35 "Subd. 5. [ADMINISTRATIVE COSTS.] (a) \$54,000 is  
36 appropriated from the Help America Vote Act account to the  
37 commissioner of administration to establish the state voting  
38 systems contract required by section 1. \$36,000 is available  
39 until June 30, 2006, and \$18,000 is available for the fiscal

1 year ending June 30, 2007.

2 (b) \$50,000 is appropriated from the Help America Vote Act  
3 account to the secretary of state to establish the state voting  
4 systems contract required by section 1 and to administer the  
5 grants to counties under subdivisions 1 and 2 of this section,  
6 to be available until June 30, 2007."

7 And when so amended that the bill be recommended to pass  
8 and be referred to the full committee.

.....*M. Kiscaden*.....  
(Division Chair)

February 22, 2005.....*2/22/05*.....  
(Date of Division action)

9  
10  
11  
12  
13

**Consolidated Fiscal Note – 2005-06 Session**

**Bill #: S0290-2A Complete Date: 03/02/05**

**Chief Author: HIGGINS, LINDA**

**Title: VOTING SYSTEMS STDS & ACQUISITION**

<b>Fiscal Impact</b>	<b>Yes</b>	<b>No</b>
State	X	
Local	X	
Fee/Departmental Earnings		X
Tax Revenue		X

**Agencies: Secretary Of State (03/02/05)**

**Administration Dept (02/25/05)**

This table reflects fiscal impact to state government. Local government impact is reflected in the narrative only.

<b>Dollars (in thousands)</b>	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Net Expenditures</b>					
Misc Special Revenue Fund	0	35,740	18	0	18
Secretary Of State	0	35,704	0	0	0
Administration Dept		36	18		18
<b>Revenues</b>					
Misc Special Revenue Fund	0	38,000	0	0	0
Secretary Of State	0	38,000	0	0	0
<b>Net Cost &lt;Savings&gt;</b>					
Misc Special Revenue Fund	0	(2,260)	18	0	18
Secretary Of State	0	(2,296)	0	0	0
Administration Dept		36	18		18
<b>Total Cost &lt;Savings&gt; to the State</b>	<b>0</b>	<b>(2,260)</b>	<b>18</b>	<b>0</b>	<b>18</b>

	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Full Time Equivalent</b>					
Misc Special Revenue Fund		0.50	0.25		0.25
Administration Dept		0.50	0.25		0.25
<b>Total FTE</b>		<b>0.50</b>	<b>0.25</b>		<b>0.25</b>

**Consolidated EBO Comments**

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: TIM JAHNKE

Date: 03/02/05 Phone: 296-6237

**Fiscal Note – 2005-06 Session**

**Bill #: S0290-2A Complete Date: 03/02/05**

**Chief Author: HIGGINS, LINDA**

**Title: VOTING SYSTEMS STDS & ACQUISITION**

<b>Fiscal Impact</b>	<b>Yes</b>	<b>No</b>
State	X	
Local	X	
Fee/Departmental Earnings		X
Tax Revenue		X

**Agency Name: Secretary Of State**

This table reflects fiscal impact to state government. Local government impact is reflected in the narrative only.

<b>Dollars (in thousands)</b>	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Expenditures</b>					
Misc Special Revenue Fund	0	35,704	0	0	0
<b>Less Agency Can Absorb</b>					
-- No Impact --					
<b>Net Expenditures</b>					
Misc Special Revenue Fund	0	35,704	0	0	0
<b>Revenues</b>					
Misc Special Revenue Fund	0	38,000	0	0	0
<b>Net Cost &lt;Savings&gt;</b>					
Misc Special Revenue Fund	0	(2,296)	0	0	0
<b>Total Cost &lt;Savings&gt; to the State</b>	0	(2,296)	0	0	0

	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Full Time Equivalents</b>					
-- No Impact --					
<b>Total FTE</b>					

## Bill Description

### Federal and State Requirements

Legislation is necessary this legislative session to appropriate funds and provide standards and requirements for voting equipment, which must be in place by January 1, 2006 as required by the Help America Vote Act (PL 107-252) (HAVA). The Department of Justice has announced its intentions to strictly enforce this January 1, 2006 deadline with legal action if necessary. HAVA provides funding for:

1. purchase of new voting equipment;
2. replacement of outdated voting equipment;
3. improved accessibility of polling places so that persons with disabilities can vote privately and independently;
4. state compliance legislation for administration of federal elections;

The goal of election administration in Minnesota both before and after the passage of HAVA is to;

1. Reduce the number of spoiled ballots in rural Minnesota by deploying precinct-count optical scan election equipment in these counties
2. Reduce the potential of legal challenge to Presidential and other Federal Election results by providing uniformity throughout the state in the manner by which ballots are counted in all Minnesota jurisdictions;
3. Provide for the first time the opportunity for individuals with disabilities to vote independently and in private by placing a HAVA compliant election machine in every polling place;
4. Provide for the replacement of outdated voting equipment.
5. Provide funds to the counties for equipment maintenance, programming and election judge costs.

Minnesota has already made great progress in addressing major portions of the HAVA requirements through the use of the funds, primarily Title I monies, legislatively appropriated in 2003, for the Statewide Voter Registration System (SVRS) and other election improvement purposes. This allows the vast bulk of the funds addressed in this fiscal note to be used for equipment. SF290-1E addresses equipment purchases and ancillary costs, not yet addressed in Minnesota.

### Assumptions

SF 290 proposes a number of election equipment strategies.

- 1) Section 3, subdivision 1 provides that a machine that complies with the Federal mandate to accommodate disabilities be purchased for each polling place in Minnesota. That language also mandates that \$4,400 per polling place in each county as of November 2, 2004 be provided for grants to counties so that counties may purchase this equipment. This price may be reduced through competitive bidding or through a multi-state purchasing agreement.
- 2) SF 290, Section 3, Subdivision 2 provides for a an allocation to counties proportional to the number of polling places in each county for purchase of precinct-count optical scan machines or for operating costs of the newly purchased voting system equipment.

### Expenditure and/or Revenue Formula

#### Revenues:

The federal government has appropriated in excess of \$3 billion for all 55 states and territories for fulfilling these requirements and for further improvements. Minnesota has received \$5.3 million in HAVA Title I funding which is being used as part of a \$6.5 million appropriation primarily for voter registration system programming among other non-equipment items in First Special Session, laws 2003, Chapter 7, and Minnesota is eligible for an additional \$202,000.00 for grants for disability access to polling places. The \$6.5 million previously appropriated has been expended as follows:

Modify Statewide Voter Registration System	\$5,296,245.90
Provide Assistance to Persons with Ltd. Proficiency	\$ 22,303.42
Improving polling place accessibility	\$ 197,796.15
Train Local Election Officials	\$ 95,187.92

Prepare training materials	\$ 88,286.53
Develop complaint procedures	\$ 12,785.96
Develop State Plan	\$ 498,055.20
<hr/>	
Total FY 2003, 2004 & 2005	\$6,210,661.08

In addition there is \$39,196,016.96 allocated to Minnesota under HAVA Title III for equipment, voter registration system and voter information purposes. This allocation is based on the proportion of voting age population as of the 2000 Census that Minnesota bears to the entire nation, which appears to be 1.71%. These funds are currently in the Help America Vote Act account. Of this amount, approximately \$38 million appears to be available for the costs outlined in this bill. While there is a 5% matching requirement under HAVA, the Legislature declared, in First Special Session, Laws 2003, Chapter 7, that the state and local funds previously spent on the Voting Equipment Grant Account in 2001 and 2002 constituted the state match, and that, in addition to interest earned on Federal funds, should be sufficient to match the amounts allocated to Minnesota to date.

It is unlikely that there will be any further Federal funding of HAVA costs, even though the entire three billion authorized has not yet been appropriated.

**Expenditures:**

The language of SF290 provides for expenditures in the following priority:

- a) \$18,000,000 to be appropriated for the purchase of the voting system machine mandated by HAVA for voters with disabilities allocated to each county based upon the number of polling places in the county times \$4,400
- b) \$18,000,000 to be allocated among counties based on the number of polling places for purchase of precinct count optical scan machines and/or reimbursement of the operating costs of each polling place.

Voting systems for persons with disabilities It appears that the approximate price for voting systems that accommodate persons with disabilities as mandated by HAVA and provided for as described in SF 290, Section 1 will be approximately \$4,000.00 per machine. This is based upon an unofficially quoted price from a current manufacturer of these machines, with a volume discount of approximately 10% also factored in.

- 1. Total Amount of Federal Funding for Equipment and Equipment Implementation: \$38,000,000
- 2. Disability Machine Allocation
  - a. (3902 current polling places, plus 87 county auditor offices x \$4400 grant per polling place) = \$17, 551,600

See Note 1

- 3. Amount allocated under Section 3, subdivision 2 for operating costs and/or precinct count equipment purchase, using current number of polling places: \$18,000,000

Total projected expenditures: \$35,551,000

**Note 1: Ballot marking machine.**

These ballot marking machines produce an optical scan ballot, which can be voter-verified before and after production. That ballot then needs to be processed by a machine that can verify that the vote has been properly cast and that there are no voter-correctable errors. The ballot-marking machine itself is new, untested, technology that utilizes a DRE-style voting touch-screen. This kind of machine has not yet been used in Minnesota at all, has not been widely used in previous elections in other states, is a slower voting system and can only handle a maximum of 120 to 150 persons per election-day (and a lesser number in those precincts with shorter polling

hours) even under optimum conditions. It is unknown whether this machine will properly record a voter's preference without a further screening by a precinct-count optical scan machine.

### **Secretary of State Administrative Costs**

There are also a number of administrative costs to the office of the Secretary of State in administering this bill. The bill appropriates \$50,000 for these costs to the Secretary of State. It also appropriates funds to the Department of Administration.

#### **1. Contract Development:**

The cost of developing the contract for voting machines will need to include an RFP Development component. The machines will need to be certified, and there will need to be the standard Bid process.

##### a) Certification -

State certification of optical scan counters is specified in Minnesota Rule 8220. Certification (or re-certification) of election hardware and software system will require:

- Step 1) initial assessment of the application for completeness, including review of Federal certification materials (such as ITA reports);
- Step 2) a demonstration test essentially the equivalent of a precinct public accuracy test;
- Step 3) preparation of the certification report and recommendation for the Secretary, and
- Step 4) post approval confirmation of bonding and other actions prior to issuing the actual certificate.

All steps assume participation of multiple staff and management, correspondence, and record-keeping. Assumes separate certifications and no related litigation.

For each certification the specific certification effort per machine is:

- Step 1 labor – approximately 1 to 6 labor days depending on the prior level of effort on the vendor's part (assume 4 days).
- Step 2 labor – approximately 8 labor days assuming a cooperative LEO host or vendor host who will take care of sample ballots test decks (at least some of them) and facilities preparation.
- Step 3 labor – approximately 5 labor days, including reviews and approvals.
- Step 4 labor – approximately 4 labor days.

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Total Labor – approximately 3 labor weeks

24 labor weeks assuming about 3 labor weeks per application and 8 applications

24x 40 hours per week x \$25 per hour = **Total costs of \$24,000**

##### b) RFP development and execution, including review of bids and letting contract –

Between 24 and 120 secretary of state staff-labor weeks depending upon any synergy between the processes to be used for contracting for the assistive voting marker machines and the tabulating machines, and assuming 8 or fewer voting systems bid. Generally this time will be spent developing the complete specifications for the machines

**Total range of costs = \$24,000 to \$120,000**

#### **2. Grant Administration:**

The bill sets forth a process for the secretary of state to administer grants to the 87 counties for the purchase of the assistive voting technology required in section x of this bill. The costs of this are:

1. Development of application and county plan template- 2 SOS election staff @ 40 hours each
2. Announcement of grant availability to counties - 8 staff hours
3. Review of applications. Two hours for each county - 4 individuals @40 hours each
4. Fiscal department involvement/documentation and issuance of grant money:  
- 15 hours (87 counties x 10 minutes per check)
5. Post-disbursement financial documentation and reporting:- 40 hours

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Total Hours: 303 @ \$25 average per staff hour = **Total Costs of \$7575**

**3. Post-Purchase Federal and State Reporting:**

1. Development and refinement of questionnaire: - 16 hours
2. Compilation of data:: - 32 hours
3. Preparation and final format of reports: - 16 hours

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Total Hours: 64 @ \$25 average per staff hour = **Total Costs of \$1600**

**Total Secretary of State Costs: FY 2006 =\$153,175**

**Local Government Costs**

SF 290 requires that there be a local government equipment plan developed by county and municipal governments. It appears that the costs of developing that plan will fall to the general administration budgets of those political subdivisions.

SF 290 appears to contemplate the continuation of existing hand and central count systems, by the terms of the language in Section 2. Continuation of central count will require, effectively, that there be two machines used for the ballots from each polling place – the HAVA disability machine in the polling place, and the central count machine in the courthouse, with no reduction in the monetary and civic costs of central count, including:

- o central count programming for each precinct
- o staff time for election judges to physically take the ballots to the courthouse and run them through the central count scanning machine

Agency Contact Name: Alberto Quintela 651-201-1321

Agency Contact Name: Alberto Quintela 651-201-1321

FN Coord Signature: KATHY HJELM

Date: 03/01/05 Phone: 201-1361

**EBO Comments**

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: TIM JAHNKE

Date: 03/02/05 Phone: 296-6237

**Fiscal Note – 2005-06 Session**

**Bill #: S0290-2A Complete Date: 02/25/05**

**Chief Author: HIGGINS, LINDA**

**Title: VOTING SYSTEMS STDS & ACQUISITION**

<b>Fiscal Impact</b>	<b>Yes</b>	<b>No</b>
State	X	
Local	X	
Fee/Departmental Earnings		X
Tax Revenue		X

**Agency Name: Administration Dept**

This table reflects fiscal impact to state government. Local government impact is reflected in the narrative only.

<b>Dollars (in thousands)</b>	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Expenditures</b>					
Misc Special Revenue Fund		36	18		18
<b>Less Agency Can Absorb</b>					
– No Impact –					
<b>Net Expenditures</b>					
Misc Special Revenue Fund		36	18		18
<b>Revenues</b>					
– No Impact –					
<b>Net Cost &lt;Savings&gt;</b>					
Misc Special Revenue Fund		36	18		18
<b>Total Cost &lt;Savings&gt; to the State</b>		36	18		18

	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Full Time Equivalents</b>					
Misc Special Revenue Fund		0.50	0.25		0.25
<b>Total FTE</b>		0.50	0.25		0.25

### **Bill Description**

The bill requires the commissioner of administration to establish a contract for voting systems and – if practical – maintenance of the equipment purchased. The contract must be re-bid every two years and all certified vendors must be allowed to compete.

Amendments to the bill (a) appropriate money for Admin and the Secretary of State to implement the bill and (b) require Admin to appoint an advisory committee of local election officials and persons with disabilities to advise the state throughout the acquisition process.

### **Assumptions**

The majority of the staffing committed to this effort will be provided by the Office of the Secretary of State. However, Admin will need to help develop technical specifications for a complex procurement, assuring compliance with statutory mandates, local needs and public procurement requirements. Admin will be responsible for developing an evaluation process that will pass scrutiny from a partisan political perspective. Admin will be responsible for handling bid protests or other legal challenges.

Admin had anticipated working with voting system users to assist in developing specifications and evaluating product options. Consequently, the amendment requiring appointment of a committee will not involve costs beyond those appropriated in the amended bill.

The bill requires that the solicitation process be repeated every two years, with a contract in place by July 1 of odd-numbered years. Realistically, without sufficient time or funds available in FY05, no contract can be in place by July, 1, 2005. Consequently, this fiscal note assumes funding for the first contract becomes available in FY06. It assumes that the first iteration will involve more effort due to the learning curve and developing approaches. Consequently, one-half FTE is projected for FY06. Follow-up solicitations are estimated at one-quarter FTE for the fiscal year preceding the contract award. Following this process will get the project on schedule for July 1, 2007. Admin does not routinely develop contracts for the exclusive use of local units of government.

### **Expenditure and/or Revenue Formula**

Help America Vote Act (HAVA) funds have been appropriated to cover Admin's costs related to the development, award and administration of these contracts.

### **Local Government Costs**

Makes federal money available to local units who choose to participate.

Agency Contact Name: Kent Allin (651-296-1442)  
FN Coord Signature: LARRY FREUND  
Date: 02/24/05 Phone: 296-5857

### **EBO Comments**

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: TIM JAHNKE  
Date: 02/25/05 Phone: 296-6237

1 Senator ..... moves to amend S.F. No. 290 as follows:

2 Delete everything after the enacting clause and insert:

3 "Section 1. Minnesota Statutes 2004, section 201.022, is  
4 amended by adding a subdivision to read:

5 Subd. 3. [CONSULTATION WITH LOCAL OFFICIALS.] The  
6 secretary of state must consult with representatives of local  
7 election officials in the development of the statewide voter  
8 registration system.

9 Sec. 2. Minnesota Statutes 2004, section 206.56, is  
10 amended by adding a subdivision to read:

11 Subd. 1a. [ASSISTIVE VOTING TECHNOLOGY.] "Assistive voting  
12 technology" means touch-activated screen, buttons, keypad,  
13 sip-and-puff input device, keyboard, earphones, or any other  
14 device used with an electronic ballot marker that assists voters  
15 to use an audio or electronic ballot display in order to cast  
16 votes.

17 Sec. 3. Minnesota Statutes 2004, section 206.56, is  
18 amended by adding a subdivision to read:

19 Subd. 1b. [AUDIO BALLOT READER.] "Audio ballot reader"  
20 means an audio representation of a ballot that can be used with  
21 other assistive voting technology to permit a voter to mark  
22 votes on a nonelectronic ballot or to transmit a ballot  
23 electronically to automatic tabulating equipment.

24 Sec. 4. Minnesota Statutes 2004, section 206.56,  
25 subdivision 2, is amended to read:

26 Subd. 2. [AUTOMATIC TABULATING EQUIPMENT.] "Automatic  
27 tabulating equipment" includes apparatus machines, resident  
28 firmware, and programmable memory units necessary to  
29 automatically examine and count votes designated on a  
30 ballot cards,--and-data-processing-machines-which-can-be-used-fer  
31 counting-ballets-and-tabulating-results.

32 Sec. 5. Minnesota Statutes 2004, section 206.56,  
33 subdivision 3, is amended to read:

34 Subd. 3. [BALLOT.] "Ballot" includes ballet-cards-and  
35 paper ballots; ballot cards; the paper ballot marked by an  
36 electronic marking device; and an electronic record of each vote

1 choice made by a voter at an election and transmitted  
2 electronically to automatic tabulating equipment.

3 Sec. 6. Minnesota Statutes 2004, section 206.56,  
4 subdivision 7, is amended to read:

5 Subd. 7. [COUNTING CENTER.] "Counting center" means a  
6 place selected by the governing body of a municipality where an  
7 a central count electronic voting system is used for the  
8 automatic processing and counting of ballots.

9 Sec. 7. Minnesota Statutes 2004, section 206.56, is  
10 amended by adding a subdivision to read:

11 Subd. 7a. [ELECTRONIC BALLOT DISPLAY.] "Electronic ballot  
12 display" means a graphic representation of a ballot on a  
13 computer monitor or screen on which a voter may make vote  
14 choices for candidates and questions for the purpose of marking  
15 a nonelectronic ballot or transmitting an electronic ballot.

16 Sec. 8. Minnesota Statutes 2004, section 206.56, is  
17 amended by adding a subdivision to read:

18 Subd. 7b. [ELECTRONIC BALLOT MARKER.] "Electronic ballot  
19 marker" means equipment that is part of an electronic voting  
20 system that uses an electronic ballot display or audio ballot  
21 reader to:

22 (1) mark a nonelectronic ballot with votes selected by a  
23 voter; or

24 (2) transmit a ballot electronically to automatic  
25 tabulating equipment.

26 Sec. 9. Minnesota Statutes 2004, section 206.56,  
27 subdivision 8, is amended to read:

28 Subd. 8. [ELECTRONIC VOTING SYSTEM.] "Electronic voting  
29 system" means a system in which the voter records votes by means  
30 of marking or transmitting a ballot, ~~which-is-designed~~ so that  
31 votes may be counted by automatic tabulating equipment in the  
32 precinct or polling place where the ballot is cast or at a  
33 counting center.

34 An electronic voting system includes automatic tabulating  
35 equipment; nonelectronic ballot markers; electronic ballot  
36 markers, including electronic ballot display, audio ballot

1 reader, and devices by which the voter will register the voter's  
2 voting intent; software used to program automatic tabulators and  
3 layout ballots; computer programs used to accumulate precinct  
4 results; ballots; secrecy folders; system documentation; and  
5 system testing results.

6 Sec. 10. Minnesota Statutes 2004, section 206.56,  
7 subdivision 9, is amended to read:

8 Subd. 9. [MANUAL MARKING DEVICE.] "Manual marking device"  
9 means any approved device for directly marking a ballot by hand  
10 with ink, pencil, or other substance which will enable the  
11 ballot to be tabulated by means of automatic tabulating  
12 equipment.

13 Sec. 11. Minnesota Statutes 2004, section 206.57,  
14 subdivision 1, is amended to read:

15 Subdivision 1. [EXAMINATION AND REPORT BY SECRETARY OF  
16 STATE; APPROVAL.] A vendor of an electronic voting system may  
17 apply to the secretary of state to examine the system and to  
18 report as to its compliance with the requirements of law and as  
19 to its accuracy, durability, efficiency, and capacity to  
20 register the will of voters. The secretary of state or a  
21 designee shall examine the system submitted and file a report on  
22 it in the Office of the Secretary of State. Examination is not  
23 required of every individual machine or counting device, but  
24 only of each type of electronic voting system before its  
25 adoption, use, or purchase and before its continued use after  
26 significant changes have been made in an approved system. The  
27 examination must include the ballot programming<sub>7</sub>; electronic  
28 ballot marking, including all assistive technologies intended to  
29 be used with the system; vote counting<sub>7</sub>; and vote accumulation  
30 functions of each voting system.

31 If the report of the secretary of state or the secretary's  
32 designee concludes that the kind of system examined complies  
33 with the requirements of sections 206.55 to 206.90 and can be  
34 used safely, the system shall be deemed approved by the  
35 secretary of state, and may be adopted and purchased for use at  
36 elections in this state. A voting system not approved by the

1 secretary of state may not be used at an election in this  
2 state. The secretary of state may adopt permanent rules  
3 consistent with sections 206.55 to 206.90 relating to the  
4 examination and use of electronic voting systems.

5 Sec. 12. Minnesota Statutes 2004, section 206.57,  
6 subdivision 5, is amended to read:

7 Subd. 5. [VOTING SYSTEM FOR DISABLED VOTERS.] In federal  
8 and state elections held after December 31, 2005, and in county,  
9 municipal, and school district elections held after December 31,  
10 2006, the voting method used in each polling place must include  
11 a voting system that is accessible for individuals with  
12 disabilities, including nonvisual accessibility for the blind  
13 and visually impaired in a manner that provides the same  
14 opportunity for access and participation, including privacy and  
15 independence, as for other voters.

16 Sec. 13. Minnesota Statutes 2004, section 206.61,  
17 subdivision 4, is amended to read:

18 Subd. 4. [ORDER OF CANDIDATES.] On the "State Partisan  
19 Primary Ballot" prepared for primary elections, and on the white  
20 ballot prepared for the general election, the order of the names  
21 of nominees or names of candidates for election shall be the  
22 same as required for paper ballots. More than one column or row  
23 may be used for the same office or party. Electronic ballot  
24 display and audio ballot readers must conform to the candidate  
25 order on the optical scan ballot used in the precinct.

26 Sec. 14. Minnesota Statutes 2004, section 206.61,  
27 subdivision 5, is amended to read:

28 Subd. 5. [ALTERNATION.] The provisions of the election  
29 laws requiring the alternation of names of candidates must be  
30 observed as far as practicable by changing the order of the  
31 names on an electronic voting system in the various precincts so  
32 that each name appears on the machines or marking devices used  
33 in a municipality substantially an equal number of times in the  
34 first, last, and in each intermediate place in the list or group  
35 in which they belong. However, the arrangement of candidates'  
36 names must be the same on all voting systems used in the same

1 precinct. If the number of names to be alternated exceeds the  
2 number of precincts, the election official responsible for  
3 providing the ballots, in accordance with subdivision 1, shall  
4 determine by lot the alternation of names.

5 If an electronic ballot marker is used with a paper ballot  
6 that is not an optical scan ballot card, the manner of  
7 alternation of candidate names on the paper ballot must be as  
8 prescribed for optical scan ballots in this subdivision. If a  
9 machine is used to transmit a ballot electronically to automatic  
10 tabulating equipment, the manner of alternation of candidate  
11 names on the transmitting machine must be as prescribed for  
12 optical scan ballots in this subdivision.

13 Sec. 15. Minnesota Statutes 2004, section 206.80, is  
14 amended to read:

15 206.80 [ELECTRONIC VOTING SYSTEMS.]

16 (a) An electronic voting system may not be employed unless  
17 it:

18 (1) permits every voter to vote in secret;

19 (2) permits every voter to vote for all candidates and  
20 questions for whom or upon which the voter is legally entitled  
21 to vote;

22 (3) provides for write-in voting when authorized;

23 (4) automatically rejects ~~by-means-of-the-automatic~~  
24 ~~tabulating-equipment~~, except as provided in section 206.84 with  
25 respect to write-in votes, all votes for an office or question  
26 when the number of votes cast on it exceeds the number which the  
27 voter is entitled to cast;

28 (5) permits a voter at a primary election to select  
29 secretly the party for which the voter wishes to vote; and

30 (6) automatically rejects ~~7-by-means-of-the-automatic~~  
31 ~~tabulating-equipment~~, all votes cast in a primary election by a  
32 voter when the voter votes for candidates of more than one  
33 party; and

34 (7) provides every voter an opportunity to verify votes  
35 electronically and to change votes or correct any error before  
36 the voter's ballot is cast and counted, produces a permanent

1 paper record of the ballot cast by the voter, and preserves the  
2 paper record as an official record available for use in any  
3 recount.

4 (b) An electronic voting system purchased on or after the  
5 effective date of this section may not be employed unless it:

6 (1) accepts and tabulates, in the precinct or at a  
7 counting center, a marked optical scan ballot;

8 (2) creates a marked optical scan ballot that can be  
9 tabulated in the precinct or at a counting center by automatic  
10 tabulating equipment certified for use in this state; or

11 (3) securely transmits a ballot electronically to automatic  
12 tabulating equipment in the precinct or at a counting center  
13 while creating an individual, discrete, permanent paper record  
14 of all the votes on the ballot.

15 Sec. 16. [206.805] [STATE VOTING SYSTEMS CONTRACTS.]

16 Subdivision 1. [CONTRACTS REQUIRED.] (a) The secretary of  
17 state, in cooperation with the commissioner of administration,  
18 shall establish one or more state voting systems contracts. The  
19 contracts should, if practical, include provisions for  
20 maintenance of the equipment purchased. The contracts must give  
21 the state a perpetual license to use and modify the software.  
22 The contracts must include provisions to escrow the software  
23 source code, as provided in subdivision 2. The contracts must  
24 provide that, if cumulative voting or ranked order voting is  
25 authorized by law for use in a jurisdiction in this state, the  
26 vendor will then provide any purchaser of equipment purchased  
27 under the contract and used in that jurisdiction with the  
28 necessary firmware to support the authorized methods of voting.  
29 Bids for voting systems and related election services must be  
30 solicited from each vendor selling or leasing voting systems  
31 that have been certified for use by the secretary of state. The  
32 contracts must be renewed no later than July 1 of each  
33 odd-numbered year.

34 (b) The secretary of state shall appoint an advisory  
35 committee of county auditors, municipal clerks who have had  
36 operational experience with the use of electronic voting

1 systems, and members of the disabilities community to assist the  
2 commissioner of administration to review and evaluate the merits  
3 of proposals submitted from voting equipment vendors for the  
4 state contracts. Appointments to the committee must be made in  
5 the manner provided in section 15.0597.

6 (c) Counties and municipalities may purchase or lease  
7 voting systems and obtain related election services from the  
8 state contracts.

9 Subd. 2. [ESCROW OF SOURCE CODE.] The contracts must  
10 require the voting system vendor to provide a copy of the source  
11 code for the voting system to an independent third-party  
12 evaluator selected by the vendor, the secretary of state, and  
13 the chairs of the major political parties. The evaluator must  
14 examine the source code and certify to the secretary of state  
15 that the voting system will record and count votes as  
16 represented by the vendor. Source code that is trade secret  
17 information must be treated as nonpublic information, in  
18 accordance with section 13.37. Each major political party may  
19 designate an agent to examine the source code to verify that the  
20 voting system will record and count votes as represented by the  
21 vendor; the agent must not disclose the source code to anyone  
22 else.

23 Sec. 17. Minnesota Statutes 2004, section 206.81, is  
24 amended to read:

25 206.81 [ELECTRONIC VOTING SYSTEMS; EXPERIMENTAL USE.]

26 (a) The secretary of state may ~~approve~~ certify an  
27 electronic voting system for experimental use at an election  
28 prior to its approval for general use.

29 (b) The secretary of state must ~~approve~~ certify one or more  
30 direct recording electronic voting systems for experimental use  
31 at an election before their ~~approval~~ certification for general  
32 use and may impose restrictions on their use. At least one  
33 voting system ~~approved~~ certified under this paragraph must  
34 permit sighted persons to vote and at least one system must  
35 permit a blind or visually impaired voter to cast a ballot  
36 independently and privately.

1 (c) Experimental use must be observed by the secretary of  
2 state or the secretary's designee and the results observed must  
3 be considered at any subsequent proceedings for  
4 ~~approval~~ certification for general use.

5 (d) The secretary of state may adopt rules consistent with  
6 sections 206.55 to 206.90 relating to experimental use. The  
7 extent of experimental use must be determined by the secretary  
8 of state.

9 Sec. 18. Minnesota Statutes 2004, section 206.82,  
10 subdivision 1, is amended to read:

11 Subdivision 1. [PROGRAM.] A program or programs for use in  
12 an election conducted by means of an electronic voting system or  
13 using an electronic ballot marker shall be prepared at the  
14 direction of the county auditor or municipal clerk who is  
15 responsible for the conduct of the election and shall be  
16 independently verified by a competent person designated by that  
17 official. The term "competent person" as used in this section  
18 means a person who can demonstrate knowledge as a computer  
19 programmer and who is other than and wholly independent of any  
20 person operating or employed by the counting center or the  
21 corporation or other preparer of the program. A test deck  
22 prepared by a competent person shall be used for independent  
23 verification of the program; it shall test the maximum digits  
24 used in totaling the returns and shall be usable by insertion  
25 during the tabulation process as well as prior to tabulation. A  
26 test deck must also be prepared using the electronic ballot  
27 marker program and must also be used to verify that all valid  
28 votes counted by the vote tabulator may be selected using the  
29 electronic ballot marker. The secretary of state shall adopt  
30 rules further specifying test procedures.

31 Sec. 19. Minnesota Statutes 2004, section 206.83, is  
32 amended to read:

33 206.83 [TESTING OF VOTING SYSTEMS.]

34 Within 14 days before election day, the official in charge  
35 of elections shall have the voting system tested to ascertain  
36 that the system will correctly mark or securely transmit to

1 automatic tabulating equipment in the precinct ballots using all  
2 methods supported by the system, including through assistive  
3 technology, and count the votes cast for all candidates and on  
4 all questions within-14-days-prior-to-election-day. Public  
5 notice of the time and place of the test must be given at least  
6 two days in advance by publication once in official newspapers.  
7 The test must be observed by at least two election judges, who  
8 are not of the same major political party, and must be open to  
9 representatives of the political parties, candidates, the press,  
10 and the public. The test must be conducted by (1) processing a  
11 preaudited group of ballots punched or marked to record a  
12 predetermined number of valid votes for each candidate and on  
13 each question, and must include for each office one or more  
14 ballot cards which have votes in excess of the number allowed by  
15 law in order to test the ability of the voting system tabulator  
16 and electronic ballot marker to reject those votes; and (2)  
17 processing an additional test deck of ballots marked using the  
18 electronic ballot marker to be employed in the precinct,  
19 including ballots marked or ballots transmitted electronically  
20 to automatic tabulating equipment in the precinct using the  
21 electronic ballot display, audio ballot reader, and each of the  
22 assistive voting peripheral devices used with the electronic  
23 ballot marker. If any error is detected, the cause must be  
24 ascertained and corrected and an errorless count must be made  
25 before the voting system may be used in the election. After the  
26 completion of the test, the programs used and ballot cards must  
27 be sealed, retained, and disposed of as provided for paper  
28 ballots.

29       Sec. 20. Minnesota Statutes 2004, section 206.84,  
30 subdivision 1, is amended to read:

31       Subdivision 1. [INSTRUCTION OF JUDGES, VOTERS.] The  
32 officials in charge of elections shall determine procedures to  
33 instruct election judges and voters in the use of electronic  
34 voting system manual marking devices and the electronic ballot  
35 marker, including assistive peripheral devices.

36       Sec. 21. Minnesota Statutes 2004, section 206.84,

1 subdivision 3, is amended to read:

2 Subd. 3. [BALLOTS.] The ballot information must be in the  
3 same order provided for paper ballots, except that the  
4 information may be in vertical or horizontal rows, or on a  
5 number of separate pages. The secretary of state shall provide  
6 by rule for standard ballot formats for electronic voting  
7 systems. Electronic ballot displays and audio ballot readers  
8 shall be in the order provided for on the optical scan ballot.  
9 Electronic ballot displays may employ zooms or other devices as  
10 assistive voting technology. Audio ballot readers may employ  
11 rewinds or audio cues as assistive voting technology.

12 Ballot cards may contain special printed marks ~~and-holes~~ as  
13 required for proper positioning and reading of the ballots by  
14 electronic vote counting equipment. Ballot cards must contain  
15 an identification of the precinct for which they have been  
16 prepared which can be read visually and which can be tabulated  
17 by the automatic tabulating equipment.

18 Sec. 22. Minnesota Statutes 2004, section 206.84,  
19 subdivision 6, is amended to read:

20 Subd. 6. [DUTIES OF OFFICIAL IN CHARGE.] The official in  
21 charge of elections in each municipality where an electronic  
22 voting system is used shall have the voting systems put in  
23 order, set, adjusted, and made ready for voting when delivered  
24 to the election precincts. The official shall also provide each  
25 precinct with a container for transporting ballot cards to the  
26 counting location after the polls close. The container shall be  
27 of sturdy material to protect the ballots from all reasonably  
28 foreseeable hazards including auto collisions. The election  
29 judges shall meet at the polling place at least one hour before  
30 the time for opening the polls. Before the polls open the  
31 election judges shall compare the ballot cards used with the  
32 sample ballots, electronic ballot displays, and audio ballot  
33 reader furnished to see that the names, numbers, and letters on  
34 both agree and shall certify to that fact on forms provided for  
35 the purpose. The certification must be filed with the election  
36 returns.

1           Sec. 23. Minnesota Statutes 2004, section 206.90,  
2 subdivision 1, is amended to read:

3           Subdivision 1. [DEFINITION.] For the purposes of this  
4 section, "optical scan voting system" means an electronic voting  
5 system approved for use under sections 206.80 to 206.81 in which  
6 the voter records votes by marking with a pencil or other  
7 writing-instrument device, including an electronic ballot  
8 marker, a ballot on which the names of candidates, office  
9 titles, party designation in a partisan primary or election, and  
10 a statement of any question accompanied by the words "Yes" and  
11 "No" are printed.

12           Sec. 24. Minnesota Statutes 2004, section 206.90,  
13 subdivision 5, is amended to read:

14           Subd. 5. [INSTRUCTION OF JUDGES, VOTERS.] In instructing  
15 judges and voters under section 206.84, subdivision 1, officials  
16 in charge of election precincts using optical scan voting  
17 systems shall include instruction on the proper mark for  
18 recording votes on ballot cards marked with a pencil or other  
19 writing instrument and the insertion by the voter of the ballot  
20 card into automatic tabulating equipment that examines and  
21 counts votes as the ballot card is deposited into the ballot box.

22           Officials shall include instruction on the insertion by the  
23 voter of the ballot card into an electronic ballot marker that  
24 can examine votes before the ballot card is deposited into the  
25 ballot box.

26           Sec. 25. Minnesota Statutes 2004, section 206.90,  
27 subdivision 6, is amended to read:

28           Subd. 6. [BALLOTS.] In precincts using optical scan voting  
29 systems, a single ballot card on which all ballot information is  
30 included must be printed in black ink on white colored material  
31 except that marks not to be read by the automatic tabulating  
32 equipment may be printed in another color ink.

33           On the front of the ballot must be printed the words  
34 "Official Ballot" and the date of the election and lines for the  
35 initials of at least two election judges.

36           When optical scan ballots are used, the offices to be

1 elected must appear in the following order: federal offices;  
2 state legislative offices; constitutional offices; proposed  
3 constitutional amendments; county offices and questions;  
4 municipal offices and questions; school district offices and  
5 questions; special district offices and questions; and judicial  
6 offices.

7 On optical scan ballots, the names of candidates and the  
8 words "yes" and "no" for ballot questions must be printed as  
9 close to their corresponding vote targets as possible.

10 The line on an optical scan ballot for write-in votes must  
11 contain the words "write-in, if any."

12 If a primary ballot contains both a partisan ballot and a  
13 nonpartisan ballot, the instructions to voters must include a  
14 statement that reads substantially as follows: "THIS BALLOT  
15 CARD CONTAINS A PARTISAN BALLOT AND A NONPARTISAN BALLOT. ON  
16 THE PARTISAN BALLOT YOU ARE PERMITTED TO VOTE FOR CANDIDATES OF  
17 ONE POLITICAL PARTY ONLY." If a primary ballot contains  
18 political party columns on both sides of the ballot, the  
19 instructions to voters must include a statement that reads  
20 substantially as follows: "ADDITIONAL POLITICAL PARTIES ARE  
21 PRINTED ON THE OTHER SIDE OF THIS BALLOT. VOTE FOR ONE  
22 POLITICAL PARTY ONLY." At the bottom of each political party  
23 column on the primary ballot, the ballot must contain a  
24 statement that reads substantially as follows: "CONTINUE VOTING  
25 ON THE NONPARTISAN BALLOT." The instructions in section  
26 204D.08, subdivision 4, do not apply to optical scan partisan  
27 primary ballots. Electronic ballot displays and audio ballot  
28 readers must follow the order of offices and questions on the  
29 optical scan or paper ballot used in the same precinct, or the  
30 sample ballot posted for that precinct.

31 Sec. 26. Minnesota Statutes 2004, section 206.90,  
32 subdivision 8, is amended to read:

33 Subd. 8. [DUTIES OF ELECTION OFFICIALS.] The official in  
34 charge of elections in each municipality where an optical scan  
35 voting system is used shall have the electronic ballot marker  
36 that examines and marks votes on ballot cards or the machine

1 that transmits a ballot electronically to automatic tabulating  
2 equipment in the precinct and the automatic tabulating equipment  
3 that examines and counts votes as ballot cards are deposited  
4 into ballot boxes put in order, set, adjusted, and made ready  
5 for voting when delivered to the election precincts.

6 Sec. 27. Minnesota Statutes 2004, section 206.90,  
7 subdivision 9, is amended to read:

8 Subd. 9. [SPOILED BALLOT CARDS.] Automatic tabulating  
9 equipment and electronic ballot markers must be capable of  
10 examining a ballot card for defects and returning it to the  
11 voter before it is counted and deposited into the ballot box and  
12 must be programmed to return as a spoiled ballot a ballot card  
13 with votes for an office or question which exceed the number  
14 which the voter is entitled to cast and at a primary a ballot  
15 card with votes for candidates of more than one party.

16 Sec. 28. [APPROPRIATIONS.]

17 Subdivision 1. [ASSISTIVE VOTING TECHNOLOGY.] (a)  
18 \$25,000,000 is appropriated from the Help America Vote Act  
19 account to the secretary of state for grants to counties to  
20 purchase electronic voting systems equipped for individuals with  
21 disabilities that meet the requirements of Minnesota Statutes,  
22 section 206.80, and have been certified by the secretary of  
23 state under Minnesota Statutes, section 206.57. This  
24 appropriation is available until June 30, 2009.

25 (b) The secretary of state shall make a grant to each  
26 county in the amount of \$6,100 times the number of precincts in  
27 the county as certified by the county, which must not be more  
28 than the number of precincts used by the county in the state  
29 general election of 2004, plus \$6,100 to purchase an electronic  
30 voting system to be used by the county auditor for absentee and  
31 mail balloting, until the appropriation is exhausted. The grant  
32 may be used either to purchase ballot marking equipment for  
33 persons with disabilities and other voters or to purchase  
34 assistive voting machines that combine voting methods used for  
35 persons with disabilities with precinct-based optical scan  
36 voting machines.

1       Subd. 2. [OPTICAL SCAN EQUIPMENT.] \$6,000,000 is  
2 appropriated from the Help America Vote Act account to the  
3 secretary of state for grants to counties to purchase optical  
4 scan voting equipment. Counties are eligible for grants to the  
5 extent that they decide to purchase ballot marking machines and  
6 as a result do not have sufficient Help America Vote Act grant  
7 money remaining to also purchase a compatible precinct-based  
8 optical scan machine or central count machine. These grants  
9 must be allocated to counties at a rate of \$3,000 per eligible  
10 precinct until the appropriation is exhausted, with priority in  
11 the payment of grants to be given to counties currently using  
12 hand- and central-count voting systems and counties using  
13 precinct-count optical scan voting systems incompatible with  
14 assistive voting systems or ballot marking machines. This  
15 appropriation is available until June 30, 2009.

16       Subd. 3. [ASSISTIVE VOTING TECHNOLOGY OPERATING COSTS.]  
17 \$7,500,000 is appropriated from the Help America Vote Act  
18 account to the secretary of state for grants to counties to  
19 defray the operating costs of assistive voting equipment.  
20 "Operating costs" include actual county and municipal costs for  
21 hardware maintenance, election day technical support, software  
22 licensing, system programming, voting system testing, training  
23 of county or municipal staff in the use of the assistive voting  
24 system, transportation of the assistive voting systems to and  
25 from the polling places, and storage of the assistive voting  
26 systems between elections. Each county may submit a request for  
27 no more than \$600 per polling place per year until the  
28 appropriation is exhausted. This appropriation is available  
29 until June 30, 2009.

30       Subd. 4. [GRANT APPLICATION.] To receive a grant under  
31 this section, a county must apply to the secretary of state on  
32 forms prescribed by the secretary of state that set forth how  
33 the grant money will be spent, which must be in accordance with  
34 the plan adopted under section 29. A county may submit more  
35 than one grant application, so long as the appropriation remains  
36 available and the total amount granted to the county does not

1 exceed the county's allocation.

2 Subd. 5. [REPORT.] Each county receiving a grant under  
3 this section must report to the secretary of state by January  
4 15, 2006, the amount spent for the purchase of each kind of  
5 electronic voting system and for operating costs of the systems  
6 purchased. The secretary of state shall compile this  
7 information and report it to the legislature by February 15,  
8 2006.

9 Subd. 6. [ADMINISTRATIVE COSTS.] (a) \$54,000 is  
10 appropriated from the Help America Vote Act account to the  
11 commissioner of administration to establish the state voting  
12 systems contract required by new Minnesota Statutes, section  
13 206.805. \$36,000 is available until June 30, 2006, and \$18,000  
14 is available for the fiscal year ending June 30, 2007.

15 (b) \$50,000 is appropriated from the Help America Vote Act  
16 account to the secretary of state to establish the state voting  
17 systems contract required by new Minnesota Statutes, section  
18 206.805, and to administer the grants to counties under this  
19 section, to be available until June 30, 2007.

20 Sec. 29. [LOCAL EQUIPMENT PLANS.]

21 (a) The county auditor shall convene a working group of all  
22 city and town election officials in each county to create a  
23 local equipment plan. The working group must continue to meet  
24 until the plan is completed, which must be no later than  
25 September 15, 2005, or 45 days after state certification of  
26 assistive voting systems, whichever is later. The plan must:

27 (1) contain procedures to implement voting systems as  
28 defined in Minnesota Statutes, section 206.80, in each polling  
29 location;

30 (2) define who is responsible for any capital or operating  
31 costs related to election equipment not covered by federal money  
32 from the Help America Vote Act account; and

33 (3) outline how the federal money from the Help America  
34 Vote Act account will be spent.

35 (b) A county plan must provide funding to purchase either  
36 precinct-based optical scan voting equipment or assistive voting

1 machines that combine voting methods used for persons with  
2 disabilities with precinct-based optical scan voting machines  
3 for any precinct whose city or town requests it, if the  
4 requesting city or town agrees with the county on who will be  
5 responsible for operating and replacement costs related to the  
6 use of the precinct-based equipment.

7 (c) The plan must be submitted to the secretary of state  
8 for review and comment.

9 (d) The county board of commissioners must adopt the local  
10 equipment plan after a public hearing. Money from the Help  
11 America Vote Act account may not be expended until the plan is  
12 adopted. The county auditor shall file the adopted local  
13 equipment plan with the secretary of state.

14 Sec. 30. [MAIL BALLOTING.]

15 Nothing in this act is intended to preclude the use of mail  
16 balloting in those precincts where it is allowed under state law.

17 Sec. 31. [EFFECTIVE DATE.]

18 This act is effective the day following final enactment."

19 Delete the title and insert:

20 "A bill for an act relating to elections; setting standards  
21 for and providing for the acquisition of electronic voting  
22 systems; appropriating money from the Help America Vote Act  
23 account; amending Minnesota Statutes 2004, sections 201.022, by  
24 adding a subdivision; 206.56, subdivisions 2, 3, 7, 8, 9, by  
25 adding subdivisions; 206.57, subdivisions 1, 5; 206.61,  
26 subdivisions 4, 5; 206.80; 206.81; 206.82, subdivision 1;  
27 206.83; 206.84, subdivisions 1, 3, 6; 206.90, subdivisions 1, 5,  
28 6, 8, 9; proposing coding for new law in Minnesota Statutes,  
29 chapter 206."

**Senate Counsel, Research,  
and Fiscal Analysis**

G-17 STATE CAPITOL  
75 REV. DR. MARTIN LUTHER KING, JR. BLVD.  
ST. PAUL, MN 55155-1606  
(651) 296-4791  
FAX: (651) 296-7747  
JO ANNE ZOFF SELLNER  
DIRECTOR

**Senate**  

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**State of Minnesota**

**S.F. No. 290 - HAVA Voting Equipment Appropriation  
A-8 Delete-everything Amendment**

**Author:** Senator Linda Higgins

**Prepared by:** Peter S. Wattson, Senate Counsel (651/296-3812) *PSW*

**Date:** May 2, 2005

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The **SCS0290A-8** delete-everything amendment incorporates many of the changes made to the HAVA Voting Equipment Appropriation bill by the House of Representatives and included in H.F. No. 874, the companion to S.F. No. 290, or in their version of the State Government Appropriations bill, H.F. No. 1481, or both. The language taken from the House bills, however, has been extensively rewritten.

**Section 1** is from both H.F. No. 874 and H.F. No. 1481. It requires the Secretary of State to consult with local election officials in the development of the statewide voter registration system.

**Sections 2 to 10** are only in H.F. No. 1481. They add or amend various definitions used in the chapter on electronic voting systems and that apply to assistive voting technology for people with disabilities. They have been rewritten to alphabetize them, eliminate redundancy, and reduce substantive policy making. The substantive requirement that a machine that transmits votes electronically to be counted by another machine must be secure and create an individual, discrete paper record of each vote has been deleted from the definitions of "ballot," "audio ballot reader," "electronic ballot display," and "electronic ballot marker," and confined to **section 15**, which sets forth the substantive requirements for electronic voting systems.

**Section 5** defines a ballot to include the "electronic record of each vote choice made by a voter at an election and transmitted electronically to automatic tabulating equipment." The House definition is more limiting: it refers to "data . . . transmitted . . . to the optical scan machine in the precinct . . ." It thus would exclude from the definition of a ballot electronic data that was transmitted beyond the precinct or to a tabulating machine other than an optical scan machine.

**Section 9** defines an electronic voting system to include one where the voter transmits a ballot, rather than directly marking it, and to include systems that count votes in the precinct rather than at a counting center.

**Sections 11 to 14** are likewise only in H.F. No. 1481. They set forth the substantive requirements for electronic voting systems, adding references to the audio ballot readers, electronic ballot displays, and electronic ballot markers that are used with assistive voting technology for people with disabilities.

**Section 12** delays for one year the requirement that assistive voting technology be used in county, municipal, and school district elections.

**Section 15** is already in S.F. No. 290. The House revisions require votes for too many candidates and votes for more than one party in a primary to be “automatically” rejected by an electronic voting system, even if the machine on which the votes are cast is not one that tabulates them. The House revisions allow for the use of an electronic voting system that neither counts nor creates an optical scan ballot, but rather “transmits a vote electronically to an optical scan machine in the precinct while creating a paper record of each vote.” The House language has been rewritten to broaden the types of machines that may be used to count the votes and where they may be counted, and to specify in more detail the paper record that must be produced. The new language requires a system that “securely transmits a ballot electronically to automatic tabulating equipment in the precinct or at a counting center while creating an individual, discrete, permanent paper record of all the votes on the ballot.”

**Section 16**, providing for contracts to purchase state voting systems, is already in S.F. No. 290. The amendment changes the proposed coding so that the section follows the substantive requirements for the systems that are to be purchased. The House revisions allow for more than one state contract. They require the advisory committee to be appointed by the Secretary of State, rather than by the Commissioner of Administration. Other elements of the House position are not included in this amendment: the Commissioner of Administration is not excluded from the development of the contracts, and the requirements relating to a perpetual license to use and modify the software, cumulative voting, and escrow of the source code are retained.

**Sections 17 to 27** are taken from H.F. No. 1481. To the current law on how electronic voting systems must be used, they add references to the assistive voting technology that will be used by people with disabilities, generally requiring it to be set up and tested in a manner similar to optical scan machines.

**Section 28, Appropriations**, has been revised to be similar to, but not the same as, the House bills. The appropriation in **subdivision 1** for assistive voting technology is increased from \$18 million to \$25 million, the same as the House bills. The increase is necessary to cover the escalating costs of

S.F. No. 290  
May 2, 2005  
Page 3

assistive voting technology, up from \$4,100 per precinct in the Senate bill to \$6,100 per precinct in the House bill.

The appropriation in **subdivision 2** for optical scan equipment is reduced from \$18 million to \$6 million. At a rate of \$3,000 per precinct, this is enough for about half the state's 4,100 precincts.

The House revision moves the appropriation for operating costs of electronic voting systems out of the appropriation for optical scan equipment and makes it a separate appropriation for operating costs of assistive voting technology only. The House added an appropriation of \$5 million to the Secretary of State for further development of the statewide voter registration system and "other election administration improvements." **Subdivision 3** in this amendment adds that \$5 million to the appropriation for assistive voting technology operating costs, making it \$7.5 million, rather than \$2.5 million as in the House bills.

**Subdivisions 4 to 6** retain language that was in **S.F. No. 290**.

**Subdivision 4** adds a requirement from the House bills that grant money be spent in accordance with the local equipment plans developed under **section 29**.

**Section 29** delays from June 30 to September 15, 2005, or 45 days after state certification of assistive voting systems, whichever is later, the date for completion of the local equipment plans. It also broadens the scope of the plans from procedures to implement "assisted voting technology for use by disabled voters" to procedures to implement all the requirements for use of electronic voting systems.

**Section 30** retains language to save the use of mail balloting where it is allowed under state law. The House bills omit this section.

PSW:ph

cc: Kevin Corbid

**Senator Cohen introduced--****S.F. No. 1468:** Referred to the Committee on State and Local Government Operations.

1                                   A bill for an act

2           relating to public employers; modifying public  
3           employer reimbursement for compensation paid to  
4           certain firefighters and peace officers; creating a  
5           panel to evaluate claims; amending Minnesota Statutes  
6           2004, sections 214.04, subdivision 1; 299A.465,  
7           subdivision 4, by adding subdivisions.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

9           Section 1. Minnesota Statutes 2004, section 214.04,  
10          subdivision 1, is amended to read:

11           Subdivision 1. [SERVICES PROVIDED.] (a) The commissioner  
12          of administration with respect to the Board of Electricity<sub>7</sub>; the  
13          commissioner of education with respect to the Board of  
14          Teaching<sub>7</sub>; the commissioner of public safety with respect to the  
15          Board of Private Detective and Protective Agent Services, the  
16          panel established pursuant to section 299A.465, subdivision 7,  
17          and the Board of Peace Officer Standards and Training<sub>7</sub>; and the  
18          commissioner of revenue with respect to the Board of Assessors,  
19          shall provide suitable offices and other space, joint conference  
20          and hearing facilities, examination rooms, and the following  
21          administrative support services: purchasing service, accounting  
22          service, advisory personnel services, consulting services  
23          relating to evaluation procedures and techniques, data  
24          processing, duplicating, mailing services, automated printing of  
25          license renewals, and such other similar services of a  
26          housekeeping nature as are generally available to other agencies

1 of state government. Investigative services shall be provided  
 2 the boards by employees of the Office of Attorney General. The  
 3 commissioner of health with respect to the health-related  
 4 licensing boards shall provide mailing and office supply  
 5 services and may provide other facilities and services listed in  
 6 this subdivision at a central location upon request of the  
 7 health-related licensing boards. The commissioner of commerce  
 8 with respect to the remaining non-health-related licensing  
 9 boards shall provide the above facilities and services at a  
 10 central location for the remaining non-health-related licensing  
 11 boards. The legal and investigative services for the boards  
 12 shall be provided by employees of the attorney general assigned  
 13 to the departments servicing the boards. Notwithstanding the  
 14 foregoing, the attorney general shall not be precluded by this  
 15 section from assigning other attorneys to service a board if  
 16 necessary in order to insure competent and consistent legal  
 17 representation. Persons providing legal and investigative  
 18 services shall to the extent practicable provide the services on  
 19 a regular basis to the same board or boards.

20 (b) The requirements in paragraph (a) with respect to the  
 21 panel established in section 299A.465, subdivision 7, expire  
 22 July 1, 2008.

23 Sec. 2. Minnesota Statutes 2004, section 299A.465,  
 24 subdivision 4, is amended to read:

25 Subd. 4. [PUBLIC EMPLOYER REIMBURSEMENT.] A public  
 26 employer subject to this section may annually apply by August 1  
 27 for the preceding fiscal year to the commissioner of public  
 28 safety for reimbursement ~~to help defray a portion~~ of its costs  
 29 of complying with this section. The commissioner shall provide  
 30 ~~an equal pro-rata share to~~ reimburse the public employer out of  
 31 the public safety officer's benefit account ~~based on the~~  
 32 ~~availability of funds for each eligible officer, firefighter,~~  
 33 ~~and qualifying dependents. Individual shares must~~ Reimbursement  
 34 must not exceed the actual costs of providing coverage under  
 35 this section by a public employer.

36 Sec. 3. Minnesota Statutes 2004, section 299A.465, is

1 amended by adding a subdivision to read:

2       Subd. 6. [DETERMINATION OF SCOPE AND DUTIES.] (a) Whenever  
3 a peace officer or firefighter has been approved to receive a  
4 duty-related disability pension, the officer or firefighter may  
5 apply to the panel established in subdivision 7 for a  
6 determination of whether or not the officer or firefighter meets  
7 the requirements in subdivision 1, paragraph (a), clause (2).  
8 In making this decision, the panel shall determine whether or  
9 not the officer's or firefighter's occupational duties or  
10 professional responsibilities put the officer or firefighter at  
11 risk for the type of illness or injury actually sustained. A  
12 final determination by the panel is binding on the applicant and  
13 the employer, subject to any right of judicial review.  
14 Applications must be made within 90 days of receipt of approval  
15 of a duty-related pension and must be acted upon by the panel  
16 within 90 days of receipt. Applications that are not acted upon  
17 within 90 days of receipt by the panel are approved.  
18 Applications and supporting documents are private data.

19       (b) This subdivision expires July 1, 2008.

20       Sec. 4. Minnesota Statutes 2004, section 299A.465, is  
21 amended by adding a subdivision to read:

22       Subd. 7. [COURSE AND SCOPE OF DUTIES PANEL.] (a) A panel  
23 is established for the purpose set forth in subdivision 6,  
24 composed of the following seven members:

25       (1) two members recommended by the Minnesota League of  
26 Cities or a successor;

27       (2) one member recommended by the Association of Minnesota  
28 Counties or a successor;

29       (3) two members recommended by the Minnesota Police and  
30 Peace Officers Association or a successor;

31       (4) one member recommended by the Minnesota Professional  
32 Firefighters Association or a successor; and

33       (5) one nonorganizational member recommended by the six  
34 organizational members.

35       (b) Recommendations must be forwarded to the commissioner  
36 of public safety who shall appoint the recommended members after

1 determining that they were properly recommended. Members shall  
2 serve for two years or until their successors have been seated.  
3 No member may serve more than three consecutive terms.  
4 Vacancies on the panel must be filled by recommendation by the  
5 organization whose representative's seat has been vacated. A  
6 vacancy of the nonorganizational seat must be filled by the  
7 recommendation of the panel. Vacancies may be declared by the  
8 panel in cases of resignation or when a member misses three or  
9 more consecutive meetings, or by a nominating organization when  
10 its nominee is no longer a member in good standing of the  
11 organization, an employee of the organization, or an employee of  
12 a member in good standing of the organization. A member  
13 appointed because of a vacancy shall serve until the expiration  
14 of the vacated term.

15 (c) Panel members shall be reimbursed for expenses related  
16 to their duties according to section 15.059, subdivision 3,  
17 paragraph (a), but shall not receive compensation or per diem  
18 payments. The panel's proceedings and determinations constitute  
19 a quasi-judicial process and its operation must comply with  
20 chapter 14. Membership on the panel does not constitute holding  
21 a public office and members of the panel are not required to  
22 take and file oaths of office or submit a public official's bond  
23 before serving on the panel. No member of the panel may be  
24 disqualified from holding any public office or employment by  
25 reason of being appointed to the panel. Members of the panel  
26 and staff or consultants working with the panel are covered by  
27 the immunity provision in section 214.34, subdivision 2. The  
28 panel shall elect a chair and adopt rules of order. The panel  
29 shall convene no later than July 1, 2005.

30 (d) This subdivision expires July 1, 2008.

31 Sec. 5. [EFFECTIVE DATE.]

32 Sections 1, 2, and 4 are effective the day after final  
33 enactment. Section 3 is effective July 1, 2005, and applies to  
34 duty-related pension approvals made on or after that date.

**Fiscal Note – 2005-06 Session**

**Bill #: S1468-0 Complete Date: 04/07/05**

**Chief Author: COHEN, RICHARD**

**Title: PUB SAFETY OFFICERS REIMBURSEMENT**

<b>Fiscal Impact</b>	<b>Yes</b>	<b>No</b>
State	X	
Local	X	
Fee/Departmental Earnings		X
Tax Revenue		X

**Agency Name:** Public Safety Dept

This table reflects fiscal impact to state government. Local government impact is reflected in the narrative only.

<b>Dollars (in thousands)</b>	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Expenditures</b>					
General Fund		609	738	885	1,053
<b>Less Agency Can Absorb</b>					
-- No Impact --					
<b>Net Expenditures</b>					
General Fund		609	738	885	1,053
<b>Revenues</b>					
-- No Impact --					
<b>Net Cost &lt;Savings&gt;</b>					
General Fund		609	738	885	1,053
<b>Total Cost &lt;Savings&gt; to the State</b>		609	738	885	1,053

	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Full Time Equivalents</b>					
-- No Impact --					
<b>Total FTE</b>					

**Bill Description**

The bill modifies the state’s method of reimbursement of public employers for health insurance coverage paid by public employers for certain firefighters and peace officers.

**Assumptions**

Minnesota Statutes 299A.465 provides for continued health insurance coverage for peace officers and firefighters disabled in the line of duty resulting in the officer’s or firefighter’s retirement or separation from services. The officer’s or firefighter’s employer is required to continue to provide health coverage.

A public employer subject to this section may annually apply by August 1 for the preceding fiscal year to the commissioner of public safety for reimbursement to help defray a portion of its costs of complying with this section. Under current law the commissioner shall provide an equal pro rata share to the public employer out of the public safety officer’s benefit account based on the availability of funds for each eligible officer, firefighter, and qualifying dependents. This bill amends this section by requiring the state to reimburse the public employers for all its costs of complying with this section.

The current level of funding for this reimbursement activity is \$314,000 per year. The Department of Public Safety received a total of \$809,611.44 in claims from public employers for the period of July 1, 2003 through June 30, 2004 and provided a total of \$313,987.56 in reimbursements. All public employers that presented claims by August 1, 2004 were reimbursed up to \$194.54 per month or the actual monthly cost if the actual cost was less than \$194.54.

We are making the assumption that the dollar value of the claims will increase each year by approximately 14% assuming additional officers and firefighters being claims each year and rising health insurance costs. In January 2005 the state’s cost for employee and dependent health insurance increased by 15% over the previous year.

**Expenditure and/or Revenue Formula**

	FY2006	FY2007	FY2008	FY2009
General Fund Appropriation-	\$314,000	\$314,000	\$314,000	\$314,000
Projected claims based on Claims submitted 8/1/04 (Assuming a 14%> in dollars claimed)	\$922,957	\$1,052,170	\$1,199,474	\$1,367,400
Projected claims over appropriations	-\$608,957	-\$738,170	-\$885,474	-\$1,053,400

**Long-Term Fiscal Considerations**

The cost to the state in continuing to provide reimbursement to public employers for all its costs in providing health insurance coverage will far exceed the states ability to provide reimbursement to all public employers.

**Local Government Costs**

Under this bill, not all public employers will be reimbursed for their costs in providing health insurance coverage.

**References/Sources**

FN Coord Signature: FRANK AHRENS  
Date: 04/07/05 Phone: 296-9484

**EBO Comments**

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: NORMAN FOSTER  
Date: 04/07/05 Phone: 215-0594

1 To: Senator Cohen, Chair

2 Committee on Finance

3 Senator Berglin,

4 Chair of the Health and Human Services Budget Division, to  
5 which was referred

6 S.F. No. 1710: A bill for an act relating to human  
7 services; implementing child protection, child care, and child  
8 and family support provisions; amending Minnesota Statutes 2004,  
9 sections 119A.43, subdivision 2; 119B.025, subdivision 1;  
10 119B.03, subdivision 6; 119B.09, subdivisions 4, 9; 144D.025;  
11 256.978, subdivision 2; 256D.02, subdivision 17; 256D.051,  
12 subdivision 6c; 256I.04, subdivision 2a; 256I.05, by adding a  
13 subdivision; 256J.626, subdivisions 6, 7, 8; 256J.751,  
14 subdivisions 2, 5; 257.85, subdivisions 2, 3; 259.23,  
15 subdivisions 1, 2; 259.41, subdivision 3; 259.67, subdivisions  
16 2, 4; 259.75, subdivision 1; 259.79, subdivision 1; 259.85,  
17 subdivision 1; 260.012; 260C.001, subdivision 3; 260C.007,  
18 subdivision 8; 260C.151, subdivision 6; 260C.178; 260C.201,  
19 subdivisions 1, 10, 11; 260C.312; 260C.317, subdivision 3;  
20 518.551, subdivision 5; 518.68, subdivision 2; 548.091,  
21 subdivision 1a; 626.556, subdivisions 1, 2, 3, 10, 10b, 10e,  
22 10f, 10i, 11, 11c, by adding subdivisions; repealing Minnesota  
23 Statutes 2004, sections 626.5551, subdivisions 1, 2, 3, 4, 5;  
24 Minnesota Rules, parts 9500.1206, subparts 20, 26d, 27;  
25 9560.0220, subpart 6, item B; 9560.0230, subpart 2.

26 Reports the same back with the recommendation that the bill  
27 do pass and be referred to the full committee.

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*Linda Berglin*.....  
(Division Chair)

April 19, 2005.....  
(Date of Division action)

1 A bill for an act  
2 relating to human services; implementing child  
3 protection, child care, and child and family support  
4 provisions; amending Minnesota Statutes 2004, sections  
5 119A.43, subdivision 2; 119B.025, subdivision 1;  
6 119B.03, subdivision 6; 119B.09, subdivisions 4, 9;  
7 144D.025; 256.978, subdivision 2; 256D.02, subdivision  
8 17; 256D.051, subdivision 6c; 256I.04, subdivision 2a;  
9 256I.05, by adding a subdivision; 256J.626,  
10 subdivisions 6, 7, 8; 256J.751, subdivisions 2, 5;  
11 257.85, subdivisions 2, 3; 259.23, subdivisions 1, 2;  
12 259.41, subdivision 3; 259.67, subdivisions 2, 4;  
13 259.75, subdivision 1; 259.79, subdivision 1; 259.85,  
14 subdivision 1; 260.012; 260C.001, subdivision 3;  
15 260C.007, subdivision 8; 260C.151, subdivision 6;  
16 260C.178; 260C.201, subdivisions 1, 10, 11; 260C.312;  
17 260C.317, subdivision 3; 518.551, subdivision 5;  
18 518.68, subdivision 2; 548.091, subdivision 1a;  
19 626.556, subdivisions 1, 2, 3, 10, 10b, 10e, 10f, 10i,  
20 11, 11c, by adding subdivisions; repealing Minnesota  
21 Statutes 2004, sections 626.5551, subdivisions 1, 2,  
22 3, 4, 5; Minnesota Rules, parts 9500.1206, subparts  
23 20, 26d, 27; 9560.0220, subpart 6, item B; 9560.0230,  
24 subpart 2.

25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

26 ARTICLE 1

27 CHILD WELFARE: ALTERNATIVE RESPONSE

28 Section 1. Minnesota Statutes 2004, section 626.556,  
29 subdivision 1, is amended to read:

30 Subdivision 1. [PUBLIC POLICY.] The legislature hereby  
31 declares that the public policy of this state is to protect  
32 children whose health or welfare may be jeopardized through  
33 physical abuse, neglect, or sexual abuse. While it is  
34 recognized that most parents want to keep their children safe,  
35 sometimes circumstances or conditions interfere with their

1 ability to do so. When this occurs, families are best served by  
2 interventions that engage their protective capacities and  
3 address immediate safety concerns and ongoing risks of child  
4 maltreatment. In furtherance of this public policy, it is the  
5 intent of the legislature under this section to strengthen the  
6 family and make the home, school, and community safe for  
7 children by promoting responsible child care in all settings;  
8 and to provide, when necessary, a safe temporary or permanent  
9 home environment for physically or sexually abused or neglected  
10 children.

11 In addition, it is the policy of this state to require the  
12 reporting of neglect, physical or sexual abuse of children in  
13 the home, school, and community settings; to provide for the  
14 voluntary reporting of abuse or neglect of children; to require  
15 the a family assessment and, when appropriate, as the preferred  
16 response to reports not alleging substantial child endangerment;  
17 to require an investigation of-the-reports when the report  
18 alleges substantial child endangerment; and to provide  
19 protective and-counseling, family support, and family  
20 preservation services when needed in appropriate cases.

21 Sec. 2. Minnesota Statutes 2004, section 626.556,  
22 subdivision 2, is amended to read:

23 Subd. 2. [DEFINITIONS.] As used in this section, the  
24 following terms have the meanings given them unless the specific  
25 content indicates otherwise:

26 (a) "Family assessment" means a comprehensive assessment of  
27 child safety, risk of subsequent child maltreatment, and family  
28 strengths and needs that is applied to a child maltreatment  
29 report that does not allege substantial child endangerment.  
30 Family assessment does not include a determination as to whether  
31 child maltreatment occurred but does determine the need for  
32 services to address the safety of family members and the risk of  
33 subsequent maltreatment.

34 (b) "Investigation" means fact gathering related to the  
35 current safety of a child and the risk of subsequent  
36 maltreatment that determines whether child maltreatment occurred

1 and whether child protective services are needed. An  
2 investigation must be used when reports involve substantial  
3 child endangerment, and for reports of maltreatment in  
4 facilities required to be licensed under chapter 245A or 245B;  
5 under sections 144.50 to 144.58 and 241.021; in a school as  
6 defined in sections 120A.05, subdivisions 9, 11, and 13, and  
7 124D.10; or in a nonlicensed personal care provider association  
8 as defined in sections 256B.04, subdivision 16, and 256B.0625,  
9 subdivision 19a.

10 (c) "Substantial child endangerment" means a person  
11 responsible for a child's care, a person who has a significant  
12 relationship to the child as defined in section 609.341, or a  
13 person in a position of authority as defined in section 609.341,  
14 who by act or omission commits or attempts to commit an act  
15 against a child under their care that constitutes any of the  
16 following:

17 (1) egregious harm as defined in section 260C.007,  
18 subdivision 14;

19 (2) sexual abuse as defined in paragraph (d);

20 (3) abandonment under section 260C.301, subdivision 2;

21 (4) neglect as defined in paragraph (f), clause (2), that  
22 substantially endangers the child's physical or mental health,  
23 including a growth delay, which may be referred to as failure to  
24 thrive, that has been diagnosed by a physician and is due to  
25 parental neglect;

26 (5) murder in the first, second, or third degree under  
27 section 609.185, 609.19, or 609.195;

28 (6) manslaughter in the first or second degree under  
29 section 609.20 or 609.205;

30 (7) assault in the first, second, or third degree under  
31 section 609.221, 609.222, or 609.223;

32 (8) solicitation, inducement, and promotion of prostitution  
33 under section 609.322;

34 (9) criminal sexual conduct under sections 609.342 to  
35 609.3451;

36 (10) solicitation of children to engage in sexual conduct

1 under section 609.352;

2 (11) malicious punishment or neglect or endangerment of a  
3 child under section 609.377 or 609.378;

4 (12) use of a minor in sexual performance under section  
5 617.246; or

6 (13) parental behavior, status, or condition which mandates  
7 that the county attorney file a termination of parental rights  
8 petition under section 260C.301, subdivision 3, paragraph (a).

9 (d) "Sexual abuse" means the subjection of a child by a  
10 person responsible for the child's care, by a person who has a  
11 significant relationship to the child, as defined in section  
12 609.341, or by a person in a position of authority, as defined  
13 in section 609.341, subdivision 10, to any act which constitutes  
14 a violation of section 609.342 (criminal sexual conduct in the  
15 first degree), 609.343 (criminal sexual conduct in the second  
16 degree), 609.344 (criminal sexual conduct in the third degree),  
17 609.345 (criminal sexual conduct in the fourth degree), or  
18 609.3451 (criminal sexual conduct in the fifth degree). Sexual  
19 abuse also includes any act which involves a minor which  
20 constitutes a violation of prostitution offenses under sections  
21 609.321 to 609.324 or 617.246. Sexual abuse includes threatened  
22 sexual abuse.

23 ~~(b)~~ (e) "Person responsible for the child's care" means (1)  
24 an individual functioning within the family unit and having  
25 responsibilities for the care of the child such as a parent,  
26 guardian, or other person having similar care responsibilities,  
27 or (2) an individual functioning outside the family unit and  
28 having responsibilities for the care of the child such as a  
29 teacher, school administrator, other school employees or agents,  
30 or other lawful custodian of a child having either full-time or  
31 short-term care responsibilities including, but not limited to,  
32 day care, babysitting whether paid or unpaid, counseling,  
33 teaching, and coaching.

34 ~~(c)~~ (f) "Neglect" means:

35 (1) failure by a person responsible for a child's care to  
36 supply a child with necessary food, clothing, shelter, health,

1 medical, or other care required for the child's physical or  
2 mental health when reasonably able to do so;

3 (2) failure to protect a child from conditions or actions  
4 that seriously endanger the child's physical or mental health  
5 when reasonably able to do so, including a growth delay, which  
6 may be referred to as a failure to thrive, that has been  
7 diagnosed by a physician and is due to parental neglect;

8 (3) failure to provide for necessary supervision or child  
9 care arrangements appropriate for a child after considering  
10 factors as the child's age, mental ability, physical condition,  
11 length of absence, or environment, when the child is unable to  
12 care for the child's own basic needs or safety, or the basic  
13 needs or safety of another child in their care;

14 (4) failure to ensure that the child is educated as defined  
15 in sections 120A.22 and 260C.163, subdivision 11, which does not  
16 include a parent's refusal to provide the parent's child with  
17 sympathomimetic medications, consistent with section 125A.091,  
18 subdivision 5;

19 (5) nothing in this section shall be construed to mean that  
20 a child is neglected solely because the child's parent,  
21 guardian, or other person responsible for the child's care in  
22 good faith selects and depends upon spiritual means or prayer  
23 for treatment or care of disease or remedial care of the child  
24 in lieu of medical care; except that a parent, guardian, or  
25 caretaker, or a person mandated to report pursuant to  
26 subdivision 3, has a duty to report if a lack of medical care  
27 may cause serious danger to the child's health. This section  
28 does not impose upon persons, not otherwise legally responsible  
29 for providing a child with necessary food, clothing, shelter,  
30 education, or medical care, a duty to provide that care;

31 (6) prenatal exposure to a controlled substance, as defined  
32 in section 253B.02, subdivision 2, used by the mother for a  
33 nonmedical purpose, as evidenced by withdrawal symptoms in the  
34 child at birth, results of a toxicology test performed on the  
35 mother at delivery or the child at birth, or medical effects or  
36 developmental delays during the child's first year of life that

1 medically indicate prenatal exposure to a controlled substance;

2 (7) "medical neglect" as defined in section 260C.007,  
3 subdivision 6, clause (5);

4 (8) chronic and severe use of alcohol or a controlled  
5 substance by a parent or person responsible for the care of the  
6 child that adversely affects the child's basic needs and safety;  
7 or

8 (9) emotional harm from a pattern of behavior which  
9 contributes to impaired emotional functioning of the child which  
10 may be demonstrated by a substantial and observable effect in  
11 the child's behavior, emotional response, or cognition that is  
12 not within the normal range for the child's age and stage of  
13 development, with due regard to the child's culture.

14 ~~(d)~~ (g) "Physical abuse" means any physical injury, mental  
15 injury, or threatened injury, inflicted by a person responsible  
16 for the child's care on a child other than by accidental means,  
17 or any physical or mental injury that cannot reasonably be  
18 explained by the child's history of injuries, or any aversive or  
19 deprivation procedures, or regulated interventions, that have  
20 not been authorized under section 121A.67 or 245.825. Abuse  
21 does not include reasonable and moderate physical discipline of  
22 a child administered by a parent or legal guardian which does  
23 not result in an injury. Abuse does not include the use of  
24 reasonable force by a teacher, principal, or school employee as  
25 allowed by section 121A.582. Actions which are not reasonable  
26 and moderate include, but are not limited to, any of the  
27 following that are done in anger or without regard to the safety  
28 of the child:

29 (1) throwing, kicking, burning, biting, or cutting a child;

30 (2) striking a child with a closed fist;

31 (3) shaking a child under age three;

32 (4) striking or other actions which result in any  
33 nonaccidental injury to a child under 18 months of age;

34 (5) unreasonable interference with a child's breathing;

35 (6) threatening a child with a weapon, as defined in  
36 section 609.02, subdivision 6;

1 (7) striking a child under age one on the face or head;

2 (8) purposely giving a child poison, alcohol, or dangerous,  
3 harmful, or controlled substances which were not prescribed for  
4 the child by a practitioner, in order to control or punish the  
5 child; or other substances that substantially affect the child's  
6 behavior, motor coordination, or judgment or that results in  
7 sickness or internal injury, or subjects the child to medical  
8 procedures that would be unnecessary if the child were not  
9 exposed to the substances;

10 (9) unreasonable physical confinement or restraint not  
11 permitted under section 609.379, including but not limited to  
12 tying, caging, or chaining; or

13 (10) in a school facility or school zone, an act by a  
14 person responsible for the child's care that is a violation  
15 under section 121A.58.

16 ~~(e)~~ (h) "Report" means any report received by the local  
17 welfare agency, police department, county sheriff, or agency  
18 responsible for assessing or investigating maltreatment pursuant  
19 to this section.

20 ~~(f)~~ (i) "Facility" means a licensed or unlicensed day care  
21 facility, residential facility, agency, hospital, sanitarium, or  
22 other facility or institution required to be licensed under  
23 sections 144.50 to 144.58, 241.021, or 245A.01 to 245A.16, or  
24 chapter 245B; or a school as defined in sections 120A.05,  
25 subdivisions 9, 11, and 13; and 124D.10; or a nonlicensed  
26 personal care provider organization as defined in sections  
27 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

28 ~~(g)~~ (j) "Operator" means an operator or agency as defined  
29 in section 245A.02.

30 ~~(h)~~ (k) "Commissioner" means the commissioner of human  
31 services.

32 ~~(i) "Assessment" includes authority to interview the child,~~  
33 ~~the person or persons responsible for the child's care, the~~  
34 ~~alleged perpetrator, and any other person with knowledge of the~~  
35 ~~abuse or neglect for the purpose of gathering the facts,~~  
36 ~~assessing the risk to the child, and formulating a plan.~~

1       ~~(j)~~ (l) "Practice of social services," for the purposes of  
2 subdivision 3, includes but is not limited to employee  
3 assistance counseling and the provision of guardian ad litem and  
4 parenting time expeditor services.

5       ~~(k)~~ (m) "Mental injury" means an injury to the  
6 psychological capacity or emotional stability of a child as  
7 evidenced by an observable or substantial impairment in the  
8 child's ability to function within a normal range of performance  
9 and behavior with due regard to the child's culture.

10       ~~(l)~~ (n) "Threatened injury" means a statement, overt act,  
11 condition, or status that represents a substantial risk of  
12 physical or sexual abuse or mental injury. Threatened injury  
13 includes, but is not limited to, exposing a child to a person  
14 responsible for the child's care, as defined in  
15 paragraph ~~(b)~~ (e), clause (1), who has:

16           (1) subjected a child to, or failed to protect a child  
17 from, an overt act or condition that constitutes egregious harm,  
18 as defined in section 260C.007, subdivision 14, or a similar law  
19 of another jurisdiction;

20           (2) been found to be palpably unfit under section 260C.301,  
21 paragraph (b), clause (4), or a similar law of another  
22 jurisdiction;

23           (3) committed an act that has resulted in an involuntary  
24 termination of parental rights under section 260C.301, or a  
25 similar law of another jurisdiction; or

26           (4) committed an act that has resulted in the involuntary  
27 transfer of permanent legal and physical custody of a child to a  
28 relative under section 260C.201, subdivision 11, paragraph (d),  
29 clause (1), or a similar law of another jurisdiction.

30       ~~(m)~~ (o) Persons who conduct assessments or investigations  
31 under this section shall take into account accepted  
32 child-rearing practices of the culture in which a child  
33 participates and accepted teacher discipline practices, which  
34 are not injurious to the child's health, welfare, and safety.

35       Sec. 3. Minnesota Statutes 2004, section 626.556,  
36 subdivision 3, is amended to read:

1 Subd. 3. [PERSONS MANDATED TO REPORT.] (a) A person who  
2 knows or has reason to believe a child is being neglected or  
3 physically or sexually abused, as defined in subdivision 2, or  
4 has been neglected or physically or sexually abused within the  
5 preceding three years, shall immediately report the information  
6 to the local welfare agency, agency responsible for assessing or  
7 investigating the report, police department, or the county  
8 sheriff if the person is:

9 (1) a professional or professional's delegate who is  
10 engaged in the practice of the healing arts, social services,  
11 hospital administration, psychological or psychiatric treatment,  
12 child care, education, probation and correctional services, or  
13 law enforcement; or

14 (2) employed as a member of the clergy and received the  
15 information while engaged in ministerial duties, provided that a  
16 member of the clergy is not required by this subdivision to  
17 report information that is otherwise privileged under section  
18 595.02, subdivision 1, paragraph (c).

19 The police department or the county sheriff, upon receiving  
20 a report, shall immediately notify the local welfare agency or  
21 agency responsible for assessing or investigating the report,  
22 orally and in writing. The local welfare agency, or agency  
23 responsible for assessing or investigating the report, upon  
24 receiving a report, shall immediately notify the local police  
25 department or the county sheriff orally and in writing. The  
26 county sheriff and the head of every local welfare agency,  
27 agency responsible for assessing or investigating reports, and  
28 police department shall each designate a person within their  
29 agency, department, or office who is responsible for ensuring  
30 that the notification duties of this paragraph and paragraph (b)  
31 are carried out. Nothing in this subdivision shall be construed  
32 to require more than one report from any institution, facility,  
33 school, or agency.

34 (b) Any person may voluntarily report to the local welfare  
35 agency, agency responsible for assessing or investigating the  
36 report, police department, or the county sheriff if the person

1 knows, has reason to believe, or suspects a child is being or  
2 has been neglected or subjected to physical or sexual abuse.  
3 The police department or the county sheriff, upon receiving a  
4 report, shall immediately notify the local welfare agency or  
5 agency responsible for assessing or investigating the report,  
6 orally and in writing. The local welfare agency or agency  
7 responsible for assessing or investigating the report, upon  
8 receiving a report, shall immediately notify the local police  
9 department or the county sheriff orally and in writing.

10 (c) A person mandated to report physical or sexual child  
11 abuse or neglect occurring within a licensed facility shall  
12 report the information to the agency responsible for licensing  
13 the facility under sections 144.50 to 144.58; 241.021; 245A.01  
14 to 245A.16; or chapter 245B; or a nonlicensed personal care  
15 provider organization as defined in sections 256B.04,  
16 subdivision 16; and 256B.0625, subdivision 19. A health or  
17 corrections agency receiving a report may request the local  
18 welfare agency to provide assistance pursuant to subdivisions  
19 10, 10a, and 10b. A board or other entity whose licensees  
20 perform work within a school facility, upon receiving a  
21 complaint of alleged maltreatment, shall provide information  
22 about the circumstances of the alleged maltreatment to the  
23 commissioner of education. Section 13.03, subdivision 4,  
24 applies to data received by the commissioner of education from a  
25 licensing entity.

26 (d) Any person mandated to report shall receive a summary  
27 of the disposition of any report made by that reporter,  
28 including whether the case has been opened for child protection  
29 or other services, or if a referral has been made to a community  
30 organization, unless release would be detrimental to the best  
31 interests of the child. Any person who is not mandated to  
32 report shall, upon request to the local welfare agency, receive  
33 a concise summary of the disposition of any report made by that  
34 reporter, unless release would be detrimental to the best  
35 interests of the child.

36 (e) For purposes of this subdivision, "immediately" means

1 as soon as possible but in no event longer than 24 hours.

2 Sec. 4. Minnesota Statutes 2004, section 626.556, is  
3 amended by adding a subdivision to read:

4 Subd. 3d. [AUTHORITY TO INTERVIEW.] The agency responsible  
5 for assessing or investigating reports of child maltreatment has  
6 the authority to interview the child, the person or persons  
7 responsible for the child's care, the alleged perpetrator, and  
8 any other person with knowledge of the abuse or neglect for the  
9 purpose of gathering the facts, assessing safety and risk to the  
10 child, and formulating a plan.

11 Sec. 5. Minnesota Statutes 2004, section 626.556,  
12 subdivision 10, is amended to read:

13 Subd. 10. [DUTIES OF LOCAL WELFARE AGENCY AND LOCAL LAW  
14 ENFORCEMENT AGENCY UPON RECEIPT OF A REPORT.] (a) Upon receipt  
15 of a report, the local welfare agency shall determine whether to  
16 conduct a family assessment or an investigation as appropriate  
17 to prevent or provide a remedy for child maltreatment. The  
18 local welfare agency:

19 (1) shall conduct an investigation on reports involving  
20 substantial child endangerment;

21 (2) shall begin an immediate investigation if, at any time  
22 when it is using a family assessment response, it determines  
23 that there is reason to believe that substantial child  
24 endangerment or a serious threat to the child's safety exists;

25 (3) may conduct a family assessment for reports that do not  
26 allege substantial child endangerment. In determining that a  
27 family assessment is appropriate, the local welfare agency may  
28 consider issues of child safety, parental cooperation, and the  
29 need for an immediate response; and

30 (4) may conduct a family assessment on a report that was  
31 initially screened and assigned for an investigation. In  
32 determining that a complete investigation is not required, the  
33 local welfare agency must document the reason for terminating  
34 the investigation and notify the local law enforcement agency if  
35 the local law enforcement agency is conducting a joint  
36 investigation.

1        If the report alleges neglect, physical abuse, or sexual  
2 abuse by a parent, guardian, or individual functioning within  
3 the family unit as a person responsible for the child's care,  
4 the local welfare agency shall immediately conduct an a family  
5 assessment including-gathering or investigation as identified in  
6 clauses (1) to (4). In conducting a family assessment or  
7 investigation, the local welfare agency shall gather information  
8 on the existence of substance abuse and domestic violence and  
9 offer ~~protective-social~~ services for purposes of preventing  
10 ~~further-abuses~~ future child maltreatment, safeguarding and  
11 enhancing the welfare of the abused or neglected minor,  
12 and supporting and preserving family life whenever possible. If  
13 the report alleges a violation of a criminal statute involving  
14 sexual abuse, physical abuse, or neglect or endangerment, under  
15 section 609.378, the local law enforcement agency and local  
16 welfare agency shall coordinate the planning and execution of  
17 their respective investigation and assessment efforts to avoid a  
18 duplication of fact-finding efforts and multiple interviews.  
19 Each agency shall prepare a separate report of the results of  
20 its investigation. In cases of alleged child maltreatment  
21 resulting in death, the local agency may rely on the  
22 fact-finding efforts of a law enforcement investigation to make  
23 a determination of whether or not maltreatment occurred. When  
24 necessary the local welfare agency shall seek authority to  
25 remove the child from the custody of a parent, guardian, or  
26 adult with whom the child is living. In performing any of these  
27 duties, the local welfare agency shall maintain appropriate  
28 records.

29        If the family assessment or investigation indicates there  
30 is a potential for abuse of alcohol or other drugs by the  
31 parent, guardian, or person responsible for the child's care,  
32 the local welfare agency shall conduct a chemical use assessment  
33 pursuant to Minnesota Rules, part 9530.6615. The local welfare  
34 agency shall report the determination of the chemical use  
35 assessment, and the recommendations and referrals for alcohol  
36 and other drug treatment services to the state authority on

1 alcohol and drug abuse.

2 (b) When a local agency receives a report or otherwise has  
3 information indicating that a child who is a client, as defined  
4 in section 245.91, has been the subject of physical abuse,  
5 sexual abuse, or neglect at an agency, facility, or program as  
6 defined in section 245.91, it shall, in addition to its other  
7 duties under this section, immediately inform the ombudsman  
8 established under sections 245.91 to 245.97. The commissioner  
9 of education shall inform the ombudsman established under  
10 sections 245.91 to 245.97 of reports regarding a child defined  
11 as a client in section 245.91 that maltreatment occurred at a  
12 school as defined in sections 120A.05, subdivisions 9, 11, and  
13 13, and 124D.10.

14 (c) Authority of the local welfare agency responsible for  
15 assessing or investigating the child abuse or neglect report,  
16 the agency responsible for assessing or investigating the  
17 report, and of the local law enforcement agency for  
18 investigating the alleged abuse or neglect includes, but is not  
19 limited to, authority to interview, without parental consent,  
20 the alleged victim and any other minors who currently reside  
21 with or who have resided with the alleged offender. The  
22 interview may take place at school or at any facility or other  
23 place where the alleged victim or other minors might be found or  
24 the child may be transported to, and the interview conducted at,  
25 a place appropriate for the interview of a child designated by  
26 the local welfare agency or law enforcement agency. The  
27 interview may take place outside the presence of the alleged  
28 offender or parent, legal custodian, guardian, or school  
29 official. For family assessments, it is the preferred practice  
30 to request a parent or guardian's permission to interview the  
31 child prior to conducting the child interview, unless doing so  
32 would compromise the safety assessment. Except as provided in  
33 this paragraph, the parent, legal custodian, or guardian shall  
34 be notified by the responsible local welfare or law enforcement  
35 agency no later than the conclusion of the investigation or  
36 assessment that this interview has occurred. Notwithstanding

1 rule 49.02 of the Minnesota Rules of Procedure for Juvenile  
2 Courts, the juvenile court may, after hearing on an ex parte  
3 motion by the local welfare agency, order that, where reasonable  
4 cause exists, the agency withhold notification of this interview  
5 from the parent, legal custodian, or guardian. If the interview  
6 took place or is to take place on school property, the order  
7 shall specify that school officials may not disclose to the  
8 parent, legal custodian, or guardian the contents of the  
9 notification of intent to interview the child on school  
10 property, as provided under this paragraph, and any other  
11 related information regarding the interview that may be a part  
12 of the child's school record. A copy of the order shall be sent  
13 by the local welfare or law enforcement agency to the  
14 appropriate school official.

15 (d) When the local welfare, local law enforcement agency,  
16 or the agency responsible for assessing or investigating a  
17 report of maltreatment determines that an interview should take  
18 place on school property, written notification of intent to  
19 interview the child on school property must be received by  
20 school officials prior to the interview. The notification shall  
21 include the name of the child to be interviewed, the purpose of  
22 the interview, and a reference to the statutory authority to  
23 conduct an interview on school property. For interviews  
24 conducted by the local welfare agency, the notification shall be  
25 signed by the chair of the local social services agency or the  
26 chair's designee. The notification shall be private data on  
27 individuals subject to the provisions of this paragraph. School  
28 officials may not disclose to the parent, legal custodian, or  
29 guardian the contents of the notification or any other related  
30 information regarding the interview until notified in writing by  
31 the local welfare or law enforcement agency that the  
32 investigation or assessment has been concluded, unless a school  
33 employee or agent is alleged to have maltreated the child.  
34 Until that time, the local welfare or law enforcement agency or  
35 the agency responsible for assessing or investigating a report  
36 of maltreatment shall be solely responsible for any disclosures

1 regarding the nature of the assessment or investigation.

2 Except where the alleged offender is believed to be a  
3 school official or employee, the time and place, and manner of  
4 the interview on school premises shall be within the discretion  
5 of school officials, but the local welfare or law enforcement  
6 agency shall have the exclusive authority to determine who may  
7 attend the interview. The conditions as to time, place, and  
8 manner of the interview set by the school officials shall be  
9 reasonable and the interview shall be conducted not more than 24  
10 hours after the receipt of the notification unless another time  
11 is considered necessary by agreement between the school  
12 officials and the local welfare or law enforcement agency.

13 Where the school fails to comply with the provisions of this  
14 paragraph, the juvenile court may order the school to comply.

15 Every effort must be made to reduce the disruption of the  
16 educational program of the child, other students, or school  
17 staff when an interview is conducted on school premises.

18 (e) Where the alleged offender or a person responsible for  
19 the care of the alleged victim or other minor prevents access to  
20 the victim or other minor by the local welfare agency, the  
21 juvenile court may order the parents, legal custodian, or  
22 guardian to produce the alleged victim or other minor for  
23 questioning by the local welfare agency or the local law  
24 enforcement agency outside the presence of the alleged offender  
25 or any person responsible for the child's care at reasonable  
26 places and times as specified by court order.

27 (f) Before making an order under paragraph (e), the court  
28 shall issue an order to show cause, either upon its own motion  
29 or upon a verified petition, specifying the basis for the  
30 requested interviews and fixing the time and place of the  
31 hearing. The order to show cause shall be served personally and  
32 shall be heard in the same manner as provided in other cases in  
33 the juvenile court. The court shall consider the need for  
34 appointment of a guardian ad litem to protect the best interests  
35 of the child. If appointed, the guardian ad litem shall be  
36 present at the hearing on the order to show cause.

1 (g) The commissioner of human services, the ombudsman for  
2 mental health and mental retardation, the local welfare agencies  
3 responsible for investigating reports, the commissioner of  
4 education, and the local law enforcement agencies have the right  
5 to enter facilities as defined in subdivision 2 and to inspect  
6 and copy the facility's records, including medical records, as  
7 part of the investigation. Notwithstanding the provisions of  
8 chapter 13, they also have the right to inform the facility  
9 under investigation that they are conducting an investigation,  
10 to disclose to the facility the names of the individuals under  
11 investigation for abusing or neglecting a child, and to provide  
12 the facility with a copy of the report and the investigative  
13 findings.

14 (h) The local welfare agency ~~or the agency~~ responsible for  
15 assessing or conducting a family assessment shall collect  
16 available and relevant information to determine child safety,  
17 risk of subsequent child maltreatment, and family strengths and  
18 needs. The local welfare agency or the agency responsible for  
19 investigating the report shall collect available and relevant  
20 information to ascertain whether maltreatment occurred and  
21 whether protective services are needed. Information collected  
22 includes, when relevant, information with regard to the person  
23 reporting the alleged maltreatment, including the nature of the  
24 reporter's relationship to the child and to the alleged  
25 offender, and the basis of the reporter's knowledge for the  
26 report; the child allegedly being maltreated; the alleged  
27 offender; the child's caretaker; and other collateral sources  
28 having relevant information related to the alleged  
29 maltreatment. The local welfare agency or the agency  
30 responsible for assessing or investigating the report may make a  
31 determination of no maltreatment early in an assessment, and  
32 close the case and retain immunity, if the collected information  
33 shows no basis for a full assessment or investigation.

34 Information relevant to the assessment or investigation  
35 must be asked for, and may include:

36 (1) the child's sex and age, prior reports of maltreatment,

1 information relating to developmental functioning, credibility  
2 of the child's statement, and whether the information provided  
3 under this clause is consistent with other information collected  
4 during the course of the assessment or investigation;

5 (2) the alleged offender's age, a record check for prior  
6 reports of maltreatment, and criminal charges and convictions.  
7 The local welfare agency or the agency responsible for assessing  
8 or investigating the report must provide the alleged offender  
9 with an opportunity to make a statement. The alleged offender  
10 may submit supporting documentation relevant to the assessment  
11 or investigation;

12 (3) collateral source information regarding the alleged  
13 maltreatment and care of the child. Collateral information  
14 includes, when relevant: (i) a medical examination of the  
15 child; (ii) prior medical records relating to the alleged  
16 maltreatment or the care of the child maintained by any  
17 facility, clinic, or health care professional and an interview  
18 with the treating professionals; and (iii) interviews with the  
19 child's caretakers, including the child's parent, guardian,  
20 foster parent, child care provider, teachers, counselors, family  
21 members, relatives, and other persons who may have knowledge  
22 regarding the alleged maltreatment and the care of the child;  
23 and

24 (4) information on the existence of domestic abuse and  
25 violence in the home of the child, and substance abuse.

26 Nothing in this paragraph precludes the local welfare  
27 agency, the local law enforcement agency, or the agency  
28 responsible for assessing or investigating the report from  
29 collecting other relevant information necessary to conduct the  
30 assessment or investigation. Notwithstanding section 13.384 or  
31 144.335, the local welfare agency has access to medical data and  
32 records for purposes of clause (3). Notwithstanding the data's  
33 classification in the possession of any other agency, data  
34 acquired by the local welfare agency or the agency responsible  
35 for assessing or investigating the report during the course of  
36 the assessment or investigation are private data on individuals

1 and must be maintained in accordance with subdivision 11. Data  
2 of the commissioner of education collected or maintained during  
3 and for the purpose of an investigation of alleged maltreatment  
4 in a school are governed by this section, notwithstanding the  
5 data's classification as educational, licensing, or personnel  
6 data under chapter 13.

7 In conducting an assessment or investigation involving a  
8 school facility as defined in subdivision 2, paragraph ~~(f)~~ (i),  
9 the commissioner of education shall collect investigative  
10 reports and data that are relevant to a report of maltreatment  
11 and are from local law enforcement and the school facility.

12 ~~(i) In the initial stages of an assessment or investigation~~  
13 Upon receipt of a report, the local welfare agency shall conduct  
14 a face-to-face ~~observation of~~ contact with the child reported to  
15 be maltreated ~~and a face-to-face interview of the alleged~~  
16 offender and with the child's primary caregiver sufficient to  
17 complete a safety assessment and ensure the immediate safety of  
18 the child. The face-to-face contact with the child and primary  
19 caregiver shall occur immediately if substantial child  
20 endangerment is alleged and within five calendar days for all  
21 other reports. If the alleged offender was not already  
22 interviewed as the primary caregiver, the local welfare agency  
23 shall also conduct a face-to-face interview with the alleged  
24 offender in the early stages of the assessment or  
25 investigation. At the initial contact, the local child welfare  
26 agency or the agency responsible for assessing or investigating  
27 the report must inform the alleged offender of the complaints or  
28 allegations made against the individual in a manner consistent  
29 with laws protecting the rights of the person who made the  
30 report. The interview with the alleged offender may be  
31 postponed if it would jeopardize an active law enforcement  
32 investigation.

33 (j) When conducting an investigation, the local welfare  
34 agency shall use a question and answer interviewing format with  
35 questioning as nondirective as possible to elicit spontaneous  
36 responses. For investigations only, the following interviewing

1 methods and procedures must be used whenever possible when  
2 collecting information:

3 (1) audio recordings of all interviews with witnesses and  
4 collateral sources; and

5 (2) in cases of alleged sexual abuse, audio-video  
6 recordings of each interview with the alleged victim and child  
7 witnesses.

8 (k) In conducting an assessment or investigation involving  
9 a school facility as defined in subdivision 2,  
10 paragraph ~~(f)~~ (i), the commissioner of education shall collect  
11 available and relevant information and use the procedures in  
12 paragraphs ~~(h)~~ (i), (k), and ~~(j)~~ subdivision 3d, except that  
13 the requirement for face-to-face observation of the child and  
14 face-to-face interview of the alleged offender is to occur in  
15 the initial stages of the assessment or investigation provided  
16 that the commissioner may also base the assessment or  
17 investigation on investigative reports and data received from  
18 the school facility and local law enforcement, to the extent  
19 those investigations satisfy the requirements of  
20 paragraphs ~~(h)~~ (i), and (k), and ~~(j)~~ subdivision 3d.

21 Sec. 6. Minnesota Statutes 2004, section 626.556,  
22 subdivision 10b, is amended to read:

23 Subd. 10b. [DUTIES OF COMMISSIONER; NEGLECT OR ABUSE IN  
24 FACILITY.] (a) This section applies to the commissioners of  
25 human services, health, and education. The commissioner of the  
26 agency responsible for assessing or investigating the report  
27 shall immediately assess or investigate if the report alleges  
28 that:

29 (1) a child who is in the care of a facility as defined in  
30 subdivision 2 is neglected, physically abused, sexually abused,  
31 or is the victim of maltreatment in a facility by an individual  
32 in that facility, or has been so neglected or abused, or been  
33 the victim of maltreatment in a facility by an individual in  
34 that facility within the three years preceding the report; or

35 (2) a child was neglected, physically abused, sexually  
36 abused, or is the victim of maltreatment in a facility by an

1 individual in a facility defined in subdivision 2, while in the  
2 care of that facility within the three years preceding the  
3 report.

4 The commissioner of the agency responsible for assessing or  
5 investigating the report shall arrange for the transmittal to  
6 the commissioner of reports received by local agencies and may  
7 delegate to a local welfare agency the duty to investigate  
8 reports. In conducting an investigation under this section, the  
9 commissioner has the powers and duties specified for local  
10 welfare agencies under this section. The commissioner of the  
11 agency responsible for assessing or investigating the report or  
12 local welfare agency may interview any children who are or have  
13 been in the care of a facility under investigation and their  
14 parents, guardians, or legal custodians.

15 (b) Prior to any interview, the commissioner of the agency  
16 responsible for assessing or investigating the report or local  
17 welfare agency shall notify the parent, guardian, or legal  
18 custodian of a child who will be interviewed in the manner  
19 provided for in subdivision 10d, paragraph (a). If reasonable  
20 efforts to reach the parent, guardian, or legal custodian of a  
21 child in an out-of-home placement have failed, the child may be  
22 interviewed if there is reason to believe the interview is  
23 necessary to protect the child or other children in the  
24 facility. The commissioner of the agency responsible for  
25 assessing or investigating the report or local agency must  
26 provide the information required in this subdivision to the  
27 parent, guardian, or legal custodian of a child interviewed  
28 without parental notification as soon as possible after the  
29 interview. When the investigation is completed, any parent,  
30 guardian, or legal custodian notified under this subdivision  
31 shall receive the written memorandum provided for in subdivision  
32 10d, paragraph (c).

33 (c) In conducting investigations under this subdivision the  
34 commissioner or local welfare agency shall obtain access to  
35 information consistent with subdivision 10, paragraphs (h), (i),  
36 and (j). In conducting assessments or investigations under this

1 subdivision, the commissioner of education shall obtain access  
2 to reports and investigative data that are relevant to a report  
3 of maltreatment and are in the possession of a school facility  
4 as defined in subdivision 2, paragraph ~~(f)~~ (i), notwithstanding  
5 the classification of the data as educational or personnel data  
6 under chapter 13. This includes, but is not limited to, school  
7 investigative reports, information concerning the conduct of  
8 school personnel alleged to have committed maltreatment of  
9 students, information about witnesses, and any protective or  
10 corrective action taken by the school facility regarding the  
11 school personnel alleged to have committed maltreatment.

12 (d) The commissioner may request assistance from the local  
13 social services agency.

14 Sec. 7. Minnesota Statutes 2004, section 626.556,  
15 subdivision 10e, is amended to read:

16 Subd. 10e. [DETERMINATIONS.] ~~Upon-the-conclusion-of-every~~  
17 ~~assessment-or-investigation-it-conducts,~~ (a) The local welfare  
18 agency shall conclude the family assessment or the investigation  
19 within 45 days of the receipt of a report. The conclusion of  
20 the assessment or investigation may be extended to permit the  
21 completion of a criminal investigation or the receipt of expert  
22 information requested within 45 days of the receipt of the  
23 report.

24 (b) After conducting a family assessment, the local welfare  
25 agency shall determine whether services are needed to address  
26 the safety of the child and other family members and the risk of  
27 subsequent maltreatment.

28 (c) After conducting an investigation, the local welfare  
29 agency shall make two determinations: first, whether  
30 maltreatment has occurred; and second, whether child protective  
31 services are needed. ~~Upon-the-conclusion-of~~

32 (d) If the commissioner of education conducts an assessment  
33 or investigation by-the-commissioner-of-education, the  
34 commissioner shall determine whether maltreatment occurred and  
35 what corrective or protective action was taken by the school  
36 facility. If a determination is made that maltreatment has

1 occurred, the commissioner shall report to the employer, the  
2 school board, and any appropriate licensing entity the  
3 determination that maltreatment occurred and what corrective or  
4 protective action was taken by the school facility. In all  
5 other cases, the commissioner shall inform the school board or  
6 employer that a report was received, the subject of the report,  
7 the date of the initial report, the category of maltreatment  
8 alleged as defined in paragraph ~~(a)~~ (f), the fact that  
9 maltreatment was not determined, and a summary of the specific  
10 reasons for the determination.

11 (e) When maltreatment is determined in an investigation  
12 involving a facility, the investigating agency shall also  
13 determine whether the facility or individual was responsible, or  
14 whether both the facility and the individual were responsible  
15 for the maltreatment using the mitigating factors in paragraph  
16 ~~(d)~~ (i). Determinations under this subdivision must be made  
17 based on a preponderance of the evidence and are private data on  
18 individuals or nonpublic data as maintained by the commissioner  
19 of education.

20 ~~(a)~~ (f) For the purposes of this subdivision, "maltreatment"  
21 means any of the following acts or omissions:

22 (1) physical abuse as defined in subdivision 2, paragraph  
23 ~~(d)~~ (g);

24 (2) neglect as defined in subdivision 2, paragraph ~~(e)~~ (f);

25 (3) sexual abuse as defined in subdivision 2, paragraph  
26 ~~(a)~~ (d);

27 (4) mental injury as defined in subdivision 2, paragraph  
28 ~~(k)~~ (m); or

29 (5) maltreatment of a child in a facility as defined in  
30 subdivision 2, paragraph ~~(f)~~ (i).

31 ~~(b)~~ (g) For the purposes of this subdivision, a  
32 determination that child protective services are needed means  
33 that the local welfare agency has documented conditions during  
34 the assessment or investigation sufficient to cause a child  
35 protection worker, as defined in section 626.559, subdivision 1,  
36 to conclude that a child is at significant risk of maltreatment

1 if protective intervention is not provided and that the  
2 individuals responsible for the child's care have not taken or  
3 are not likely to take actions to protect the child from  
4 maltreatment or risk of maltreatment.

5 ~~(e)~~ (h) This subdivision does not mean that maltreatment  
6 has occurred solely because the child's parent, guardian, or  
7 other person responsible for the child's care in good faith  
8 selects and depends upon spiritual means or prayer for treatment  
9 or care of disease or remedial care of the child, in lieu of  
10 medical care. However, if lack of medical care may result in  
11 serious danger to the child's health, the local welfare agency  
12 may ensure that necessary medical services are provided to the  
13 child.

14 ~~(d)~~ (i) When determining whether the facility or individual  
15 is the responsible party for determined maltreatment in a  
16 facility, the investigating agency shall consider at least the  
17 following mitigating factors:

18 (1) whether the actions of the facility or the individual  
19 caregivers were according to, and followed the terms of, an  
20 erroneous physician order, prescription, individual care plan,  
21 or directive; however, this is not a mitigating factor when the  
22 facility or caregiver was responsible for the issuance of the  
23 erroneous order, prescription, individual care plan, or  
24 directive or knew or should have known of the errors and took no  
25 reasonable measures to correct the defect before administering  
26 care;

27 (2) comparative responsibility between the facility, other  
28 caregivers, and requirements placed upon an employee, including  
29 the facility's compliance with related regulatory standards and  
30 the adequacy of facility policies and procedures, facility  
31 training, an individual's participation in the training, the  
32 caregiver's supervision, and facility staffing levels and the  
33 scope of the individual employee's authority and discretion; and

34 (3) whether the facility or individual followed  
35 professional standards in exercising professional judgment.

36 (j) Individual counties may implement more detailed

1 definitions or criteria that indicate which allegations to  
2 investigate, as long as a county's policies are consistent with  
3 the definitions in the statutes and rules and are approved by  
4 the county board. Each local welfare agency shall periodically  
5 inform mandated reporters under subdivision 3 who work in the  
6 county of the definitions of maltreatment in the statutes and  
7 rules and any additional definitions or criteria that have been  
8 approved by the county board.

9 Sec. 8. Minnesota Statutes 2004, section 626.556,  
10 subdivision 10f, is amended to read:

11 Subd. 10f. [NOTICE OF DETERMINATIONS.] Within ten working  
12 days of the conclusion of a family assessment, the local welfare  
13 agency shall notify the parent or guardian of the child of the  
14 need for services to address child safety concerns or  
15 significant risk of subsequent child maltreatment. The local  
16 welfare agency and the family may also jointly agree that family  
17 support and family preservation services are needed. Within ten  
18 working days of the conclusion of an assessment investigation,  
19 the local welfare agency or agency responsible for assessing or  
20 investigating the report shall notify the parent or guardian of  
21 the child, the person determined to be maltreating the child,  
22 and if applicable, the director of the facility, of the  
23 determination and a summary of the specific reasons for the  
24 determination. The notice must also include a certification  
25 that the information collection procedures under subdivision 10,  
26 paragraphs (h), (i), and (j), were followed and a notice of the  
27 right of a data subject to obtain access to other private data  
28 on the subject collected, created, or maintained under this  
29 section. In addition, the notice shall include the length of  
30 time that the records will be kept under subdivision 11c. The  
31 investigating agency shall notify the parent or guardian of the  
32 child who is the subject of the report, and any person or  
33 facility determined to have maltreated a child, of their appeal  
34 or review rights under this section or section 256.022.

35 Sec. 9. Minnesota Statutes 2004, section 626.556,  
36 subdivision 10i, is amended to read:

1 Subd. 10i. [ADMINISTRATIVE RECONSIDERATION OF FINAL  
2 DETERMINATION OF MALTREATMENT AND DISQUALIFICATION BASED ON  
3 SERIOUS OR RECURRING MALTREATMENT; REVIEW PANEL.]  
4 (a) Administrative reconsideration is not applicable in family  
5 assessments since no determination concerning maltreatment is  
6 made. For investigations, except as provided under paragraph  
7 (e), an individual or facility that the commissioner of human  
8 services, a local social service agency, or the commissioner of  
9 education determines has maltreated a child, an interested  
10 person acting on behalf of the child, regardless of the  
11 determination, who contests the investigating agency's final  
12 determination regarding maltreatment, may request the  
13 investigating agency to reconsider its final determination  
14 regarding maltreatment. The request for reconsideration must be  
15 submitted in writing to the investigating agency within 15  
16 calendar days after receipt of notice of the final determination  
17 regarding maltreatment or, if the request is made by an  
18 interested person who is not entitled to notice, within 15 days  
19 after receipt of the notice by the parent or guardian of the  
20 child. Effective January 1, 2002, an individual who was  
21 determined to have maltreated a child under this section and who  
22 was disqualified on the basis of serious or recurring  
23 maltreatment under sections 245C.14 and 245C.15, may request  
24 reconsideration of the maltreatment determination and the  
25 disqualification. The request for reconsideration of the  
26 maltreatment determination and the disqualification must be  
27 submitted within 30 calendar days of the individual's receipt of  
28 the notice of disqualification under sections 245C.16 and  
29 245C.17.

30 (b) Except as provided under paragraphs (e) and (f), if the  
31 investigating agency denies the request or fails to act upon the  
32 request within 15 calendar days after receiving the request for  
33 reconsideration, the person or facility entitled to a fair  
34 hearing under section 256.045 may submit to the commissioner of  
35 human services or the commissioner of education a written  
36 request for a hearing under that section. Section 256.045 also

1 governs hearings requested to contest a final determination of  
2 the commissioner of education. For reports involving  
3 maltreatment of a child in a facility, an interested person  
4 acting on behalf of the child may request a review by the Child  
5 Maltreatment Review Panel under section 256.022 if the  
6 investigating agency denies the request or fails to act upon the  
7 request or if the interested person contests a reconsidered  
8 determination. The investigating agency shall notify persons  
9 who request reconsideration of their rights under this  
10 paragraph. The request must be submitted in writing to the  
11 review panel and a copy sent to the investigating agency within  
12 30 calendar days of receipt of notice of a denial of a request  
13 for reconsideration or of a reconsidered determination. The  
14 request must specifically identify the aspects of the agency  
15 determination with which the person is dissatisfied.

16 (c) If, as a result of a reconsideration or review, the  
17 investigating agency changes the final determination of  
18 maltreatment, that agency shall notify the parties specified in  
19 subdivisions 10b, 10d, and 10f.

20 (d) Except as provided under paragraph (f), if an  
21 individual or facility contests the investigating agency's final  
22 determination regarding maltreatment by requesting a fair  
23 hearing under section 256.045, the commissioner of human  
24 services shall assure that the hearing is conducted and a  
25 decision is reached within 90 days of receipt of the request for  
26 a hearing. The time for action on the decision may be extended  
27 for as many days as the hearing is postponed or the record is  
28 held open for the benefit of either party.

29 (e) Effective January 1, 2002, if an individual was  
30 disqualified under sections 245C.14 and 245C.15, on the basis of  
31 a determination of maltreatment, which was serious or recurring,  
32 and the individual has requested reconsideration of the  
33 maltreatment determination under paragraph (a) and requested  
34 reconsideration of the disqualification under sections 245C.21  
35 to 245C.27, reconsideration of the maltreatment determination  
36 and reconsideration of the disqualification shall be

1 consolidated into a single reconsideration. If reconsideration  
2 of the maltreatment determination is denied or the  
3 disqualification is not set aside under sections 245C.21 to  
4 245C.27, the individual may request a fair hearing under section  
5 256.045. If an individual requests a fair hearing on the  
6 maltreatment determination and the disqualification, the scope  
7 of the fair hearing shall include both the maltreatment  
8 determination and the disqualification.

9 (f) Effective January 1, 2002, if a maltreatment  
10 determination or a disqualification based on serious or  
11 recurring maltreatment is the basis for a denial of a license  
12 under section 245A.05 or a licensing sanction under section  
13 245A.07, the license holder has the right to a contested case  
14 hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to  
15 1400.8612. As provided for under section 245A.08, subdivision  
16 2a, the scope of the contested case hearing shall include the  
17 maltreatment determination, disqualification, and licensing  
18 sanction or denial of a license. In such cases, a fair hearing  
19 regarding the maltreatment determination shall not be conducted  
20 under paragraph (b). If the disqualified subject is an  
21 individual other than the license holder and upon whom a  
22 background study must be conducted under chapter 245C, the  
23 hearings of all parties may be consolidated into a single  
24 contested case hearing upon consent of all parties and the  
25 administrative law judge.

26 (g) For purposes of this subdivision, "interested person  
27 acting on behalf of the child" means a parent or legal guardian;  
28 stepparent; grandparent; guardian ad litem; adult stepbrother,  
29 stepsister, or sibling; or adult aunt or uncle; unless the  
30 person has been determined to be the perpetrator of the  
31 maltreatment.

32 Sec. 10. Minnesota Statutes 2004, section 626.556, is  
33 amended by adding a subdivision to read:

34 Subd. 101. [DOCUMENTATION.] When a case is closed that has  
35 been open for services, the local welfare agency shall document  
36 the outcome of the family assessment or investigation, including

1 a description of services provided and the removal or reduction  
2 of risk to the child, if it existed.

3 Sec. 11. Minnesota Statutes 2004, section 626.556, is  
4 amended by adding a subdivision to read:

5 Subd. 10m. [PROVISION OF CHILD PROTECTIVE SERVICES.] The  
6 local welfare agency shall create a written plan, in  
7 collaboration with the family whenever possible, within 30 days  
8 of the determination that child protective services are needed  
9 or upon joint agreement of the local welfare agency and the  
10 family that family support and preservation services are  
11 needed. Child protective services for a family are voluntary  
12 unless ordered by the court.

13 Sec. 12. Minnesota Statutes 2004, section 626.556,  
14 subdivision 11, is amended to read:

15 Subd. 11. [RECORDS.] (a) Except as provided in paragraph  
16 (b) or (d) and subdivisions 10b, 10d, 10g, and 11b, all records  
17 concerning individuals maintained by a local welfare agency or  
18 agency responsible for assessing or investigating the report  
19 under this section, including any written reports filed under  
20 subdivision 7, shall be private data on individuals, except  
21 insofar as copies of reports are required by subdivision 7 to be  
22 sent to the local police department or the county sheriff. All  
23 records concerning determinations of maltreatment by a facility  
24 are nonpublic data as maintained by the Department of Education,  
25 except insofar as copies of reports are required by subdivision  
26 7 to be sent to the local police department or the county  
27 sheriff. Reports maintained by any police department or the  
28 county sheriff shall be private data on individuals except the  
29 reports shall be made available to the investigating,  
30 petitioning, or prosecuting authority, including county medical  
31 examiners or county coroners. Section 13.82, subdivisions 8, 9,  
32 and 14, apply to law enforcement data other than the reports.  
33 The local social services agency or agency responsible for  
34 assessing or investigating the report shall make available to  
35 the investigating, petitioning, or prosecuting authority,  
36 including county medical examiners or county coroners or their

1 professional delegates, any records which contain information  
2 relating to a specific incident of neglect or abuse which is  
3 under investigation, petition, or prosecution and information  
4 relating to any prior incidents of neglect or abuse involving  
5 any of the same persons. The records shall be collected and  
6 maintained in accordance with the provisions of chapter 13. In  
7 conducting investigations and assessments pursuant to this  
8 section, the notice required by section 13.04, subdivision 2,  
9 need not be provided to a minor under the age of ten who is the  
10 alleged victim of abuse or neglect. An individual subject of a  
11 record shall have access to the record in accordance with those  
12 sections, except that the name of the reporter shall be  
13 confidential while the report is under assessment or  
14 investigation except as otherwise permitted by this  
15 subdivision. Any person conducting an investigation or  
16 assessment under this section who intentionally discloses the  
17 identity of a reporter prior to the completion of the  
18 investigation or assessment is guilty of a misdemeanor. After  
19 the assessment or investigation is completed, the name of the  
20 reporter shall be confidential. The subject of the report may  
21 compel disclosure of the name of the reporter only with the  
22 consent of the reporter or upon a written finding by the court  
23 that the report was false and that there is evidence that the  
24 report was made in bad faith. This subdivision does not alter  
25 disclosure responsibilities or obligations under the Rules of  
26 Criminal Procedure.

27 (b) Upon request of the legislative auditor, data on  
28 individuals maintained under this section must be released to  
29 the legislative auditor in order for the auditor to fulfill the  
30 auditor's duties under section 3.971. The auditor shall  
31 maintain the data in accordance with chapter 13.

32 (c) The commissioner of education must be provided with all  
33 requested data that are relevant to a report of maltreatment and  
34 are in possession of a school facility as defined in subdivision  
35 2, paragraph ~~(f)~~ (i), when the data is requested pursuant to an  
36 assessment or investigation of a maltreatment report of a

1 student in a school. If the commissioner of education makes a  
2 determination of maltreatment involving an individual performing  
3 work within a school facility who is licensed by a board or  
4 other agency, the commissioner shall provide necessary and  
5 relevant information to the licensing entity to enable the  
6 entity to fulfill its statutory duties. Notwithstanding section  
7 13.03, subdivision 4, data received by a licensing entity under  
8 this paragraph are governed by section 13.41 or other applicable  
9 law governing data of the receiving entity, except that this  
10 section applies to the classification of and access to data on  
11 the reporter of the maltreatment.

12 (d) The investigating agency shall exchange not public data  
13 with the Child Maltreatment Review Panel under section 256.022  
14 if the data are pertinent and necessary for a review requested  
15 under section 256.022. Upon completion of the review, the not  
16 public data received by the review panel must be returned to the  
17 investigating agency.

18 Sec. 13. Minnesota Statutes 2004, section 626.556,  
19 subdivision 11c, is amended to read:

20 Subd. 11c. [WELFARE, COURT SERVICES AGENCY, AND SCHOOL  
21 RECORDS MAINTAINED.] Notwithstanding sections 138.163 and  
22 138.17, records maintained or records derived from reports of  
23 abuse by local welfare agencies, agencies responsible for  
24 assessing or investigating the report, court services agencies,  
25 or schools under this section shall be destroyed as provided in  
26 paragraphs (a) to (d) by the responsible authority.

27 (a) ~~If upon~~ For family assessment or cases and cases where  
28 an investigation there-is results in no determination of  
29 maltreatment or the need for child protective services,  
30 the assessment or investigation records must be maintained for a  
31 period of four years. Records under this paragraph may not be  
32 used for employment, background checks, or purposes other than  
33 to assist in future risk and safety assessments.

34 (b) All records relating to reports which, upon ~~assessment~~  
35 ~~or investigation~~, indicate either maltreatment or a need for  
36 child protective services shall be maintained for at least ten

1 years after the date of the final entry in the case record.

2 (c) All records regarding a report of maltreatment,  
3 including any notification of intent to interview which was  
4 received by a school under subdivision 10, paragraph (d), shall  
5 be destroyed by the school when ordered to do so by the agency  
6 conducting the assessment or investigation. The agency shall  
7 order the destruction of the notification when other records  
8 relating to the report under investigation or assessment are  
9 destroyed under this subdivision.

10 (d) Private or confidential data released to a court  
11 services agency under subdivision 10h must be destroyed by the  
12 court services agency when ordered to do so by the local welfare  
13 agency that released the data. The local welfare agency or  
14 agency responsible for assessing or investigating the report  
15 shall order destruction of the data when other records relating  
16 to the assessment or investigation are destroyed under this  
17 subdivision.

18 Sec. 14. [REPEALER.]

19 (a) Minnesota Statutes 2004, section 626.5551, subdivisions  
20 1, 2, 3, 4, and 5, are repealed.

21 (b) Minnesota Rules, parts 9560.0220, subpart 6, item B;  
22 and 9560.0230, subpart 2, are repealed.

23 ARTICLE 2

24 CHILD WELFARE: PERMANENCY

25 Section 1. Minnesota Statutes 2004, section 257.85,  
26 subdivision 2, is amended to read:

27 Subd. 2. [SCOPE.] The provisions of this section apply to  
28 those situations in which the legal and physical custody of a  
29 child is established with a relative or important friend with  
30 whom the child has resided or had significant contact according  
31 to section 260C.201, subdivision 11, by a district court order  
32 issued on or after July 1, 1997, or a tribal court order issued  
33 on or after July 1, 2005, when the child has been removed from  
34 the care of the parent by previous district or tribal court  
35 order.

36 Sec. 2. Minnesota Statutes 2004, section 257.85,

1 subdivision 3, is amended to read:

2 Subd. 3. [DEFINITIONS.] For purposes of this section, the  
3 terms defined in this subdivision have the meanings given them.

4 (a) "MFIP standard" means the transitional standard used to  
5 calculate assistance under the MFIP program, or, if permanent  
6 legal and physical custody of the child is given to a relative  
7 custodian residing outside of Minnesota, the analogous  
8 transitional standard or standard of need used to calculate  
9 assistance under the TANF program of the state where the  
10 relative custodian lives.

11 (b) "Local agency" means the ~~local~~ county social services  
12 agency or tribal social services agency with legal custody of a  
13 child prior to the transfer of permanent legal and physical  
14 custody.

15 (c) "Permanent legal and physical custody" means permanent  
16 legal and physical custody ordered by a Minnesota Juvenile Court  
17 under section 260C.201, subdivision 27 11.

18 (d) "Relative" has the meaning given in section 260C.007,  
19 subdivision 27.

20 (e) "Relative custodian" means a person who has permanent  
21 legal and physical custody of a child. When siblings, including  
22 half-siblings and stepsiblings, are placed together in permanent  
23 legal and physical custody, the person receiving permanent legal  
24 and physical custody of the siblings is considered a relative  
25 custodian of all of the siblings for purposes of this section.

26 (f) "Relative custody assistance agreement" means an  
27 agreement entered into between a local agency and a person who  
28 has been or will be awarded permanent legal and physical custody  
29 of a child.

30 (g) "Relative custody assistance payment" means a monthly  
31 cash grant made to a relative custodian pursuant to a relative  
32 custody assistance agreement and in an amount calculated under  
33 subdivision 7.

34 (h) "Remains in the physical custody of the relative  
35 custodian" means that the relative custodian is providing  
36 day-to-day care for the child and that the child lives with the

1 relative custodian; absence from the relative custodian's home  
2 for a period of more than 120 days raises a presumption that the  
3 child no longer remains in the physical custody of the relative  
4 custodian.

5 Sec. 3. Minnesota Statutes 2004, section 259.23,  
6 subdivision 1, is amended to read:

7 Subdivision 1. [VENUE.] (a) Except as provided in section  
8 260C.101, subdivision 2, the juvenile court shall have original  
9 jurisdiction in all adoption proceedings. The proper venue for  
10 an adoption proceeding shall be the county of the petitioner's  
11 residence, except as provided in paragraph (b). However,

12 (b) Venue for the adoption of a child committed to the  
13 guardianship of the commissioner of human services shall be the  
14 county with jurisdiction in the matter according to section  
15 260C.317, subdivision 3.

16 (c) Upon request of the petitioner, the court having  
17 jurisdiction over the matter under section 260C.317, subdivision  
18 3, may transfer venue of an adoption proceeding involving a  
19 child under the guardianship of the commissioner to the county  
20 of the petitioner's residence upon determining that:

21 (1) the commissioner has given consent to the petitioner's  
22 adoption of the child or that consent is unreasonably withheld;

23 (2) there is no other adoption petition for the child that  
24 has been filed or is reasonably anticipated by the commissioner  
25 or the commissioner's delegate to be filed; and

26 (3) transfer of venue is in the best interests of the child.  
27 Transfer of venue under this paragraph shall be according to the  
28 rules of adoption court procedure.

29 (d) In all other adoptions, if the petitioner has acquired  
30 a new residence in another county and requests a transfer of the  
31 adoption proceeding, the court in which an adoption is initiated  
32 may transfer the proceeding to the appropriate court in the new  
33 county of residence if the transfer is in the best interests of  
34 the person to be adopted. The court transfers the proceeding by  
35 ordering a continuance and by forwarding to the court  
36 administrator of the appropriate court a certified copy of all

1 papers filed, together with an order of transfer. The  
2 transferring court also shall forward copies of the order of  
3 transfer to the commissioner of human services and any agency  
4 participating in the proceedings. The judge of the receiving  
5 court shall accept the order of the transfer and any other  
6 documents transmitted and hear the case; provided, however, the  
7 receiving court may in its discretion require the filing of a  
8 new petition prior to the hearing.

9 Sec. 4. Minnesota Statutes 2004, section 259.23,  
10 subdivision 2, is amended to read:

11 Subd. 2. [CONTENTS OF PETITION.] The petition shall be  
12 signed by the petitioner and, if married, by the spouse. It  
13 shall be verified, and filed in duplicate. The petition shall  
14 allege:

15 (a) The full name, age and place of residence of  
16 petitioner, and if married, the date and place of marriage;

17 (b) The date petitioner acquired physical custody of the  
18 child and from what person or agency;

19 (c) The date of birth of the child, if known, and the state  
20 and county where born;

21 (d) The name of the child's parents, if known, and the  
22 guardian if there be one;

23 (e) The actual name of the child, if known, and any known  
24 aliases;

25 (f) The name to be given the child if a change of name is  
26 desired;

27 (g) The description and value of any real or personal  
28 property owned by the child;

29 (h) That the petitioner desires that the relationship of  
30 parent and child be established between petitioner and the  
31 child, and that it is to the best interests of the child for the  
32 child to be adopted by the petitioner.

33 In agency placements, the information required in clauses  
34 (d) and (e) ~~above~~ shall not be required to be alleged in the  
35 petition but shall be transmitted to the court by the  
36 commissioner of human services or the agency.

1 Sec. 5. Minnesota Statutes 2004, section 259.41,  
2 subdivision 3, is amended to read:

3 Subd. 3. [BACKGROUND CHECK; AFFIDAVIT OF HISTORY.] (a) At  
4 the time an adoption study is commenced, each prospective  
5 adoptive parent must:

6 (1) authorize access by the agency to any private data  
7 needed to complete the study;

8 (2) provide all addresses at which the prospective adoptive  
9 parent and anyone in the household over the age of 13 has  
10 resided in the previous ~~ten~~ five years; and

11 (3) disclose any names used previously other than the name  
12 used at the time of the study; and

13 ~~(4) provide a set of fingerprints, which shall be forwarded~~  
14 ~~to the Bureau of Criminal Apprehension to facilitate the~~  
15 ~~criminal conviction background check required under paragraph~~  
16 ~~(b).~~

17 (b) When the requirements of paragraph (a) have been met,  
18 the agency shall immediately begin a background check, on each  
19 person over the age of 13 living in the home, consisting, at a  
20 minimum, of the following:

21 (1) a check of criminal conviction data with the Bureau of  
22 Criminal Apprehension and local law enforcement authorities;

23 (2) a check for data on substantiated maltreatment of a  
24 child or vulnerable adult and domestic violence data with local  
25 law enforcement and social services agencies and district  
26 courts; and

27 (3) for those persons under the age of 25, a check of  
28 juvenile court records.

29 Notwithstanding the provisions of section 260B.171 or  
30 260C.171, the Bureau of Criminal Apprehension, local law  
31 enforcement and social services agencies, district courts, and  
32 juvenile courts shall release the requested information to the  
33 agency completing the adoption study.

34 (c) When paragraph (b) requires checking the data or  
35 records of local law enforcement and social services agencies  
36 and district and juvenile courts, the agency shall check with

1 the law enforcement and social services agencies and courts  
2 whose jurisdictions cover the addresses under paragraph (a),  
3 clause (2). In the event that the agency is unable to complete  
4 any of the record checks required by paragraph (b), the agency  
5 shall document the fact and the agency's efforts to obtain the  
6 information.

7 (d) For a study completed under this section, when the  
8 agency has reasonable cause to believe that further information  
9 may exist on the prospective adoptive parent or household member  
10 over the age of 13 that may relate to the health, safety, or  
11 welfare of the child, the prospective adoptive parent or  
12 household member over the age of 13 shall provide the agency  
13 with a set of classifiable fingerprints obtained from an  
14 authorized law enforcement agency and the agency may obtain  
15 criminal history data from the National Criminal Records  
16 Repository by submitting fingerprints to the Bureau of Criminal  
17 Apprehension. The agency has reasonable cause when, but not  
18 limited to, the:

19 (1) information from the Bureau of Criminal Apprehension  
20 indicates that the prospective adoptive parent or household  
21 member over the age of 13 is a multistate offender;

22 (2) information from the Bureau of Criminal Apprehension  
23 indicates that multistate offender status is undetermined;

24 (3) the agency has received a report from the prospective  
25 adoptive parent or household member over the age of 13 or a  
26 third party indicating that the prospective adoptive parent or  
27 household member over the age of 13 has a criminal history in a  
28 jurisdiction other than Minnesota; or

29 (4) the prospective adoptive parent or household member  
30 over the age of 13 is or has been a resident of a state other  
31 than Minnesota in the prior five years.

32 ~~(c)~~ (e) At any time prior to completion of the background  
33 check required under paragraph (b), a prospective adoptive  
34 parent may submit to the agency conducting the study a sworn  
35 affidavit stating whether they or any person residing in the  
36 household have been convicted of a crime. The affidavit shall

1 also state whether the adoptive parent or any other person  
2 residing in the household is the subject of an open  
3 investigation of, or have been the subject of a substantiated  
4 allegation of, child or vulnerable-adult maltreatment within the  
5 past ten years. A complete description of the crime, open  
6 investigation, or substantiated abuse, and a complete  
7 description of any sentence, treatment, or disposition must be  
8 included. The affidavit must contain an acknowledgment that if,  
9 at any time before the adoption is final, a court receives  
10 evidence leading to a conclusion that a prospective adoptive  
11 parent knowingly gave false information in the affidavit, it  
12 shall be determined that the adoption of the child by the  
13 prospective adoptive parent is not in the best interests of the  
14 child.

15 ~~(d)~~ (f) For the purposes of subdivision 1 and section  
16 259.47, subdivisions 3 and 6, an adoption study is complete for  
17 placement, even though the background checks required by  
18 paragraph (b) have not been completed, if each prospective  
19 adoptive parent has completed the affidavit allowed by paragraph  
20 ~~(c)~~ (e) and the other requirements of this section have been met.  
21 The background checks required by paragraph (b) must be  
22 completed before an adoption petition is filed. If an adoption  
23 study has been submitted to the court under section 259.47,  
24 subdivision 3 or 6, before the background checks required by  
25 paragraph (b) were complete, an updated adoption study report  
26 which includes the results of the background check must be filed  
27 with the adoption petition. In the event that an agency is  
28 unable to complete any of the records checks required by  
29 paragraph (b), the agency shall submit with the petition to  
30 adopt an affidavit documenting the agency's efforts to complete  
31 the checks.

32 Sec. 6. Minnesota Statutes 2004, section 259.67,  
33 subdivision 2, is amended to read:

34 Subd. 2. [ADOPTION ASSISTANCE AGREEMENT.] The placing  
35 agency shall certify a child as eligible for adoption assistance  
36 according to rules promulgated by the commissioner. The placing

1 agency shall not certify a child who remains under the  
2 jurisdiction of the sending agency pursuant to section 260.851,  
3 article 5, for state funded adoption assistance when Minnesota  
4 is the receiving state. Not later than 30 days after a parent  
5 or parents are found and approved for adoptive placement of a  
6 child certified as eligible for adoption assistance, and before  
7 the final decree of adoption is issued, a written agreement must  
8 be entered into by the commissioner, the adoptive parent or  
9 parents, and the placing agency. The written agreement must  
10 be fully completed by the placing agency and in the form  
11 prescribed by the commissioner and must set forth the  
12 responsibilities of all parties, the anticipated duration of the  
13 adoption assistance payments, and the payment terms. The  
14 adoption assistance agreement shall be subject to the  
15 commissioner's approval, which must be granted or denied not  
16 later than 15 days after the agreement is entered.

17 The amount of adoption assistance is subject to the  
18 availability of state and federal funds and shall be determined  
19 through agreement with the adoptive parents. The agreement  
20 shall take into consideration the circumstances of the adopting  
21 parent or parents, the needs of the child being adopted and may  
22 provide ongoing monthly assistance, supplemental maintenance  
23 expenses related to the adopted person's special needs,  
24 nonmedical expenses periodically necessary for purchase of  
25 services, items, or equipment related to the special needs, and  
26 medical expenses. The placing agency or the adoptive parent or  
27 parents shall provide written documentation to support the need  
28 for adoption assistance payments. The commissioner may require  
29 periodic reevaluation of adoption assistance payments. The  
30 amount of ongoing monthly adoption assistance granted may in no  
31 case exceed that which would be allowable for the child under  
32 foster family care and is subject to the availability of state  
33 and federal funds.

34 Sec. 7. Minnesota Statutes 2004, section 259.67,  
35 subdivision 4, is amended to read:

36 Subd. 4. [ELIGIBILITY CONDITIONS.] (a) The placing agency

1 shall use the AFDC requirements as specified in federal law as  
2 of July 16, 1996, when determining the child's eligibility for  
3 adoption assistance under title IV-E of the Social Security  
4 Act. If the child does not qualify, the placing agency shall  
5 certify a child as eligible for state funded adoption assistance  
6 only if the following criteria are met:

7 (1) Due to the child's characteristics or circumstances it  
8 would be difficult to provide the child an adoptive home without  
9 adoption assistance.

10 (2)(i) A placement agency has made reasonable efforts to  
11 place the child for adoption without adoption assistance, but  
12 has been unsuccessful; or

13 (ii) the child's licensed foster parents desire to adopt  
14 the child and it is determined by the placing agency that the  
15 adoption is in the best interest of the child.

16 (3) The child has been a ward of the commissioner, a  
17 Minnesota-licensed child-placing agency, or a tribal social  
18 service agency of Minnesota recognized by the Secretary of the  
19 Interior. The placing agency shall not certify a child who  
20 remains under the jurisdiction of the sending agency pursuant to  
21 section 260.851, article 5, for state funded adoption assistance  
22 when Minnesota is the receiving state.

23 (b) For purposes of this subdivision, the characteristics  
24 or circumstances that may be considered in determining whether a  
25 child is a child with special needs under United States Code,  
26 title 42, chapter 7, subchapter IV, part E, or meets the  
27 requirements of paragraph (a), clause (1), are the following:

28 (1) The child is a member of a sibling group to be placed  
29 as one unit in which at least one sibling is older than 15  
30 months of age or is described in clause (2) or (3).

31 (2) The child has documented physical, mental, emotional,  
32 or behavioral disabilities.

33 (3) The child has a high risk of developing physical,  
34 mental, emotional, or behavioral disabilities.

35 (4) The child is adopted according to tribal law without a  
36 termination of parental rights or relinquishment, provided that

1 the tribe has documented the valid reason why the child cannot  
2 or should not be returned to the home of the child's parent.

3 (c) When a child's eligibility for adoption assistance is  
4 based upon the high risk of developing physical, mental,  
5 emotional, or behavioral disabilities, payments shall not be  
6 made under the adoption assistance agreement unless and until  
7 the potential disability manifests itself as documented by an  
8 appropriate health care professional.

9 Sec. 8. Minnesota Statutes 2004, section 259.75,  
10 subdivision 1, is amended to read:

11 Subdivision 1. [ESTABLISHMENT; CONTENTS; AVAILABILITY.]  
12 The commissioner of human services shall establish an adoption  
13 exchange~~7-which-shall-include-but-not-be-limited-to-a-book7~~  
14 ~~updated-monthly7~~ that contains a photograph and description of  
15 each child who has been legally freed for adoption. The  
16 exchange service shall be available to all local social service  
17 agencies and licensed child-placing agencies whose purpose is to  
18 assist in the adoptive placement of children~~7-and-the-exchange~~  
19 ~~book-shall-be-distributed-to-all-such-agencies.~~

20 Sec. 9. Minnesota Statutes 2004, section 259.79,  
21 subdivision 1, is amended to read:

22 Subdivision 1. [CONTENT.] (a) The adoption records of the  
23 commissioner~~7~~, the commissioner's agents and licensed  
24 child-placing agencies shall contain copies of all relevant  
25 legal documents, responsibly collected genetic, medical and  
26 social history of the child and the child's birth parents, the  
27 child's placement record, copies of all pertinent agreements,  
28 contracts, and correspondence relevant to the adoption, and  
29 copies of all reports and recommendations made to the court.

30 (b) The commissioner of human services shall maintain a  
31 permanent record of all adoptions granted in district court in  
32 Minnesota regarding children who are:

33 (1) under guardianship of the commissioner or a licensed  
34 child-placing agency according to section 260C.201, subdivision  
35 11, or 260C.317;

36 (2) placed by the commissioner, commissioner's agent, or

1 licensed child-placing agency after a consent to adopt according  
2 to section 259.24 or under an agreement conferring authority to  
3 place for adoption according to section 259.25; or

4 (3) adopted after a direct adoptive placement approved by  
5 the district court under section 259.47.

6 Each record shall contain identifying information about the  
7 child, the birth or legal parents, and adoptive parents,  
8 including race where such data is available. The record must  
9 also contain: (1) the date the child was legally freed for  
10 adoption; (2) the date of the adoptive placement; (3) the name  
11 of the placing agency; (4) the county where the adoptive  
12 placement occurred; (5) the date that the petition to adopt was  
13 filed; (6) the county where the petition to adopt was filed; and  
14 (7) the date and county where the adoption decree was granted.

15 (c) Identifying information contained in the adoption  
16 record shall be confidential and shall be disclosed only  
17 pursuant to section 259.61.

18 Sec. 10. Minnesota Statutes 2004, section 259.85,  
19 subdivision 1, is amended to read:

20 Subdivision 1. [PURPOSE.] The commissioner of human  
21 services shall establish and supervise a postadoption service  
22 grants program to be administered by local social service  
23 agencies for the purpose of preserving and strengthening  
24 adoptive families. The program will provide financial  
25 assistance to adoptive parents who are not receiving adoption  
26 assistance under section 259.67 to meet the special needs of an  
27 adopted child that cannot be met by other resources available to  
28 the family.

29 Sec. 11. Minnesota Statutes 2004, section 260.012, is  
30 amended to read:

31 260.012 [DUTY TO ENSURE PLACEMENT PREVENTION AND FAMILY  
32 REUNIFICATION; REASONABLE EFFORTS.]

33 (a) Once a child alleged to be in need of protection or  
34 services is under the court's jurisdiction, the court shall  
35 ensure that reasonable efforts, including culturally appropriate  
36 services, by the social services agency are made to prevent

1 placement or to eliminate the need for removal and to reunite  
2 the child with the child's family at the earliest possible time,  
3 ~~consistent-with-the-best-interests,-safety,-and-protection-of~~  
4 ~~the-child~~ and when a child cannot be reunified with the parent  
5 or guardian from whom the child was removed, the court must  
6 ensure that the responsible social services agency makes  
7 reasonable efforts to finalize an alternative permanent plan for  
8 the child as provided in paragraph (e). In determining  
9 reasonable efforts to be made with respect to a child and in  
10 making those reasonable efforts, the child's best interests,  
11 health, and safety must be of paramount concern. Reasonable  
12 efforts to prevent placement and for rehabilitation and  
13 reunification are not always required except upon a  
14 determination by the court that:

15 ~~(i)~~ a ~~termination-of-parental-rights~~ petition has been  
16 filed stating a prima facie case that:

17 ~~(i)~~ (1) the parent has subjected a child to egregious harm  
18 as defined in section 260C.007, subdivision 14;

19 ~~(ii)~~ (2) the parental rights of the parent to another child  
20 have been terminated involuntarily;

21 ~~(iii)~~ (3) the child is an abandoned infant under section  
22 260C.301, subdivision 2, paragraph (a), clause (2); or

23 ~~(iv)~~ (4) the parent's custodial rights to another child  
24 have been involuntarily transferred to a relative under section  
25 260C.201, subdivision 11, paragraph (e), clause (1), or a  
26 similar law of another jurisdiction; or

27 ~~(2)-the-county-attorney-has-filed-a-determination-not-to~~  
28 ~~proceed-with-a-termination-of-parental-rights-petition-on-these~~  
29 ~~grounds-was-made-under-section-260C-301,-subdivision-3,~~  
30 ~~paragraph-(b),-and-a-permanency-hearing-is-held-within-30-days~~  
31 ~~of-the-determination,-or~~

32 ~~(3)-a-termination-of-parental-rights-petition-or-other~~  
33 ~~petition-according-to-section-260C-201,-subdivision-11,-has-been~~  
34 ~~filed-alleging-a-prima-facie-case-that~~

35 (5) the provision of services or further services for the  
36 purpose of reunification is futile and therefore unreasonable

1 under the circumstances.

2 (b) When the court makes one of the prima facie  
3 determinations under paragraph (a), either permanency pleadings  
4 under section 260C.201, subdivision 11, or a termination of  
5 parental rights petition under sections 260C.141 and 260C.301  
6 must be filed. A permanency hearing under section 260C.201,  
7 subdivision 11, must be held within 30 days of this  
8 determination.

9 (c) In the case of an Indian child, in proceedings under  
10 sections 260B.178 or 260C.178, 260C.201, and 260C.301 the  
11 juvenile court must make findings and conclusions consistent  
12 with the Indian Child Welfare Act of 1978, United States Code,  
13 title 25, section 1901 et seq., as to the provision of active  
14 efforts. ~~If a child is under the court's delinquency~~  
15 jurisdiction, it shall be the duty of the court to ensure that  
16 reasonable efforts are made to reunite the child with the  
17 child's family at the earliest possible time, consistent with  
18 the best interests of the child and the safety of the  
19 public. ~~In cases governed by the Indian Child Welfare Act of~~  
20 1978, United States Code, title 23, section 1901, the  
21 responsible social services agency must provide active efforts  
22 as required under United States Code, title 23, section 1911(d).

23 (b) (d) "Reasonable efforts to prevent placement" means:

24 (1) the agency has made reasonable efforts to prevent the  
25 placement of the child in foster care; or

26 (2) given the particular circumstances of the child and  
27 family at the time of the child's removal, there are no services  
28 or efforts available which could allow the child to safely  
29 remain in the home.

30 (e) "reasonable efforts to finalize a permanent plan for  
31 the child" means due diligence by the responsible social  
32 services agency to:

33 (1) reunify the child with the parent or guardian from whom  
34 the child was removed;

35 (2) assess a noncustodial parent's ability to provide  
36 day-to-day care for the child and, where appropriate, provide

1 services necessary to enable the noncustodial parent to safely  
2 provide the care as required by section 260C.212, subdivision 4;

3 (3) conduct a relative search as required under section  
4 260C.212, subdivision 5; and

5 (4) when the child cannot return to the parent or guardian  
6 from whom the child was removed, to plan for and finalize a safe  
7 and legally permanent alternative home for the child, preferably  
8 through adoption or transfer of permanent legal and physical  
9 custody of the child.

10 (f) Reasonable efforts are made upon the exercise of due  
11 diligence by the responsible social services agency to  
12 use culturally appropriate and available services to meet the  
13 needs of the child and the child's family in-order-to-prevent  
14 removal-of-the-child-from-the-child's-family,-or-upon-removal,  
15 services-to-eliminate-the-need-for-removal-and-reunite-the  
16 family. (1) Services may include those provided by the  
17 responsible social services agency and other culturally  
18 appropriate services available in the community. (2) At each  
19 stage of the proceedings where the court is required to review  
20 the appropriateness of the responsible social services agency's  
21 reasonable efforts as described in paragraphs (a), (d), and (e),  
22 the social services agency has the burden of demonstrating that:

23 (1) it has made reasonable efforts,-or-that-provision-of  
24 services-or-further-services-for-the-purpose-of-rehabilitation  
25 and-reunification-is-futile-and-therefore-unreasonable-under-the  
26 circumstances-or-that-reasonable-efforts-aimed-at-reunification  
27 are-not-required-under-this-section to prevent placement of the  
28 child in foster care;

29 (2) it has made reasonable efforts to eliminate the need  
30 for removal of the child from the child's home and to reunify  
31 the child with the child's family at the earliest possible time;

32 (3) it has made reasonable efforts to finalize an  
33 alternative permanent home for the child; or

34 (4) reasonable efforts to prevent placement and to reunify  
35 the child with the parent or guardian are not required. The  
36 agency may meet this burden by stating facts in a sworn petition

1 filed under section 260C.141, or by filing an affidavit  
2 summarizing the agency's reasonable efforts or facts the agency  
3 believes demonstrate there is no need for reasonable efforts to  
4 reunify the parent and child, or through testimony or a  
5 certified report required under juvenile court rules.

6 ~~(3)-No~~ (g) Once the court determines that reasonable  
7 efforts for reunification are not required when-the-court-makes  
8 a-determination because the court has made one of the prima  
9 facie determinations under paragraph (a) unless, the court may  
10 only require reasonable efforts for reunification after a  
11 hearing according to section 260C.163, where the court finds  
12 there is not clear and convincing evidence of the facts upon  
13 which the court based its prima facie determination. In this  
14 case when there is clear and convincing evidence that the child  
15 is in need of protection or services, the court may proceed  
16 under-section-260C-312- find the child in need of protection or  
17 services and order any of the dispositions available under  
18 section 260C.201, subdivision 1. Reunification of a surviving  
19 child with a parent is not required if the parent has been  
20 convicted of:

21 ~~(i)~~ (1) a violation of, or an attempt or conspiracy to  
22 commit a violation of, sections 609.185 to 609.20; 609.222,  
23 subdivision 2; or 609.223 in regard to another child of the  
24 parent;

25 ~~(ii)~~ (2) a violation of section 609.222, subdivision 2; or  
26 609.223, in regard to the surviving child; or

27 ~~(iii)~~ (3) a violation of, or an attempt or conspiracy to  
28 commit a violation of, United States Code, title 18, section  
29 1111(a) or 1112(a), in regard to another child of the parent.

30 ~~(e)~~ (h) The juvenile court, in proceedings under sections  
31 260B.178 or 260C.178, 260C.201, and 260C.301 shall make findings  
32 and conclusions as to the provision of reasonable efforts. When  
33 determining whether reasonable efforts have been made, the court  
34 shall consider whether services to the child and family were:

35 (1) relevant to the safety and protection of the child;

36 (2) adequate to meet the needs of the child and family;

- 1 (3) culturally appropriate;  
2 (4) available and accessible;  
3 (5) consistent and timely; and  
4 (6) realistic under the circumstances.

5 In the alternative, the court may determine that provision  
6 of services or further services for the purpose of  
7 rehabilitation is futile and therefore unreasonable under the  
8 circumstances or that reasonable efforts are not required as  
9 provided in paragraph (a).

10 ~~(d)~~ (i) This section does not prevent out-of-home placement  
11 for treatment of a child with a mental disability when the  
12 child's diagnostic assessment or individual treatment plan  
13 indicates that appropriate and necessary treatment cannot be  
14 effectively provided outside of a residential or inpatient  
15 treatment program.

16 ~~(e)~~ (j) If continuation of reasonable efforts ~~described-in~~  
17 ~~paragraph-(b)~~ to prevent placement or reunify the child with the  
18 parent or guardian from whom the child was removed is determined  
19 by the court to be inconsistent with the permanent plan for the  
20 child, ~~or-upon-a-determination~~ or upon the court making one of  
21 the prima facie determinations under paragraph (a), reasonable  
22 efforts must be made to place the child in a timely manner in  
23 ~~accordance-with-the-permanent-plan-ordered-by-the-court~~ a safe  
24 and permanent home and to complete whatever steps are necessary  
25 to legally finalize the permanent ~~plan-for~~ placement of the  
26 child.

27 ~~(f)~~ (k) Reasonable efforts to place a child for adoption or  
28 in another permanent placement may be made concurrently with  
29 reasonable efforts ~~as-described-in-paragraphs-(a)-and-(b)~~ to  
30 prevent placement or to reunify the child with the parent or  
31 guardian from whom the child was removed. When the responsible  
32 social services agency decides to concurrently make reasonable  
33 efforts for both reunification and permanent placement away from  
34 the parent under ~~paragraphs~~ paragraph (a) and ~~(b)~~, the agency  
35 shall disclose its decision and both plans for concurrent  
36 reasonable efforts to all parties and the court. When the

1 agency discloses its decision to proceed on both plans for  
2 reunification and permanent placement away from the parent, the  
3 court's review of the agency's reasonable efforts shall include  
4 the agency's efforts under ~~paragraphs-(a)-and-(b)~~ both plans.

5 Sec. 12. Minnesota Statutes 2004, section 260C.001,  
6 subdivision 3, is amended to read:

7 Subd. 3. [PERMANENCY AND TERMINATION OF PARENTAL RIGHTS.]

8 The purpose of the laws relating to permanency and termination  
9 of parental rights is to ensure that:

10 (1) when required and appropriate, reasonable efforts have  
11 been made by the social services agency to reunite the child  
12 with the child's parents in a home that is safe and permanent;  
13 and

14 (2) if placement with the parents is not reasonably  
15 foreseeable, to secure for the child a safe and permanent  
16 placement, preferably with adoptive parents or a fit and willing  
17 relative through transfer of permanent legal and physical  
18 custody to that relative.

19 Nothing in this section requires reasonable efforts to  
20 prevent placement or to reunify the child with the parent or  
21 guardian to be made in circumstances where the court has  
22 determined that the child has been subjected to egregious  
23 harm or, when the child is an abandoned infant, the parent has  
24 involuntarily lost custody of another child through a proceeding  
25 under section 260C.201, subdivision 11, or similar law of  
26 another state, the parental rights of the parent to a sibling  
27 have been involuntarily terminated, or the court has determined  
28 that reasonable efforts or further reasonable efforts to reunify  
29 the child with the parent or guardian would be futile.

30 The paramount consideration in all proceedings for  
31 permanent placement of the child under section 260C.201,  
32 subdivision 11, or the termination of parental rights is the  
33 best interests of the child. In proceedings involving an  
34 American Indian child, as defined in section 260.755,  
35 subdivision 8, the best interests of the child must be  
36 determined consistent with the Indian Child Welfare Act of 1978,

1 United States Code, title 25, section 1901, et seq.

2 Sec. 13. Minnesota Statutes 2004, section 260C.007,  
3 subdivision 8, is amended to read:

4 Subd. 8. [COMPELLING REASONS.] "Compelling reasons" means  
5 an individualized determination by the responsible social  
6 services agency, which is approved by the court, related to a  
7 request by the agency not to initiate proceedings to terminate  
8 parental rights or transfer permanent legal and physical custody  
9 of a child to the child's relative or former noncustodial parent  
10 under section 260C.301, subdivision 3.

11 Sec. 14. Minnesota Statutes 2004, section 260C.151,  
12 subdivision 6, is amended to read:

13 Subd. 6. [IMMEDIATE CUSTODY.] If the court makes  
14 individualized, explicit findings, based on the notarized  
15 petition or sworn affidavit, that there are reasonable grounds  
16 to believe the child is in surroundings or conditions which  
17 endanger the child's health, safety, or welfare that require  
18 that responsibility for the child's care and custody be  
19 immediately assumed by the ~~court~~ responsible social services  
20 agency and that continuation of the child in the custody of the  
21 parent or guardian is contrary to the child's welfare, the court  
22 may order that the officer serving the summons take the child  
23 into immediate custody for placement of the child in foster  
24 care. In ordering that responsibility for the care, custody,  
25 and control of the child be assumed by the responsible social  
26 services agency, the court is ordering emergency protective care  
27 as that term is defined in the juvenile court rules.

28 Sec. 15. Minnesota Statutes 2004, section 260C.178, is  
29 amended to read:

30 260C.178 [~~DETENTION~~ EMERGENCY REMOVAL HEARING.]

31 Subdivision 1. [HEARING AND RELEASE REQUIREMENTS.] (a) If  
32 a child was taken into custody under section 260C.175,  
33 subdivision 1, clause (a) or (b)(2), the court shall hold a  
34 hearing within 72 hours of the time the child was taken into  
35 custody, excluding Saturdays, Sundays, and holidays, to  
36 determine whether the child should continue in custody.

1 (b) Unless there is reason to believe that the child would  
2 endanger self or others, not return for a court hearing, run  
3 away from the child's parent, guardian, or custodian or  
4 otherwise not remain in the care or control of the person to  
5 whose lawful custody the child is released, or that the child's  
6 health or welfare would be immediately endangered, the child  
7 shall be released to the custody of a parent, guardian,  
8 custodian, or other suitable person, subject to reasonable  
9 conditions of release including, but not limited to, a  
10 requirement that the child undergo a chemical use assessment as  
11 provided in section 260C.157, subdivision 1. If the court  
12 determines there is reason to believe that the child would  
13 endanger self or others; not return for a court hearing; run  
14 away from the child's parent, guardian, or custodian or  
15 otherwise not remain in the care or control of the person to  
16 whose lawful custody the child is released; or that the child's  
17 health or welfare would be immediately endangered, the court  
18 shall order the child into foster care under the responsibility  
19 of the responsible social services agency or responsible  
20 probation or corrections agency for the purposes of protective  
21 care as that term is used in the juvenile court rules. In  
22 determining whether the child's health or welfare would be  
23 immediately endangered, the court shall consider whether the  
24 child would reside with a perpetrator of domestic child abuse.

25 (c) The court, before determining whether a child should be  
26 placed in or continue in custody foster care under the  
27 protective care of the responsible agency, shall also make a  
28 determination, consistent with section 260.012 as to whether  
29 reasonable efforts, ~~or~~ were made to prevent placement or whether  
30 reasonable efforts to prevent placement are not required. In  
31 the case of an Indian child, the court shall determine whether  
32 active efforts, according to the Indian Child Welfare Act of  
33 1978, United States Code, title 25, section 1912(d), were made  
34 to prevent placement. The court shall ~~also determine whether~~  
35 ~~there are available services that would prevent the need for~~  
36 ~~further detention;--in the alternative,~~ enter a finding that the

1 responsible social services agency has made reasonable efforts  
2 to prevent placement when the agency establishes either:

3 (1) that it has actually provided services or made efforts  
4 in an attempt to prevent the child's removal but that such  
5 services or efforts have not proven sufficient to permit the  
6 child to safely remain in the home; or

7 (2) that there are no services or other efforts that could  
8 be made at the time of the hearing that could safely permit the  
9 child to remain home or to return home. When reasonable efforts  
10 to prevent placement are required and there are services or  
11 other efforts that could be ordered which would permit the child  
12 to safely return home, the court shall order the child returned  
13 to the care of the parent or guardian and the services or  
14 efforts put in place to ensure the child's safety. When the  
15 court makes a prima facie determination that one of the  
16 circumstances under paragraph (e) exists, the court shall  
17 determine that reasonable efforts to prevent placement and to  
18 return the child to the care of the parent or guardian are not  
19 required if-the-court-makes-a-prima-facie-determination-that-one  
20 of-the-circumstances-under-paragraph-(e)-exists.

21 If the court finds the social services agency's preventive  
22 or reunification efforts have not been reasonable but further  
23 preventive or reunification efforts could not permit the child  
24 to safely remain at home, the court may nevertheless authorize  
25 or continue the removal of the child.

26 (d) The court may not order or continue the foster care  
27 placement of the child unless the court makes explicit,  
28 individualized findings that continued custody of the child by  
29 the parent or guardian would be contrary to the welfare of the  
30 child.

31 (e) At the ~~detention~~ emergency removal hearing, or at any  
32 time during the course of the proceeding, and upon notice and  
33 request of the county attorney, the court shall ~~make-the~~  
34 ~~following-determinations:~~

35 ~~(1)~~ determine whether a ~~termination-of-parental-rights~~  
36 petition has been filed stating a prima facie case that:

1       ~~(i)~~ (1) the parent has subjected a child to egregious harm  
2 as defined in section 260C.007, subdivision 14;

3       ~~(ii)~~ (2) the parental rights of the parent to another child  
4 have been involuntarily terminated; or

5       ~~(iii)~~ (3) the child is an abandoned infant under section  
6 260C.301, subdivision 2, paragraph (a), clause (2);

7       ~~(2)~~-that (4) the parents' custodial rights to another child  
8 have been involuntarily transferred to a relative under section  
9 260C.201, subdivision 11, paragraph (e), clause (1), or a  
10 similar law of another jurisdiction; or

11       (5) the provision of services or further services for the  
12 purpose of reunification is futile and therefore unreasonable.

13       (f) When a petition to terminate parental rights is  
14 required under section 260C.301, subdivision 3 or 4, but the  
15 county attorney has determined not to proceed with a termination  
16 of parental rights petition under ~~section 260C.307, or~~

17 ~~(3)-whether-a-termination-of-parental-rights-petition-or~~  
18 ~~other-petition-according-to-section-260C.201, subdivision 11,~~  
19 ~~has-been-filed-alleging-a-prima-facie-case-that-the-provision-of~~  
20 ~~services-or-further-services-for-the-purpose-of-rehabilitation~~  
21 ~~and-reunification-is-futile-and-therefore-unreasonable-under-the~~  
22 ~~circumstances.~~

23       ~~If-the-court-determines-that-the-county-attorney-is-not~~  
24 ~~proceeding-with-a-termination-of-parental-rights-petition-under~~  
25 ~~section-260C.307, but-is-proceeding-with-a-petition-under~~  
26 ~~section-260C.201, subdivision 11, the court shall schedule a~~  
27 ~~permanency hearing within 30 days.~~, and has instead filed a  
28 petition to transfer permanent legal and physical custody to a  
29 relative under section 260C.201, subdivision 11, the court shall  
30 schedule a permanency hearing within 30 days of the filing of  
31 the petition.

32       (g) If the county attorney has filed a petition under  
33 section 260C.307, the court shall schedule a trial under section  
34 260C.163 within 90 days of the filing of the petition except  
35 when the county attorney determines that the criminal case shall  
36 proceed to trial first under section 260C.201, subdivision 3.

1       ~~(f)~~ (h) If the court determines the child should be ordered  
2 into ~~out-of-home-placement~~ foster care and the child's parent  
3 refuses to give information to the responsible social services  
4 agency regarding the child's father or relatives of the child,  
5 the court may order the parent to disclose the names, addresses,  
6 telephone numbers, and other identifying information to the  
7 responsible social services agency for the purpose of complying  
8 with the requirements of sections 260C.151, 260C.212, and  
9 260C.215.

10       ~~(g)~~ (i) If a child ordered into ~~out-of-home-placement~~  
11 foster care has siblings, whether full, half, or step, who are  
12 also ordered into ~~placement~~ foster care, the court shall inquire  
13 of the responsible social services agency of the efforts to  
14 place the children together as required by section 260C.212,  
15 subdivision 2, paragraph (d), if placement together is in each  
16 child's best interests, unless a child is in placement due  
17 solely to the child's own behavior or a child is placed with a  
18 previously noncustodial parent who is not parent to all  
19 siblings. If the children are not placed together at the time  
20 of the hearing, the court shall inquire at each subsequent  
21 hearing of the agency's efforts to place the siblings together.  
22 If any sibling is not placed with another sibling or siblings,  
23 the agency must develop a plan for visitation among the siblings  
24 as required under section 260C.212, subdivision 1.

25       ~~Subd. 2.---[DURATION.]---If-the-court-determines-that-the~~  
26 ~~child-should-continue-in-detention,-it-may-order-detention~~  
27 ~~continued-for-eight-days,-excluding-Saturdays,-Sundays-and~~  
28 ~~holidays,-from-and-including-the-date-of-the-order.---The-court~~  
29 ~~shall-include-in-its-order-the-reasons-for-continued-detention~~  
30 ~~and-the-findings-of-fact-which-support-these-reasons.~~

31       Subd. 3. [PARENTAL VISITATION.] If a child has been taken  
32 into custody under section 260C.151, subdivision 5, or 260C.175,  
33 subdivision 1, clause (b)(2), and the court determines that the  
34 child should continue in ~~detention~~ foster care, the court shall  
35 include in its order reasonable rules for supervised or  
36 unsupervised parental visitation of the child in the ~~shelter~~

1 foster care facility unless it finds that visitation would  
2 endanger the child's physical or emotional well-being.

3 Subd. 4. [MENTAL HEALTH TREATMENT.] (a) Except as provided  
4 in paragraph (b), a child who is held ordered placed in  
5 detention foster care as an alleged victim of child abuse as  
6 defined in section 630.36, subdivision 2, may not be given  
7 mental health treatment specifically for the effects of the  
8 alleged abuse until the court finds that there is ~~probable-cause~~  
9 a prima facie basis to believe the abuse has occurred.

10 (b) A child described in paragraph (a) may be given mental  
11 health treatment prior to a ~~probable-cause~~ prima facie finding  
12 of child abuse if the treatment is either agreed to by the  
13 child's parent or guardian in writing, or ordered by the court  
14 according to the standard contained in section 260C.201,  
15 subdivision 1.

16 Subd. 5. [COPIES OF ORDER.] Copies of the court's order  
17 shall be served upon the parties, including the ~~supervisor-of~~  
18 ~~the-detention~~ placement facility, ~~who~~ which shall release the  
19 child or continue to hold the child as the court orders.

20 When the court's order is served upon these parties, notice  
21 shall also be given to the parties of the subsequent reviews  
22 provided by subdivision 6. ~~The-notice-shall-also-inform-each~~  
23 ~~party-of-the-right-to-submit-to-the-court-for-informal-review~~  
24 ~~any-new-evidence-regarding-whether-the-child-should-be-continued~~  
25 ~~in-detention-and-to-request-a-hearing-to-present-the-evidence-to~~  
26 ~~the-court.~~

27 Subd. 6. [REVIEW.] ~~If-a-child-held-in-detention-under-a~~  
28 ~~court-order-issued-under-subdivision-2-has-not-been-released~~  
29 ~~prior-to-expiration-of-the-order, the-court-or-referee-shall~~  
30 ~~informally-review-the-child's-case-file-to-determine, under-the~~  
31 ~~standards-provided-by-subdivision-1, whether-detention-should-be~~  
32 ~~continued.--If-detention-is-continued-thereafter, informal~~  
33 ~~reviews-such-as-these-shall-be-held-within-every-eight-days,~~  
34 ~~excluding-Saturdays, Sundays, and-holidays, of-the-child's~~  
35 ~~detention.~~ When a child is placed in foster care, the child's  
36 placement shall be periodically reviewed as required under the

1 juvenile court rules including notice to the parties required to  
2 be served with a copy of the order under subdivision 4.

3 A hearing~~, rather than an informal review of the child's~~  
4 ~~case file,~~ shall be held at the request of any one of the  
5 parties notified pursuant to subdivision 5, if that party  
6 notifies the court of a wish to present to the court new  
7 evidence concerning whether the child should be continued in  
8 detention or notifies the court of a wish to present an  
9 alternate placement arrangement to provide for the safety and  
10 protection of the child.

11 In addition, if a child was taken into detention custody  
12 under section 260C.151, subdivision 5, or 260C.175, subdivision  
13 1, clause (c)(2), and is ~~held~~ placed in detention foster care or  
14 placed in another facility under a court order issued under  
15 subdivision 2, the court shall schedule and hold an adjudicatory  
16 hearing on the petition within 60 days of the detention  
17 emergency removal hearing upon the request of any party to the  
18 proceeding. However, if good cause is shown by a party to the  
19 proceeding why the hearing should not be held within that time  
20 period, the hearing shall be held within 90 days, unless the  
21 parties agree otherwise and the court so orders.

22 Subd. 7. [OUT-OF-HOME PLACEMENT PLAN.] (a) An out-of-home  
23 placement plan required under section 260C.212 shall be filed  
24 with the court within 30 days of the filing of a petition  
25 alleging the child to be in need of protection or services under  
26 section 260C.141, subdivision 1, or filed with the petition if  
27 the petition is a review of a voluntary placement under section  
28 260C.141, subdivision 2.

29 (b) Upon the filing of the out-of-home placement plan which  
30 has been developed jointly with the parent and in consultation  
31 with others as required under section 260C.212, subdivision 1,  
32 the court may approve implementation of the plan by the  
33 responsible social services agency based on the allegations  
34 contained in the petition. The court shall send written notice  
35 of the approval of the out-of-home placement plan to all parties  
36 and the county attorney or may state such approval on the record

1 at a hearing. A parent may agree to comply with the terms of  
2 the plan filed with the court.

3 ~~(c) Upon notice and motion by a parent who agrees to comply~~  
4 ~~with the terms of an out-of-home placement plan, the court may~~  
5 ~~modify the plan and order the responsible social services agency~~  
6 ~~to provide other or additional services for reunification, if~~  
7 ~~reunification efforts are required, and the court determines the~~  
8 ~~agency's plan inadequate under section 260.012. The responsible~~  
9 social services agency shall make reasonable attempts to engage  
10 a parent in case planning. If the parent refuses to cooperate  
11 in the development of the out-of-home placement plan or  
12 disagrees with the services recommended by the responsible  
13 social service agency, the agency shall note such refusal or  
14 disagreement for the court in the out-of-home placement plan  
15 filed with the court. The agency shall notify the court of the  
16 services it will provide or efforts it will attempt under the  
17 plan notwithstanding the parent's refusal to cooperate or  
18 disagreement with the services. The parent may ask the court to  
19 modify the plan to require different or additional services  
20 requested by the parent, but which the agency refused to  
21 provide. The court may approve the plan as presented by the  
22 agency or may modify the plan to require services requested by  
23 the parent. The court's approval shall be based on the content  
24 of the petition.

25 (d) Unless the parent agrees to comply with the terms of  
26 the out-of-home placement plan, the court may not order a parent  
27 to comply with the provisions of the plan until the court ~~makes~~  
28 a determination finds the child is in need of protection or  
29 services and orders disposition under section 260C.201,  
30 subdivision 1. However, the court may find that the responsible  
31 social services agency has made reasonable efforts for  
32 reunification if the agency makes efforts to implement the terms  
33 of an out-of-home placement plan approved under this section.

34 Sec. 16. Minnesota Statutes 2004, section 260C.201,  
35 subdivision 1, is amended to read:

36 Subdivision 1. [DISPOSITIONS.] (a) If the court finds that

1 the child is in need of protection or services or neglected and  
2 in foster care, it shall enter an order making any of the  
3 following dispositions of the case:

4 (1) place the child under the protective supervision of the  
5 responsible social services agency or child-placing agency in  
6 the home of a parent of the child under conditions prescribed by  
7 the court directed to the correction of the child's need for  
8 protection or services:

9 (i) the court may order the child into the home of a parent  
10 who does not otherwise have legal custody of the child, however,  
11 an order under this section does not confer legal custody on  
12 that parent;

13 (ii) if the court orders the child into the home of a  
14 father who is not adjudicated, he must cooperate with paternity  
15 establishment proceedings regarding the child in the appropriate  
16 jurisdiction as one of the conditions prescribed by the court  
17 for the child to continue in his home; and

18 (iii) the court may order the child into the home of a  
19 noncustodial parent with conditions and may also order both the  
20 noncustodial and the custodial parent to comply with the  
21 requirements of a case plan under subdivision 2; or

22 (2) transfer legal custody to one of the following:

23 (i) a child-placing agency; or

24 (ii) the responsible social services agency. In placing  
25 making a foster care placement for a child whose custody has  
26 been transferred under this paragraph subdivision, the agencies  
27 agency shall make an individualized determination of how the  
28 placement is in the child's best interests using the  
29 consideration for relatives and the best interest factors in  
30 section 260C.212, subdivision 2, paragraph (b); or

31 (3) order a trial home visit without modifying the transfer  
32 of legal custody to the responsible social services agency under  
33 clause (2). Trial home visit means the child is returned to the  
34 care of the parent or guardian from whom the child was removed  
35 for a period not to exceed six months. During the period of the  
36 trial home visit, the responsible social services agency:

1 (i) shall continue to have legal custody of the child,  
2 which means the agency may see the child in the parent's home,  
3 at school, in a child care facility, or other setting as the  
4 agency deems necessary and appropriate;

5 (ii) shall continue to have the ability to access  
6 information under section 260C.208;

7 (iii) shall continue to provide appropriate services to  
8 both the parent and the child during the period of the trial  
9 home visit;

10 (iv) without previous court order or authorization, may  
11 terminate the trial home visit in order to protect the child's  
12 health, safety, or welfare and may remove the child to foster  
13 care;

14 (v) shall advise the court and parties within three days of  
15 the termination of the trial home visit when a visit is  
16 terminated by the responsible social services agency without a  
17 court order; and

18 (vi) shall prepare a report for the court when the trial  
19 home visit is terminated whether by the agency or court order  
20 which describes the child's circumstances during the trial home  
21 visit and recommends appropriate orders, if any, for the court  
22 to enter to provide for the child's safety and stability. In  
23 the event a trial home visit is terminated by the agency by  
24 removing the child to foster care without prior court order or  
25 authorization, the court shall conduct a hearing within ten days  
26 of receiving notice of the termination of the trial home visit  
27 by the agency and shall order disposition under this subdivision  
28 or conduct a permanency hearing under subdivision 11 or 11a.  
29 The time period for the hearing may be extended by the court for  
30 good cause shown and if it is in the best interests of the child  
31 as long as the total time the child spends in foster care  
32 without a permanency hearing does not exceed 12 months.

33 (4) If the child has been adjudicated as a child in need of  
34 protection or services because the child is in need of special  
35 services or care to treat or ameliorate a physical or mental  
36 disability, the court may order the child's parent, guardian, or

1 custodian to provide it. The court may order the child's health  
2 plan company to provide mental health services to the child.  
3 Section 62Q.535 applies to an order for mental health services  
4 directed to the child's health plan company. If the health  
5 plan, parent, guardian, or custodian fails or is unable to  
6 provide this treatment or care, the court may order it  
7 provided. Absent specific written findings by the court that  
8 the child's disability is the result of abuse or neglect by the  
9 child's parent or guardian, the court shall not transfer legal  
10 custody of the child for the purpose of obtaining special  
11 treatment or care solely because the parent is unable to provide  
12 the treatment or care. If the court's order for mental health  
13 treatment is based on a diagnosis made by a treatment  
14 professional, the court may order that the diagnosing  
15 professional not provide the treatment to the child if it finds  
16 that such an order is in the child's best interests; or  
17 ~~(4)~~ (5) If the court believes that the child has sufficient  
18 maturity and judgment and that it is in the best interests of  
19 the child, the court may order a child 16 years old or older to  
20 be allowed to live independently, either alone or with others as  
21 approved by the court under supervision the court considers  
22 appropriate, if the county board, after consultation with the  
23 court, has specifically authorized this dispositional  
24 alternative for a child.

25 (b) If the child was adjudicated in need of protection or  
26 services because the child is a runaway or habitual truant, the  
27 court may order any of the following dispositions in addition to  
28 or as alternatives to the dispositions authorized under  
29 paragraph (a):

30 (1) counsel the child or the child's parents, guardian, or  
31 custodian;

32 (2) place the child under the supervision of a probation  
33 officer or other suitable person in the child's own home under  
34 conditions prescribed by the court, including reasonable rules  
35 for the child's conduct and the conduct of the parents,  
36 guardian, or custodian, designed for the physical, mental, and

1 moral well-being and behavior of the child; or with the consent  
2 of the commissioner of corrections, place the child in a group  
3 foster care facility which is under the commissioner's  
4 management and supervision;

5 (3) subject to the court's supervision, transfer legal  
6 custody of the child to one of the following:

7 (i) a reputable person of good moral character. No person  
8 may receive custody of two or more unrelated children unless  
9 licensed to operate a residential program under sections 245A.01  
10 to 245A.16; or

11 (ii) a county probation officer for placement in a group  
12 foster home established under the direction of the juvenile  
13 court and licensed pursuant to section 241.021;

14 (4) require the child to pay a fine of up to \$100. The  
15 court shall order payment of the fine in a manner that will not  
16 impose undue financial hardship upon the child;

17 (5) require the child to participate in a community service  
18 project;

19 (6) order the child to undergo a chemical dependency  
20 evaluation and, if warranted by the evaluation, order  
21 participation by the child in a drug awareness program or an  
22 inpatient or outpatient chemical dependency treatment program;

23 (7) if the court believes that it is in the best interests  
24 of the child and of public safety that the child's driver's  
25 license or instruction permit be canceled, the court may order  
26 the commissioner of public safety to cancel the child's license  
27 or permit for any period up to the child's 18th birthday. If  
28 the child does not have a driver's license or permit, the court  
29 may order a denial of driving privileges for any period up to  
30 the child's 18th birthday. The court shall forward an order  
31 issued under this clause to the commissioner, who shall cancel  
32 the license or permit or deny driving privileges without a  
33 hearing for the period specified by the court. At any time  
34 before the expiration of the period of cancellation or denial,  
35 the court may, for good cause, order the commissioner of public  
36 safety to allow the child to apply for a license or permit, and

1 the commissioner shall so authorize;

2 (8) order that the child's parent or legal guardian deliver  
3 the child to school at the beginning of each school day for a  
4 period of time specified by the court; or

5 (9) require the child to perform any other activities or  
6 participate in any other treatment programs deemed appropriate  
7 by the court.

8 To the extent practicable, the court shall enter a  
9 disposition order the same day it makes a finding that a child  
10 is in need of protection or services or neglected and in foster  
11 care, but in no event more than 15 days after the finding unless  
12 the court finds that the best interests of the child will be  
13 served by granting a delay. If the child was under eight years  
14 of age at the time the petition was filed, the disposition order  
15 must be entered within ten days of the finding and the court may  
16 not grant a delay unless good cause is shown and the court finds  
17 the best interests of the child will be served by the delay.

18 (c) If a child who is 14 years of age or older is  
19 adjudicated in need of protection or services because the child  
20 is a habitual truant and truancy procedures involving the child  
21 were previously dealt with by a school attendance review board  
22 or county attorney mediation program under section 260A.06 or  
23 260A.07, the court shall order a cancellation or denial of  
24 driving privileges under paragraph (b), clause (7), for any  
25 period up to the child's 18th birthday.

26 (d) In the case of a child adjudicated in need of  
27 protection or services because the child has committed domestic  
28 abuse and been ordered excluded from the child's parent's home,  
29 the court shall dismiss jurisdiction if the court, at any time,  
30 finds the parent is able or willing to provide an alternative  
31 safe living arrangement for the child, as defined in Laws 1997,  
32 chapter 239, article 10, section 2.

33 (e) When a parent has complied with a case plan ordered  
34 under subdivision 6 and the child is in the care of the parent,  
35 the court may order the responsible social services agency to  
36 monitor the parent's continued ability to maintain the child

1 safely in the home under such terms and conditions as the court  
2 determines appropriate under the circumstances.

3 Sec. 17. Minnesota Statutes 2004, section 260C.201,  
4 subdivision 10, is amended to read:

5 Subd. 10. [~~COURT REVIEW OF OUT-OF-HOME-PLACEMENTS~~ FOSTER  
6 CARE.] (a) If the court ~~places orders~~ a child placed in a  
7 ~~residential-facility, as defined in section 260C.212,~~  
8 ~~subdivision 1~~ foster care, the court shall review the  
9 out-of-home placement at least every 90 days as required in  
10 juvenile court rules to determine whether continued out-of-home  
11 placement is necessary and appropriate or whether the child  
12 should be returned home. This review is not required if the  
13 court has returned the child home, ordered the child permanently  
14 placed away from the parent under subdivision 11, or terminated  
15 rights under section 260C.301. Court review for a child  
16 permanently placed away from a parent, including where the child  
17 is under guardianship and legal custody of the commissioner,  
18 shall be governed by subdivision 11 or section 260C.317,  
19 subdivision 3, whichever is applicable.

20 (b) No later than six months after the child's ~~out-of-home~~  
21 placement in foster care, the court shall review agency efforts  
22 pursuant to section 260C.212, subdivision 2, and order that the  
23 efforts continue if the agency has failed to perform the duties  
24 under that section.

25 (c) The court shall review the out-of-home placement plan  
26 and may modify the plan as provided under subdivisions 6 and 7.

27 (d) When the court orders ~~out-of-home-placement~~ transfer of  
28 custody to a responsible social services agency resulting in  
29 foster care or protective supervision with a noncustodial parent  
30 under subdivision 1, the court shall notify the parents of the  
31 provisions of subdivisions 11 and 11a as required under juvenile  
32 court rules.

33 Sec. 18. Minnesota Statutes 2004, section 260C.201,  
34 subdivision 11, is amended to read:

35 Subd. 11. [~~REVIEW OF COURT-ORDERED PLACEMENTS; PERMANENT~~  
36 PLACEMENT DETERMINATION.] (a) This subdivision and subdivision

1 11a do not apply in cases where the child is in placement due  
2 solely to the child's developmental disability or emotional  
3 disturbance, where legal custody has not been transferred to the  
4 responsible social services agency, and where the court finds  
5 compelling reasons under section 260C.007, subdivision 8, to  
6 continue the child in foster care past the time periods  
7 specified in this subdivision. Foster care placements of  
8 children due solely to their disability are governed by section  
9 260C.141, subdivision 2b. In all other cases where the child is  
10 in foster care or in the care of a noncustodial parent under  
11 subdivision 1, the court shall ~~conduct-a-hearing~~ commence  
12 proceedings to determine the permanent status of a child not  
13 later than 12 months after the child is placed in foster care or  
14 in the care of a noncustodial parent. At the admit-deny hearing  
15 commencing such proceedings, the court shall determine whether  
16 there is a prima facie basis for finding that the agency made  
17 reasonable efforts, or in the case of an Indian child active  
18 efforts, required under section 260.012 and proceed according to  
19 the rules of juvenile court.

20 For purposes of this subdivision, the date of the child's  
21 placement in foster care is the earlier of the first  
22 court-ordered placement or 60 days after the date on which the  
23 child has been voluntarily placed in foster care by the child's  
24 parent or guardian. For purposes of this subdivision, time  
25 spent by a child under the protective supervision of the  
26 responsible social services agency in the home of a noncustodial  
27 parent pursuant to an order under subdivision 1 counts towards  
28 the requirement of a permanency hearing under this subdivision  
29 or subdivision 11a. Time spent on a trial home visit does not  
30 count towards the requirement of a permanency hearing under this  
31 subdivision or subdivision 11a.

32 For purposes of this subdivision, 12 months is calculated  
33 as follows:

34 (1) during the pendency of a petition alleging that a child  
35 is in need of protection or services, all time periods when a  
36 child is placed in foster care or in the home of a noncustodial

1 parent are cumulated;

2 (2) if a child has been placed in foster care within the  
3 previous five years under one or more previous petitions, the  
4 lengths of all prior time periods when the child was placed in  
5 foster care within the previous five years are cumulated. If a  
6 child under this clause has been in foster care for 12 months or  
7 more, the court, if it is in the best interests of the child and  
8 for compelling reasons, may extend the total time the child may  
9 continue out of the home under the current petition up to an  
10 additional six months before making a permanency determination.

11 (b) Unless the responsible social services agency  
12 recommends return of the child to the custodial parent or  
13 parents, not later than 30 days prior to ~~this~~ the admit-deny  
14 hearing required under paragraph (a) and the rules of juvenile  
15 court, the responsible social services agency shall file  
16 pleadings in juvenile court to establish the basis for the  
17 juvenile court to order permanent placement of the child,  
18 including a termination of parental rights petition, according  
19 to paragraph (d). Notice of the hearing and copies of the  
20 pleadings must be provided pursuant to section 260C.152. ~~If a~~  
21 ~~termination-of-parental-rights-petition-is-filed-before-the-date~~  
22 ~~required-for-the-permanency-planning-determination-and-there-is~~  
23 ~~a-trial-under-section-260C:163-scheduled-on-that-petition-within~~  
24 ~~90-days-of-the-filing-of-the-petition, no hearing need be~~  
25 ~~conducted-under-this-subdivision.~~

26 (c) The permanency proceedings shall be conducted in a  
27 timely fashion including that any trial required under section  
28 260C.163 shall be commenced within 60 days of the admit-deny  
29 hearing required under paragraph (a). At the conclusion of the  
30 hearing permanency proceedings, the court shall:

31 (1) order the child returned to the care of the parent or  
32 guardian from whom the child was removed; or

33 (2) order a permanent placement or termination of parental  
34 rights if permanent placement or termination of parental rights  
35 is in the child's best interests. The "best interests of the  
36 child" means all relevant factors to be considered and

1 evaluated. Transfer of permanent legal and physical custody,  
2 termination of parental rights, or guardianship and legal  
3 custody to the commissioner through a consent to adopt are  
4 preferred permanency options for a child who cannot return home.

5 (d) If the child is not returned to the home, the court  
6 must order one of the following dispositions:

7 (1) permanent legal and physical custody to a relative in  
8 the best interests of the child according to the following  
9 conditions:

10 (i) an order for transfer of permanent legal and physical  
11 custody to a relative shall only be made after the court has  
12 reviewed the suitability of the prospective legal and physical  
13 custodian;

14 (ii) in transferring permanent legal and physical custody  
15 to a relative, the juvenile court shall follow the standards  
16 applicable under this chapter and chapter 260, and the  
17 procedures set out in the juvenile court rules;

18 (iii) an order establishing permanent legal and physical  
19 custody under this subdivision must be filed with the family  
20 court;

21 (iv) a transfer of legal and physical custody includes  
22 responsibility for the protection, education, care, and control  
23 of the child and decision making on behalf of the child;

24 (v) the social services agency may bring a petition or  
25 motion naming a fit and willing relative as a proposed permanent  
26 legal and physical custodian. The commissioner of human  
27 services shall annually prepare for counties information that  
28 must be given to proposed custodians about their legal rights  
29 and obligations as custodians together with information on  
30 financial and medical benefits for which the child is eligible;  
31 and

32 (vi) the juvenile court may maintain jurisdiction over the  
33 responsible social services agency, the parents or guardian of  
34 the child, the child, and the permanent legal and physical  
35 custodian for purposes of ensuring appropriate services are  
36 delivered to the child and permanent legal custodian or for the

1 purpose of ensuring conditions ordered by the court related to  
2 the care and custody of the child are met;

3 (2) termination of parental rights when the requirements of  
4 sections 260C.301 to 260C.328 are met or according to the  
5 following conditions:

6 (i) ~~unless order~~ the social services agency ~~has-already~~  
7 ~~filed to file~~ a petition for termination of parental  
8 rights ~~under-section-260C-307,--the-court-may-order-such-a~~  
9 ~~petition-filed-and~~ in which case all the requirements of  
10 sections 260C.301 to 260C.328 remain applicable; and

11 (ii) an adoption completed subsequent to a determination  
12 under this subdivision may include an agreement for  
13 communication or contact under section 259.58;

14 (3) long-term foster care according to the following  
15 conditions:

16 (i) the court may order a child into long-term foster care  
17 only if it ~~finds~~ approves the responsible social service  
18 agency's compelling reasons that neither an award of permanent  
19 legal and physical custody to a relative, nor termination of  
20 parental rights is in the child's best interests; and

21 (ii) further, the court may only order long-term foster  
22 care for the child under this section if it finds the following:

23 (A) the child has reached age 12 and ~~reasonable-efforts-by~~  
24 the responsible social services agency ~~have-failed~~ has made  
25 reasonable efforts to locate and place the child with an  
26 adoptive family for-the-child or with a fit and willing relative  
27 who will agree to a transfer of permanent legal and physical  
28 custody of the child, but such efforts have not proven  
29 successful; or

30 (B) the child is a sibling of a child described in subitem  
31 (A) and the siblings have a significant positive relationship  
32 and are ordered into the same long-term foster care home; and

33 (iii) at least annually, the responsible social services  
34 agency reconsiders its provision of services to the child and  
35 the child's placement in long-term foster care to ensure that:

36 (A) long-term foster care continues to be the most

1 appropriate legal arrangement for meeting the child's need for  
2 permanency and stability, including whether there is another  
3 permanent placement option under this chapter that would better  
4 serve the child's needs and best interests;

5 (B) whenever possible, there is an identified long-term  
6 foster care family that is committed to being the foster family  
7 for the child as long as the child is a minor or under the  
8 jurisdiction of the court;

9 (C) the child is receiving appropriate services or  
10 assistance to maintain or build connections with the child's  
11 family and community;

12 (D) the child's physical and mental health needs are being  
13 appropriately provided for; and

14 (E) the child's educational needs are being met;

15 (4) foster care for a specified period of time according to  
16 the following conditions:

17 (i) foster care for a specified period of time may be  
18 ordered only if:

19 (A) the sole basis for an adjudication that the child is in  
20 need of protection or services is the child's behavior;

21 (B) the court finds that foster care for a specified period  
22 of time is in the best interests of the child; and

23 (C) the court ~~finds~~ approves the responsible social  
24 services agency's compelling reasons that neither an award of  
25 permanent legal and physical custody to a relative, nor  
26 termination of parental rights is in the child's best interests;

27 (ii) the order does not specify that the child continue in  
28 foster care for any period exceeding one year; or

29 (5) guardianship and legal custody to the commissioner of  
30 human services under the following procedures and conditions:

31 (i) there is an identified prospective adoptive home agreed  
32 to by the responsible social services agency that has agreed to  
33 adopt the child and the court accepts the parent's voluntary  
34 consent to adopt under section 259.24, except that such consent  
35 executed by a parent under this item, following proper notice  
36 that consent given under this provision is irrevocable upon

1 acceptance by the court, shall be irrevocable unless fraud is  
2 established and an order issues permitting revocation as stated  
3 in item (vii);

4 (ii) if the court accepts a consent to adopt in lieu of  
5 ordering one of the other enumerated permanency dispositions,  
6 the court must review the matter at least every 90 days. The  
7 review will address the reasonable efforts of the agency to  
8 achieve a finalized adoption;

9 (iii) a consent to adopt under this clause vests all legal  
10 authority regarding the child, including guardianship and legal  
11 custody of the child, with the commissioner of human services as  
12 if the child were a state ward after termination of parental  
13 rights;

14 (iv) the court must forward a copy of the consent to adopt,  
15 together with a certified copy of the order transferring  
16 guardianship and legal custody to the commissioner, to the  
17 commissioner; and

18 (v) if an adoption is not finalized by the identified  
19 prospective adoptive parent within 12 months of the execution of  
20 the consent to adopt under this clause, the commissioner of  
21 human services or the commissioner's delegate shall pursue  
22 adoptive placement in another home unless the commissioner  
23 certifies that the failure to finalize is not due to either an  
24 action or a failure to act by the prospective adoptive parent;

25 (vi) notwithstanding item (v), as soon as the commissioner  
26 or commissioner's delegate determines that finalization of the  
27 adoption with the identified prospective adoptive parent is not  
28 possible, that the prospective adoptive parent is not  
29 cooperative in completing the steps necessary to finalize the  
30 adoption, or upon the commissioner's determination to withhold  
31 consent to the adoption under chapter 259, the commissioner or  
32 commissioner's delegate shall pursue adoptive placement in  
33 another home; and

34 (vii) unless otherwise required by the Indian Child Welfare  
35 Act, United States Code, title 25, section 1913, a consent to  
36 adopt executed under this section, following proper notice that

1 consent given under this provision is irrevocable upon  
2 acceptance by the court, shall be irrevocable upon acceptance by  
3 the court except upon order permitting revocation issued by the  
4 same court after written findings that consent was obtained by  
5 fraud.

6 (e) In ordering a permanent placement of a child, the court  
7 must be governed by the best interests of the child, including a  
8 review of the relationship between the child and relatives and  
9 the child and other important persons with whom the child has  
10 resided or had significant contact.

11 (f) Once a permanent placement determination has been made  
12 and permanent placement has been established, further court  
13 reviews are necessary if:

14 (1) the placement is long-term foster care or foster care  
15 for a specified period of time;

16 (2) the court orders further hearings because it has  
17 retained jurisdiction of a transfer of permanent legal and  
18 physical custody matter;

19 (3) an adoption has not yet been finalized; or

20 (4) there is a disruption of the permanent or long-term  
21 placement.

22 (g) Court reviews of an order for long-term foster care,  
23 whether under this section or section 260C.317, subdivision 3,  
24 paragraph (d), ~~or-foster-care-for-a-specified-period-of-time~~  
25 must be conducted at least yearly and must review the child's  
26 out-of-home placement plan and the reasonable efforts of the  
27 agency to finalize the permanent plan for the child including  
28 the agency's efforts to:

29 (1) ensure that long-term foster care continues to be the  
30 most appropriate legal arrangement for meeting the child's need  
31 for permanency and stability or, if not, to identify and attempt  
32 to finalize another permanent placement option under this  
33 chapter that would better serve the child's needs and best  
34 interests;

35 (2) identify a specific long-term foster home for the child  
36 or-a-specific-foster-home-for-the-time-the-child-is-specified-to

1 ~~be out of the care of the parent~~, if one has not already been  
2 identified;

3 ~~(2)~~ (3) support continued placement of the child in the  
4 identified home, if one has been identified;

5 ~~(3)~~ (4) ensure appropriate services are provided to address  
6 the physical health, mental health, and educational needs of the  
7 child during the period of long-term foster care or foster care  
8 for a specified period of time and also ensure appropriate  
9 services or assistance to maintain relationships with  
10 appropriate family members and the child's community; and

11 ~~(4)~~ (5) plan for the child's independence upon the child's  
12 leaving long-term foster care living as required under section  
13 260C.212, subdivision 1, ~~and~~

14 ~~(5) where placement is for a specified period of time, a~~  
15 ~~plan for the safe return of the child to the care of the parent.~~

16 (h) In the event it is necessary for a child that has been  
17 ordered into foster care for a specified period of time to be in  
18 foster care longer than one year after the permanency hearing  
19 held under this section, not later than 12 months after the time  
20 the child was ordered into foster care for a specified period of  
21 time, the matter must be returned to court for a review of the  
22 appropriateness of continuing the child in foster care and of  
23 the responsible social services agency's reasonable efforts to  
24 finalize a permanent plan for the child; if it is in the child's  
25 best interests to continue the order for foster care for a  
26 specified period of time past a total of 12 months, the court  
27 shall set objectives for the child's continuation in foster  
28 care, specify any further amount of time the child may be in  
29 foster care, and review the plan for the safe return of the  
30 child to the parent.

31 (i) An order under this subdivision permanently placing a  
32 child out of the home of the parent or guardian must include the  
33 following detailed findings:

34 (1) how the child's best interests are served by the order;

35 (2) the nature and extent of the responsible social service  
36 agency's reasonable efforts, or, in the case of an Indian child,

1 active efforts to reunify the child with the parent or parents  
2 guardian where reasonable efforts are required;

3 (3) the parent's or parents' efforts and ability to use  
4 services to correct the conditions which led to the out-of-home  
5 placement; and

6 (4) ~~whether~~ that the conditions which led to the  
7 out-of-home placement have not been corrected so that the child  
8 can safely return home.

9 ~~(i)~~ (j) An order for permanent legal and physical custody  
10 of a child may be modified under sections 518.18 and 518.185.  
11 The social services agency is a party to the proceeding and must  
12 receive notice. A parent may only seek modification of an order  
13 for long-term foster care upon motion and a showing by the  
14 parent of a substantial change in the parent's circumstances  
15 such that the parent could provide appropriate care for the  
16 child and that removal of the child from the child's permanent  
17 placement and the return to the parent's care would be in the  
18 best interest of the child. The responsible social services  
19 agency may ask the court to vacate an order for long-term foster  
20 care upon a prima facie showing that there is a factual basis  
21 for the court to order another permanency option under this  
22 chapter and that such an option is in the child's best  
23 interests. Upon a hearing where the court determines that there  
24 is a factual basis for vacating the order for long-term foster  
25 care and that another permanent order regarding the placement of  
26 the child is in the child's best interests, the court may vacate  
27 the order for long-term foster care and enter a different order  
28 for permanent placement that is in the child's best interests.  
29 The court shall not require further reasonable efforts to  
30 reunify the child with the parent or guardian as a basis for  
31 vacating the order for long-term foster care and ordering a  
32 different permanent placement in the child's best interests.  
33 The county attorney must file pleadings and give notice as  
34 required under the rules of juvenile court in order to modify an  
35 order for long-term foster care under this paragraph.

36 ~~(j)~~ (k) The court shall issue an order required under this

1 section within 15 days of the close of the proceedings. The  
2 court may extend issuing the order an additional 15 days when  
3 necessary in the interests of justice and the best interests of  
4 the child.

5 Sec. 19. Minnesota Statutes 2004, section 260C.312, is  
6 amended to read:

7 260C.312 [DISPOSITION; PARENTAL RIGHTS NOT TERMINATED.]

8 (a) If, after a hearing, the court does not terminate  
9 parental rights but determines that the child is in need of  
10 protection or services, or that the child is neglected and in  
11 foster care, the court may find the child is in need of  
12 protection or services or neglected and in foster care and may  
13 enter an order in accordance with the provisions of section  
14 260C.201.

15 (b) When a child has been in placement 15 of the last 22  
16 months after a trial on a termination of parental rights  
17 petition, if the court finds that the petition is not proven or  
18 that termination of parental rights is not in the child's best  
19 interests, the court must order the child returned to the care  
20 of the parent unless the court finds approves the responsible  
21 social services agency's determination of compelling reasons why  
22 the child should remain out of the care of the parent. If the  
23 court orders the child returned to the care of the parent, the  
24 court may order a trial home visit, protective supervision, or  
25 monitoring under section 260C.201.

26 Sec. 20. Minnesota Statutes 2004, section 260C.317,  
27 subdivision 3, is amended to read:

28 Subd. 3. [ORDER; RETENTION OF JURISDICTION.] (a) A  
29 certified copy of the findings and the order terminating  
30 parental rights, and a summary of the court's information  
31 concerning the child shall be furnished by the court to the  
32 commissioner or the agency to which guardianship is  
33 transferred. The orders shall be on a document separate from  
34 the findings. The court shall furnish the individual to whom  
35 guardianship is transferred a copy of the order terminating  
36 parental rights.

1 (b) The court shall retain jurisdiction in a case where  
2 adoption is the intended permanent placement disposition until  
3 the child's adoption is finalized, the child is 18 years of age,  
4 or the child is otherwise ordered discharged from the  
5 jurisdiction of the court. The guardian ad litem and counsel  
6 for the child shall continue on the case until an adoption  
7 decree is entered. A hearing must be held every 90 days  
8 following termination of parental rights for the court to review  
9 progress toward an adoptive placement and the specific  
10 recruitment efforts the agency has taken to find an adoptive  
11 family or other placement living arrangement for the child and  
12 to finalize the adoption or other permanency plan.

13 (c) ~~When adoption is not the intended disposition~~ The  
14 responsible social services agency may make a determination of  
15 compelling reasons for a child to be in long-term foster care  
16 when the agency has made exhaustive efforts to recruit,  
17 identify, and place the child in an adoptive home, and if the  
18 child continues in out-of-home-placement foster care for at  
19 least 24 months after the court has issued the order terminating  
20 parental rights and. Upon approving the agency's determination  
21 of compelling reasons, the court may order the child placed in  
22 long-term foster care. At least every 12 months thereafter as  
23 long as the child continues in out-of-home placement, the court  
24 shall conduct a permanency review hearing to determine the  
25 future status of the child, ~~including, but not limited to,~~  
26 ~~whether the child should be continued in out-of-home placement,~~  
27 ~~should be placed for adoption, or should, because of the child's~~  
28 ~~special needs and for compelling reasons, be ordered into~~  
29 ~~long-term out-of-home placement~~ using the review requirements of  
30 section 260C.201, subdivision 11, paragraph (g).

31 (d) The court shall retain jurisdiction through the child's  
32 minority in a case where long-term foster care is the permanent  
33 disposition whether under paragraph (c) or section 260C.201,  
34 subdivision 11. ~~All of the review requirements under section~~  
35 ~~260C.201, subdivision 11, paragraph (g), apply.~~

36

ARTICLE 3

## 1 CHILD CARE

2 Section 1. Minnesota Statutes 2004, section 119B.025,  
3 subdivision 1, is amended to read:

4 Subdivision 1. [FACTORS WHICH MUST BE VERIFIED.] (a) The  
5 county shall verify the following at all initial child care  
6 applications using the universal application:

7 (1) identity of adults;

8 (2) presence of the minor child in the home, if  
9 questionable;

10 (3) relationship of minor child to the parent, stepparent,  
11 legal guardian, eligible relative caretaker, or the spouses of  
12 any of the foregoing;

13 (4) age;

14 (5) immigration status, if related to eligibility;

15 (6) Social Security number, if given;

16 (7) income;

17 (8) spousal support and child support payments made to  
18 persons outside the household;

19 (9) residence; and

20 (10) inconsistent information, if related to eligibility.

21 (b) If a family did not use the universal application or  
22 child care addendum to apply for child care assistance, the  
23 family must complete the universal application or child care  
24 addendum at its next eligibility redetermination and the county  
25 must verify the factors listed in paragraph (a) as part of that  
26 redetermination. Once a family has completed a universal  
27 application or child care addendum, the county shall use the  
28 redetermination form described in paragraph (c) for that  
29 family's subsequent redeterminations. Eligibility must be  
30 redetermined at least every six months. If a family reports a  
31 change in an eligibility factor before the family's next  
32 regularly scheduled redetermination, the county must recalculate  
33 eligibility without requiring verification of any eligibility  
34 factor that did not change.

35 (c) The commissioner shall develop a recertification  
36 redetermination form to redetermine eligibility and a change

1 report form to report changes that minimizes minimize paperwork  
2 for the county and the participant.

3 Sec. 2. Minnesota Statutes 2004, section 119B.03,  
4 subdivision 6, is amended to read:

5 Subd. 6. [ALLOCATION FORMULA.] The basic sliding fee state  
6 and federal funds shall be allocated on a calendar year basis.  
7 Funds shall be allocated first in amounts equal to each county's  
8 guaranteed floor according to subdivision 8, with any remaining  
9 available funds allocated according to the following formula:

10 (a) One-fourth of the funds shall be allocated in  
11 proportion to each county's total expenditures for the basic  
12 sliding fee child care program reported during the most recent  
13 fiscal year completed at the time of the notice of allocation.

14 (b) One-fourth of the funds shall be allocated based on the  
15 number of families participating in the transition year child  
16 care program as reported during the most recent quarter  
17 completed at the time of the notice of allocation.

18 (c) One-fourth of the funds shall be allocated in  
19 proportion to each county's most recently reported first,  
20 second, and third priority waiting list as defined in  
21 subdivision 2 and the reinstatement list of those families whose  
22 assistance was terminated with the approval of the commissioner  
23 under Minnesota Rules, part 3400.0183, subpart 1.

24 (d) One-fourth of the funds must be allocated in proportion  
25 to each county's most recently reported waiting list as defined  
26 in subdivision 2 and the reinstatement list of those families  
27 whose assistance was terminated with the approval of the  
28 commissioner under Minnesota Rules, part 3400.0183, subpart 1.

29 Sec. 3. Minnesota Statutes 2004, section 119B.09,  
30 subdivision 4, is amended to read:

31 Subd. 4. [ELIGIBILITY; ANNUAL INCOME; CALCULATION.] Annual  
32 income of the applicant family is the current monthly income of  
33 the family multiplied by 12 or the income for the 12-month  
34 period immediately preceding the date of application, or income  
35 calculated by the method which provides the most accurate  
36 assessment of income available to the family. Self-employment

1 income must be calculated based on gross receipts less operating  
2 expenses. Income must be ~~redetermined~~ recalculated when the  
3 family's income changes, but no less often than every six  
4 months. Income must be verified with documentary evidence. If  
5 the applicant does not have sufficient evidence of income,  
6 verification must be obtained from the source of the income.

7 Sec. 4. Minnesota Statutes 2004, section 119B.09,  
8 subdivision 9, is amended to read:

9 Subd. 9. [LICENSED AND LEGAL NONLICENSED FAMILY CHILD CARE  
10 PROVIDERS; ASSISTANCE.] Licensed and legal nonlicensed family  
11 child care providers are not eligible to receive child care  
12 assistance subsidies under this chapter for their own children  
13 or children in their ~~custody~~ family during the hours they are  
14 providing child care or being paid to provide child care. Child  
15 care providers are eligible to receive child care assistance  
16 subsidies for their children when they are engaged in other  
17 activities that meet the requirements of this chapter and for  
18 which child care assistance can be paid. The hours for which  
19 the provider receives a child care subsidy for their own  
20 children must not overlap with the hours the provider provides  
21 child care services.

22 ARTICLE 4

23 CHILD SUPPORT

24 Section 1. Minnesota Statutes 2004, section 256.978,  
25 subdivision 2, is amended to read:

26 Subd. 2. [ACCESS TO INFORMATION.] (a) A request for  
27 information by the public authority responsible for child  
28 support of this state or any other state may be made to:

29 (1) employers when there is reasonable cause to believe  
30 that the subject of the inquiry is or was an employee or  
31 independent contractor of the employer. Information to be  
32 released by employers of employees is limited to place of  
33 residence, employment status, wage or payment information,  
34 benefit information, and Social Security number. Information to  
35 be released by employers of independent contractors is limited  
36 to place of residence or address, contract status, payment

1 information, benefit information, and Social Security number or  
2 identification number;

3 (2) utility companies when there is reasonable cause to  
4 believe that the subject of the inquiry is or was a retail  
5 customer of the utility company. Customer information to be  
6 released by utility companies is limited to place of residence,  
7 home telephone, work telephone, source of income, employer and  
8 place of employment, and Social Security number;

9 (3) insurance companies when there is reasonable cause to  
10 believe that the subject of the inquiry is or was receiving  
11 funds either in the form of a lump sum or periodic payments.  
12 Information to be released by insurance companies is limited to  
13 place of residence, home telephone, work telephone, employer,  
14 Social Security number, and amounts and type of payments made to  
15 the subject of the inquiry;

16 (4) labor organizations when there is reasonable cause to  
17 believe that the subject of the inquiry is or was a member of  
18 the labor association. Information to be released by labor  
19 associations is limited to place of residence, home telephone,  
20 work telephone, Social Security number, and current and past  
21 employment information; and

22 (5) financial institutions when there is reasonable cause  
23 to believe that the subject of the inquiry has or has had  
24 accounts, stocks, loans, certificates of deposits, treasury  
25 bills, life insurance policies, or other forms of financial  
26 dealings with the institution. Information to be released by  
27 the financial institution is limited to place of residence, home  
28 telephone, work telephone, identifying information on the type  
29 of financial relationships, Social Security number, current  
30 value of financial relationships, and current indebtedness of  
31 the subject with the financial institution.

32 (b) For purposes of this subdivision, utility companies  
33 include telephone companies, radio common carriers, and  
34 telecommunications carriers as defined in section 237.01, and  
35 companies that provide electrical, telephone, natural gas,  
36 propane gas, oil, coal, or cable television services to retail

1 customers. The term financial institution includes banks,  
2 savings and loans, credit unions, brokerage firms, mortgage  
3 companies, insurance companies, benefit associations, safe  
4 deposit companies, money market mutual funds, or similar  
5 entities authorized to do business in the state.

6 (c) For purposes of this section, the public authority may  
7 request or obtain information from any person or entity  
8 enumerated in this section, or from any third party who  
9 contracts with any such person or entity to obtain or retain  
10 information that may be requested by the public authority.

11 Sec. 2. Minnesota Statutes 2004, section 518.551,  
12 subdivision 5, is amended to read:

13 Subd. 5. [NOTICE TO PUBLIC AUTHORITY; GUIDELINES.] (a) The  
14 petitioner shall notify the public authority of all proceedings  
15 for dissolution, legal separation, determination of parentage or  
16 for the custody of a child, if either party is receiving public  
17 assistance or applies for it subsequent to the commencement of  
18 the proceeding. The notice must contain the full names of the  
19 parties to the proceeding, their Social Security account  
20 numbers, and their birth dates. After receipt of the notice,  
21 the court shall set child support as provided in this  
22 subdivision. The court may order either or both parents owing a  
23 duty of support to a child of the marriage to pay an amount  
24 reasonable or necessary for the child's support, without regard  
25 to marital misconduct. The court shall approve a child support  
26 stipulation of the parties if each party is represented by  
27 independent counsel, unless the stipulation does not meet the  
28 conditions of paragraph (i). In other cases the court shall  
29 determine and order child support in a specific dollar amount in  
30 accordance with the guidelines and the other factors set forth  
31 in paragraph (c) and any departure therefrom. The court may  
32 also order the obligor to pay child support in the form of a  
33 percentage share of the obligor's net bonuses, commissions, or  
34 other forms of compensation, in addition to, or if the obligor  
35 receives no base pay, in lieu of, an order for a specific dollar  
36 amount.

1 (b) The court shall derive a specific dollar amount for  
 2 child support by multiplying the obligor's net income by the  
 3 percentage indicated by the following guidelines:

4 Net Income Per Number of Children  
 5 Month of Obligor  
 6 1 2 3 4 5 6 7 or  
 7 more

8 \$550 and Below Order based on the ability of the  
 9 obligor to provide support  
 10 at these income levels, or at higher  
 11 levels, if the obligor has  
 12 the earning ability.

13	\$551 - 600	16%	19%	22%	25%	28%	30%	32%
14	\$601 - 650	17%	21%	24%	27%	29%	32%	34%
15	\$651 - 700	18%	22%	25%	28%	31%	34%	36%
16	\$701 - 750	19%	23%	27%	30%	33%	36%	38%
17	\$751 - 800	20%	24%	28%	31%	35%	38%	40%
18	\$801 - 850	21%	25%	29%	33%	36%	40%	42%
19	\$851 - 900	22%	27%	31%	34%	38%	41%	44%
20	\$901 - 950	23%	28%	32%	36%	40%	43%	46%
21	\$951 - 1000	24%	29%	34%	38%	41%	45%	48%
22	\$1001- 5000	25%	30%	35%	39%	43%	47%	50%

23 or the amount  
 24 in effect under  
 25 paragraph (k)

26 Guidelines for support for an obligor with a monthly income  
 27 in excess of the income limit currently in effect under  
 28 paragraph (k) shall be the same dollar amounts as provided for  
 29 in the guidelines for an obligor with a monthly income equal to  
 30 the limit in effect.

31 Net Income defined as:

32  
 33 Total monthly  
 34 income less \*(i) Federal Income Tax  
 35 \*(ii) State Income Tax  
 36 \*(iii) Social Security



1 of employment;

2 (D) the excess employment is in the nature of additional,  
3 part-time or overtime employment compensable by the hour or  
4 fraction of an hour; and

5 (E) the party's compensation structure has not been changed  
6 for the purpose of affecting a support or maintenance obligation.

7 The court shall review the work-related and  
8 education-related child care costs paid and shall allocate the  
9 costs to each parent in proportion to each parent's net income,  
10 as determined under this subdivision, after the transfer of  
11 child support and spousal maintenance, unless the allocation  
12 would be substantially unfair to either parent. There is a  
13 presumption of substantial unfairness if after the sum total of  
14 child support, spousal maintenance, and child care costs is  
15 subtracted from the obligor's income, the income is at or below  
16 100 percent of the federal poverty guidelines. The cost of  
17 child care for purposes of this paragraph is 75 percent of the  
18 actual cost paid for child care, to reflect the approximate  
19 value of state and federal tax credits available to the  
20 obligee. The actual cost paid for child care is the total  
21 amount received by the child care provider for the child or  
22 children of the obligor from the obligee or any public agency.  
23 The court shall require verification of employment or school  
24 attendance and documentation of child care expenses from the  
25 obligee and the public agency, if applicable. If child care  
26 expenses fluctuate during the year because of seasonal  
27 employment or school attendance of the obligee or extended  
28 periods of parenting time with the obligor, the court shall  
29 determine child care expenses based on an average monthly cost.  
30 The amount allocated for child care expenses is considered child  
31 support but is not subject to a cost-of-living adjustment under  
32 section 518.641. If a court order provides for child care  
33 expenses and the public authority provides child support  
34 enforcement services, the collection of the amount allocated for  
35 child care expenses terminates must be suspended when either  
36 party ~~notifies~~ informs the public authority that the no child

1 ~~care costs have ended and without any legal action on the part~~  
2 ~~of either party~~ are being incurred and the public authority  
3 verifies the accuracy of the information with the other party.  
4 The public authority shall ~~verify the information received under~~  
5 ~~this provision before authorizing termination.~~ ~~The termination~~  
6 ~~is effective as of the date of the notification.~~ resume  
7 collection of the amount allocated for child care expenses when  
8 either party provides information that child care costs have  
9 resumed. If the parties provide conflicting information to the  
10 public authority regarding whether or not child care expenses  
11 are being incurred, the collection of the amount allocated for  
12 child care expenses must continue or resume. Either party,  
13 through motion to the court, may challenge the suspension or  
14 resumption of the collection of the amount allocated for child  
15 care expenses. All provisions of the court order remain in  
16 effect even though the public authority suspends collection  
17 activities for the amount allocated for child care expenses. In  
18 these and other cases where there is a substantial increase or  
19 decrease in child care expenses, the parties may modify the  
20 order under section 518.64.

21 The court may allow the obligor parent to care for the  
22 child while the obligee parent is working, as provided in  
23 section 518.175, subdivision 8, but this is not a reason to  
24 deviate from the guidelines.

25 (c) In addition to the child support guidelines, the court  
26 shall take into consideration the following factors in setting  
27 or modifying child support or in determining whether to deviate  
28 from the guidelines:

29 (1) all earnings, income, and resources of the parents,  
30 including real and personal property, but excluding income from  
31 excess employment of the obligor or obligee that meets the  
32 criteria of paragraph (b), clause (2)(ii);

33 (2) the financial needs and resources, physical and  
34 emotional condition, and educational needs of the child or  
35 children to be supported;

36 (3) the standard of living the child would have enjoyed had

1 the marriage not been dissolved, but recognizing that the  
2 parents now have separate households;

3 (4) which parent receives the income taxation dependency  
4 exemption and what financial benefit the parent receives from  
5 it;

6 (5) the parents' debts as provided in paragraph (d); and

7 (6) the obligor's receipt of public assistance under the  
8 AFDC program formerly codified under sections 256.72 to 256.82  
9 or 256B.01 to 256B.40 and chapter 256J or 256K.

10 (d) In establishing or modifying a support obligation, the  
11 court may consider debts owed to private creditors, but only if:

12 (1) the right to support has not been assigned under  
13 section 256.741;

14 (2) the court determines that the debt was reasonably  
15 incurred for necessary support of the child or parent or for the  
16 necessary generation of income. If the debt was incurred for  
17 the necessary generation of income, the court shall consider  
18 only the amount of debt that is essential to the continuing  
19 generation of income; and

20 (3) the party requesting a departure produces a sworn  
21 schedule of the debts, with supporting documentation, showing  
22 goods or services purchased, the recipient of them, the amount  
23 of the original debt, the outstanding balance, the monthly  
24 payment, and the number of months until the debt will be fully  
25 paid.

26 (e) Any schedule prepared under paragraph (d), clause (3),  
27 shall contain a statement that the debt will be fully paid after  
28 the number of months shown in the schedule, barring emergencies  
29 beyond the party's control.

30 (f) Any further departure below the guidelines that is  
31 based on a consideration of debts owed to private creditors  
32 shall not exceed 18 months in duration, after which the support  
33 shall increase automatically to the level ordered by the court.  
34 Nothing in this section shall be construed to prohibit one or  
35 more step increases in support to reflect debt retirement during  
36 the 18-month period.

1 (g) If payment of debt is ordered pursuant to this section,  
2 the payment shall be ordered to be in the nature of child  
3 support.

4 (h) Nothing shall preclude the court from receiving  
5 evidence on the above factors to determine if the guidelines  
6 should be exceeded or modified in a particular case.

7 (i) The guidelines in this subdivision are a rebuttable  
8 presumption and shall be used in all cases when establishing or  
9 modifying child support. If the court does not deviate from the  
10 guidelines, the court shall make written findings concerning the  
11 amount of the obligor's income used as the basis for the  
12 guidelines calculation and any other significant evidentiary  
13 factors affecting the determination of child support. If the  
14 court deviates from the guidelines, the court shall make written  
15 findings giving the amount of support calculated under the  
16 guidelines, the reasons for the deviation, and shall  
17 specifically address the criteria in paragraph (c) and how the  
18 deviation serves the best interest of the child. The court may  
19 deviate from the guidelines if both parties agree and the court  
20 makes written findings that it is in the best interests of the  
21 child, except that in cases where child support payments are  
22 assigned to the public agency under section 256.741, the court  
23 may deviate downward only as provided in paragraph (j). Nothing  
24 in this paragraph prohibits the court from deviating in other  
25 cases. The provisions of this paragraph apply whether or not  
26 the parties are each represented by independent counsel and have  
27 entered into a written agreement. The court shall review  
28 stipulations presented to it for conformity to the guidelines  
29 and the court is not required to conduct a hearing, but the  
30 parties shall provide the documentation of earnings required  
31 under subdivision 5b.

32 (j) If the child support payments are assigned to the  
33 public agency under section 256.741, the court may not deviate  
34 downward from the child support guidelines unless the court  
35 specifically finds that the failure to deviate downward would  
36 impose an extreme hardship on the obligor.

1 (k) The dollar amount of the income limit for application  
2 of the guidelines must be adjusted on July 1 of every  
3 even-numbered year to reflect cost-of-living changes. The  
4 Supreme Court shall select the index for the adjustment from the  
5 indices listed in section 518.641. The state court  
6 administrator shall make the changes in the dollar amount  
7 required by this paragraph available to courts and the public on  
8 or before April 30 of the year in which the amount is to change.

9 (l) In establishing or modifying child support, if a child  
10 receives a child's insurance benefit under United States Code,  
11 title 42, section 402, because the obligor is entitled to old  
12 age or disability insurance benefits, the amount of support  
13 ordered shall be offset by the amount of the child's benefit.  
14 The court shall make findings regarding the obligor's income  
15 from all sources, the child support amount calculated under this  
16 section, the amount of the child's benefit, and the obligor's  
17 child support obligation. Any benefit received by the child in  
18 a given month in excess of the child support obligation shall  
19 not be treated as an arrearage payment or a future payment.

20 Sec. 3. Minnesota Statutes 2004, section 518.68,  
21 subdivision 2, is amended to read:

22 Subd. 2. [CONTENTS.] The required notices must be  
23 substantially as follows:

24 **IMPORTANT NOTICE**

25 **1. PAYMENTS TO PUBLIC AGENCY**

26 According to Minnesota Statutes, section 518.551,  
27 subdivision 1, payments ordered for maintenance and support  
28 must be paid to the public agency responsible for child  
29 support enforcement as long as the person entitled to  
30 receive the payments is receiving or has applied for public  
31 assistance or has applied for support and maintenance  
32 collection services. **MAIL PAYMENTS TO:**

33 **2. DEPRIVING ANOTHER OF CUSTODIAL OR PARENTAL RIGHTS -- A**  
34 **FELONY**

35 A person may be charged with a felony who conceals a minor  
36 child or takes, obtains, retains, or fails to return a

1 minor child from or to the child's parent (or person with  
2 custodial or visitation rights), according to Minnesota  
3 Statutes, section 609.26. A copy of that section is  
4 available from any district court clerk.

5 3. NONSUPPORT OF A SPOUSE OR CHILD -- CRIMINAL PENALTIES

6 A person who fails to pay court-ordered child support or  
7 maintenance may be charged with a crime, which may include  
8 misdemeanor, gross misdemeanor, or felony charges,  
9 according to Minnesota Statutes, section 609.375. A copy  
10 of that section is available from any district court clerk.

11 4. RULES OF SUPPORT, MAINTENANCE, PARENTING TIME

12 (a) Payment of support or spousal maintenance is to be as  
13 ordered, and the giving of gifts or making purchases of  
14 food, clothing, and the like will not fulfill the  
15 obligation.

16 (b) Payment of support must be made as it becomes due, and  
17 failure to secure or denial of parenting time is NOT an  
18 excuse for nonpayment, but the aggrieved party must seek  
19 relief through a proper motion filed with the court.

20 (c) Nonpayment of support is not grounds to deny parenting  
21 time. The party entitled to receive support may apply for  
22 support and collection services, file a contempt motion, or  
23 obtain a judgment as provided in Minnesota Statutes,  
24 section 548.091.

25 (d) The payment of support or spousal maintenance takes  
26 priority over payment of debts and other obligations.

27 (e) A party who accepts additional obligations of support  
28 does so with the full knowledge of the party's prior  
29 obligation under this proceeding.

30 (f) Child support or maintenance is based on annual income,  
31 and it is the responsibility of a person with seasonal  
32 employment to budget income so that payments are made  
33 throughout the year as ordered.

34 (g) If the obligor is laid off from employment or receives  
35 a pay reduction, support may be reduced, but only if a  
36 motion to reduce the support is served and filed with the

1 court. Any reduction will take effect only if ordered by  
2 the court and may only relate back to the time that the  
3 motion is filed. If a motion is not filed, the support  
4 obligation will continue at the current level. The court  
5 is not permitted to reduce support retroactively, except as  
6 provided in Minnesota Statutes, section 518.64, subdivision  
7 2, paragraph (c).

8 (h) Reasonable parenting time guidelines are contained in  
9 Appendix B, which is available from the court administrator.

10 (i) The nonpayment of support may be enforced through the  
11 denial of student grants; interception of state and federal  
12 tax refunds; suspension of driver's, recreational, and  
13 occupational licenses; referral to the department of  
14 revenue or private collection agencies; seizure of assets,  
15 including bank accounts and other assets held by financial  
16 institutions; reporting to credit bureaus; interest  
17 charging, income withholding, and contempt proceedings; and  
18 other enforcement methods allowed by law.

19 (j) The public authority may suspend or resume collection  
20 of the amount allocated for child care expenses if the  
21 conditions of Minnesota Statutes, section 518.551,  
22 subdivision 5, paragraph (b), are met.

23 5. PARENTAL RIGHTS FROM MINNESOTA STATUTES, SECTION 518.17,  
24 SUBDIVISION 3

25 Unless otherwise provided by the Court:

26 (a) Each party has the right of access to, and to receive  
27 copies of, school, medical, dental, religious training, and  
28 other important records and information about the minor  
29 children. Each party has the right of access to  
30 information regarding health or dental insurance available  
31 to the minor children. Presentation of a copy of this  
32 order to the custodian of a record or other information  
33 about the minor children constitutes sufficient  
34 authorization for the release of the record or information  
35 to the requesting party.

36 (b) Each party shall keep the other informed as to the name

1 and address of the school of attendance of the minor  
2 children. Each party has the right to be informed by  
3 school officials about the children's welfare, educational  
4 progress and status, and to attend school and parent  
5 teacher conferences. The school is not required to hold a  
6 separate conference for each party.

7 (c) In case of an accident or serious illness of a minor  
8 child, each party shall notify the other party of the  
9 accident or illness, and the name of the health care  
10 provider and the place of treatment.

11 (d) Each party has the right of reasonable access and  
12 telephone contact with the minor children.

13 6. WAGE AND INCOME DEDUCTION OF SUPPORT AND MAINTENANCE

14 Child support and/or spousal maintenance may be withheld  
15 from income, with or without notice to the person obligated  
16 to pay, when the conditions of Minnesota Statutes, section  
17 518.6111 have been met. A copy of those sections is  
18 available from any district court clerk.

19 7. CHANGE OF ADDRESS OR RESIDENCE

20 Unless otherwise ordered, each party shall notify the other  
21 party, the court, and the public authority responsible for  
22 collection, if applicable, of the following information  
23 within ten days of any change: the residential and mailing  
24 address, telephone number, driver's license number, Social  
25 Security number, and name, address, and telephone number of  
26 the employer.

27 8. COST OF LIVING INCREASE OF SUPPORT AND MAINTENANCE

28 Child support and/or spousal maintenance may be adjusted  
29 every two years based upon a change in the cost of living  
30 (using Department of Labor Consumer Price Index .....,  
31 unless otherwise specified in this order) when the  
32 conditions of Minnesota Statutes, section 518.641, are met.  
33 Cost of living increases are compounded. A copy of  
34 Minnesota Statutes, section 518.641, and forms necessary to  
35 request or contest a cost of living increase are available  
36 from any district court clerk.

## 1 9. JUDGMENTS FOR UNPAID SUPPORT

2 If a person fails to make a child support payment, the  
3 payment owed becomes a judgment against the person  
4 responsible to make the payment by operation of law on or  
5 after the date the payment is due, and the person entitled  
6 to receive the payment or the public agency may obtain  
7 entry and docketing of the judgment WITHOUT NOTICE to the  
8 person responsible to make the payment under Minnesota  
9 Statutes, section 548.091. Interest begins to accrue on a  
10 payment or installment of child support whenever the unpaid  
11 amount due is greater than the current support due,  
12 according to Minnesota Statutes, section 548.091,  
13 subdivision 1a.

## 14 10. JUDGMENTS FOR UNPAID MAINTENANCE

15 A judgment for unpaid spousal maintenance may be entered  
16 when the conditions of Minnesota Statutes, section 548.091,  
17 are met. A copy of that section is available from any  
18 district court clerk.

19 11. ATTORNEY FEES AND COLLECTION COSTS FOR ENFORCEMENT OF CHILD  
20 SUPPORT

21 A judgment for attorney fees and other collection costs  
22 incurred in enforcing a child support order will be entered  
23 against the person responsible to pay support when the  
24 conditions of section 518.14, subdivision 2, are met. A  
25 copy of section 518.14 and forms necessary to request or  
26 contest these attorney fees and collection costs are  
27 available from any district court clerk.

## 28 12. PARENTING TIME EXPEDITOR PROCESS

29 On request of either party or on its own motion, the court  
30 may appoint a parenting time expeditor to resolve parenting  
31 time disputes under Minnesota Statutes, section 518.1751.  
32 A copy of that section and a description of the expeditor  
33 process is available from any district court clerk.

## 34 13. PARENTING TIME REMEDIES AND PENALTIES

35 Remedies and penalties for the wrongful denial of parenting  
36 time are available under Minnesota Statutes, section

1 518.175, subdivision 6. These include compensatory  
2 parenting time; civil penalties; bond requirements;  
3 contempt; and reversal of custody. A copy of that  
4 subdivision and forms for requesting relief are available  
5 from any district court clerk.

6 Sec. 4. Minnesota Statutes 2004, section 548.091,  
7 subdivision 1a, is amended to read:

8 Subd. 1a. [CHILD SUPPORT JUDGMENT BY OPERATION OF LAW.]

9 (a) Any payment or installment of support required by a judgment  
10 or decree of dissolution or legal separation, determination of  
11 parentage, an order under chapter 518C, an order under section  
12 256.87, or an order under section 260B.331 or 260C.331, that is  
13 not paid or withheld from the obligor's income as required under  
14 section 518.6111, or which is ordered as child support by  
15 judgment, decree, or order by a court in any other state, is a  
16 judgment by operation of law on and after the date it is due, is  
17 entitled to full faith and credit in this state and any other  
18 state, and shall be entered and docketed by the court  
19 administrator on the filing of affidavits as provided in  
20 subdivision 2a. Except as otherwise provided by paragraph (b),  
21 interest accrues from the date the unpaid amount due is greater  
22 than the current support due at the annual rate provided in  
23 section 549.09, subdivision 1, plus two percent, not to exceed  
24 an annual rate of 18 percent. A payment or installment of  
25 support that becomes a judgment by operation of law between the  
26 date on which a party served notice of a motion for modification  
27 under section 518.64, subdivision 2, and the date of the court's  
28 order on modification may be modified under that subdivision.

29 (b) Notwithstanding the provisions of section 549.09, upon  
30 motion to the court and upon proof by the obligor of 36 12  
31 consecutive months of complete and timely payments of both  
32 current support and court-ordered paybacks of a child support  
33 debt or arrearage, the court may order interest on the remaining  
34 debt or arrearage to stop accruing. Timely payments are those  
35 made in the month in which they are due. If, after that time,  
36 the obligor fails to make complete and timely payments of both

1 current support and court-ordered paybacks of child support debt  
2 or arrearage, the public authority or the obligee may move the  
3 court for the reinstatement of interest as of the month in which  
4 the obligor ceased making complete and timely payments.

5 The court shall provide copies of all orders issued under  
6 this section to the public authority. The state court  
7 administrator shall prepare and make available to the court and  
8 the parties forms to be submitted by the parties in support of a  
9 motion under this paragraph.

10 (c) Notwithstanding the provisions of section 549.09, upon  
11 motion to the court, the court may order interest on a child  
12 support debt or arrearage to stop accruing where the court finds  
13 that the obligor is:

14 (1) unable to pay support because of a significant physical  
15 or mental disability;

16 (2) a recipient of Supplemental Security Income (SSI),  
17 Title II Older Americans Survivor's Disability Insurance  
18 (OASDI), other disability benefits, or public assistance based  
19 upon need; or

20 (3) institutionalized or incarcerated for at least 30 days  
21 for an offense other than nonsupport of the child or children  
22 involved, and is otherwise financially unable to pay support.

23 (d) If the conditions in paragraph (c) no longer exist,  
24 upon motion to the court, the court may order interest accrual  
25 to resume retroactively from the date of service of the motion  
26 to resume the accrual of interest.

## 27 ARTICLE 5

### 28 FAMILY SUPPORTS

29 Section 1. Minnesota Statutes 2004, section 119A.43,  
30 subdivision 2, is amended to read:

31 Subd. 2. [ESTABLISHMENT AND ADMINISTRATION.] A  
32 transitional housing program is established to be administered  
33 by the commissioner. The commissioner may make grants to  
34 eligible recipients or enter into agreements with community  
35 action agencies or other public or private nonprofit agencies to  
36 make grants to eligible recipients to initiate, maintain, or

1 expand programs to provide transitional housing and support  
2 services for persons in need of transitional housing, which may  
3 include up to six months of follow-up support services for  
4 persons who complete transitional housing as they stabilize in  
5 permanent housing. The commissioner must ensure that money  
6 appropriated to implement this section is distributed as soon as  
7 practicable. The commissioner may make grants directly to  
8 eligible recipients. The commissioner may use up to ten percent  
9 of the appropriation available for this program for persons  
10 needing assistance longer than 24 months.

11 Sec. 2. Minnesota Statutes 2004, section 144D.025, is  
12 amended to read:

13 144D.025 [OPTIONAL REGISTRATION.]

14 An establishment that meets all the requirements of this  
15 chapter except that fewer than 80 percent of the adult residents  
16 are age 55 or older, or a supportive housing establishment  
17 developed and funded in whole or in part with funds provided  
18 specifically as part of the plan to end long-term homelessness  
19 required under Laws 2003, chapter 128, article 15, section 9,  
20 may, at its option, register as a housing with services  
21 establishment.

22 Sec. 3. Minnesota Statutes 2004, section 256D.02,  
23 subdivision 17, is amended to read:

24 Subd. 17. [PROFESSIONAL CERTIFICATION.] "Professional  
25 certification" means:--~~(1)~~ a statement about a person's illness,  
26 injury, or incapacity that is signed by a ~~licensed-physician,~~  
27 ~~psychological-practitioner,~~~~or-licensed-psychologist,~~~~qualified~~  
28 ~~by-professional-training-and-experience-to-diagnose-and-certify~~  
29 ~~the-person's-condition,~~~~or~~

30 ~~(2)-a-statement-about-an-incapacity-involving-a-spinal~~  
31 ~~subluxation-condition-that-is-signed-by-a-licensed-chiropractor~~  
32 ~~qualified-by-professional-training-and-experience-to-diagnose~~  
33 ~~and-certify-the-condition~~ "qualified professional" as defined in  
34 section 256J.08, subdivision 73a.

35 Sec. 4. Minnesota Statutes 2004, section 256D.051,  
36 subdivision 6c, is amended to read:

1 Subd. 6c. [PROGRAM FUNDING.] ~~(a)~~ Within the limits of  
2 available resources, the commissioner shall reimburse the actual  
3 costs of county agencies and their employment and training  
4 service providers for the provision of food stamp employment and  
5 training services, including participant support services,  
6 direct program services, and program administrative activities.  
7 The cost of services for each county's food stamp employment and  
8 training program shall not exceed the annual allocated amount.  
9 No more than 15 percent of program funds may be used for  
10 administrative activities. The county agency may expend county  
11 funds in excess of the limits of this subdivision without state  
12 reimbursement.

13 Program funds shall be allocated based on the county's  
14 average number of food stamp cases as compared to the statewide  
15 total number of such cases. The average number of cases shall  
16 be based on counts of cases as of March 31, June 30, September  
17 30, and December 31 of the previous calendar year. The  
18 commissioner may reallocate unexpended money appropriated under  
19 this section to those county agencies that demonstrate a need  
20 for additional funds.

21 ~~(b)-This-subdivision-expires-effective-June-30,2005-~~

22 Sec. 5. Minnesota Statutes 2004, section 256I.04,  
23 subdivision 2a, is amended to read:

24 Subd. 2a. [LICENSE REQUIRED.] A county agency may not  
25 enter into an agreement with an establishment to provide group  
26 residential housing unless:

27 (1) the establishment is licensed by the Department of  
28 Health as a hotel and restaurant; a board and lodging  
29 establishment; a residential care home; a boarding care home  
30 before March 1, 1985; or a supervised living facility, and the  
31 service provider for residents of the facility is licensed under  
32 chapter 245A. However, an establishment licensed by the  
33 Department of Health to provide lodging need not also be  
34 licensed to provide board if meals are being supplied to  
35 residents under a contract with a food vendor who is licensed by  
36 the Department of Health;

1 (2) the residence is licensed by the commissioner of human  
2 services under Minnesota Rules, parts 9555.5050 to 9555.6265, or  
3 certified by a county human services agency prior to July 1,  
4 1992, using the standards under Minnesota Rules, parts 9555.5050  
5 to 9555.6265; or

6 (3) the establishment is registered under chapter 144D and  
7 provides three meals a day, ~~except-that~~ or is an establishment  
8 voluntarily registered under section 144D.025 ~~is-not-eligible~~  
9 ~~for-an-agreement-to-provide-group-residential-housing as a~~  
10 supportive housing establishment; or

11 (4) an establishment voluntarily registered under section  
12 144D.025, other than a supportive housing establishment under  
13 clause (3), is not eligible to provide group residential housing.

14 The requirements under clauses (1), (2), (3), and ~~(3)~~ (4)  
15 do not apply to establishments exempt from state licensure  
16 because they are located on Indian reservations and subject to  
17 tribal health and safety requirements.

18 Sec. 6. Minnesota Statutes 2004, section 256I.05, is  
19 amended by adding a subdivision to read:

20 Subd. 1g. [SUPPLEMENTARY SERVICE RATE FOR CERTAIN  
21 FACILITIES.] On or after July 1, 2005, a county agency may  
22 negotiate a supplementary service rate for recipients of  
23 assistance under section 256I.04, subdivision 1, paragraph (b),  
24 who relocate from a homeless shelter licensed and registered  
25 prior to December 31, 1996, by the Minnesota Department of  
26 Health under section 157.17, to a supportive housing  
27 establishment developed and funded in whole or in part with  
28 funds provided specifically as part of the plan to end long-term  
29 homelessness required under Laws 2003, chapter 128, article 15,  
30 section 9, not to exceed \$456.75.

31 Sec. 7. Minnesota Statutes 2004, section 256J.626,  
32 subdivision 6, is amended to read:

33 Subd. 6. [BASE ALLOCATION TO COUNTIES AND TRIBES;  
34 DEFINITIONS.] (a) For purposes of this section, the following  
35 terms have the meanings given them.

36 (1) "2002 historic spending base" means the commissioner's

1 determination of the sum of the reimbursement related to fiscal  
2 year 2002 of county or tribal agency expenditures for the base  
3 programs listed in clause ~~(4)~~ (6), items (i) through (iv), and  
4 earnings related to calendar year 2002 in the base program  
5 listed in clause ~~(4)~~ (6), item (v), and the amount of spending  
6 in fiscal year 2002 in the base program listed in  
7 clause ~~(4)~~ (6), item (vi), issued to or on behalf of persons  
8 residing in the county or tribal service delivery area.

9 (2) "Adjusted caseload factor" means a factor weighted:

10 (i) 47 percent on the MFIP cases in each county at four  
11 points in time in the most recent 12-month period for which data  
12 is available multiplied by the county's caseload difficulty  
13 factor; and

14 (ii) 53 percent on the count of adults on MFIP in each  
15 county and tribe at four points in time in the most recent  
16 12-month period for which data is available multiplied by the  
17 county or tribe's caseload difficulty factor.

18 (3) "Caseload difficulty factor" means a factor determined  
19 by the commissioner for each county and tribe based upon the  
20 self-support index described in section 256J.751, subdivision 2,  
21 clause (7).

22 ~~(2)~~ (4) "Initial allocation" means the amount potentially  
23 available to each county or tribe based on the formula in  
24 paragraphs (b) through ~~(d)~~ (h).

25 ~~(3)~~ (5) "Final allocation" means the amount available to  
26 each county or tribe based on the formula in paragraphs (b)  
27 through ~~(d)~~ (h), after adjustment by subdivision 7.

28 ~~(4)~~ (6) "Base programs" means the:

29 (i) MFIP employment and training services under Minnesota  
30 Statutes 2002, section 256J.62, subdivision 1, in effect June  
31 30, 2002;

32 (ii) bilingual employment and training services to refugees  
33 under Minnesota Statutes 2002, section 256J.62, subdivision 6,  
34 in effect June 30, 2002;

35 (iii) work literacy language programs under Minnesota  
36 Statutes 2002, section 256J.62, subdivision 7, in effect June

1 30, 2002;

2 (iv) supported work program authorized in Laws 2001, First  
3 Special Session chapter 9, article 17, section 2, in effect June  
4 30, 2002;

5 (v) administrative aid program under section 256J.76 in  
6 effect December 31, 2002; and

7 (vi) emergency assistance program under Minnesota Statutes  
8 2002, section 256J.48, in effect June 30, 2002.

9 ~~(b)(1)-Beginning-July-17-2003~~ The commissioner shall:

10 (1) beginning July 1, 2003, determine the initial  
11 allocation of funds available under this section according to  
12 clause (2);

13 (2) allocate all of the funds available for the period  
14 beginning July 1, 2003, and ending December 31, 2004, ~~shall be~~  
15 allocated to each county or tribe in proportion to the county's  
16 or tribe's share of the statewide 2002 historic spending base;

17 ~~(c)~~ (3) determine for calendar year 2005, the commissioner  
18 ~~shall determine~~ the initial allocation of funds to be made  
19 available under this section in proportion to the county or  
20 tribe's initial allocation for the period of July 1, 2003, to  
21 December 31, 2004;

22 ~~(d)-The-formula-under-this-subdivision-sunsets-December-31,~~  
23 ~~2005-~~ (4) determine for calendar year 2006 the initial  
24 allocation of funds to be made available under this section  
25 based 90 percent on the proportion of the county or tribe's  
26 share of the statewide 2002 historic spending base and ten  
27 percent on the proportion of the county or tribe's share of the  
28 adjusted caseload factor;

29 (5) determine for calendar year 2007 the initial allocation  
30 of funds to be made available under this section based 70  
31 percent on the proportion of the county or tribe's share of the  
32 statewide 2002 historic spending base and 30 percent on the  
33 proportion of the county or tribe's share of the adjusted  
34 caseload factor; and

35 (6) determine for calendar year 2008 and subsequent years  
36 the initial allocation of funds to be made available under this

1 section based 50 percent on the proportion of the county or  
2 tribe's share of the statewide 2002 historic spending base and  
3 50 percent on the proportion of the county or tribe's share of  
4 the adjusted caseload factor.

5 ~~(e)~~ (c) With the commencement of a new or expanded tribal  
6 TANF program or an agreement under section 256.01, subdivision  
7 2, paragraph (g), in which some or all of the responsibilities  
8 of particular counties under this section are transferred to a  
9 tribe, the commissioner shall:

10 (1) in the case where all responsibilities under this  
11 section are transferred to a tribal program, determine the  
12 percentage of the county's current caseload that is transferring  
13 to a tribal program and adjust the affected county's allocation  
14 accordingly; and

15 (2) in the case where a portion of the responsibilities  
16 under this section are transferred to a tribal program, the  
17 commissioner shall consult with the affected county or counties  
18 to determine an appropriate adjustment to the allocation.

19 ~~(f)~~ (d) Effective January 1, 2005, counties and tribes will  
20 have their final allocations adjusted based on the performance  
21 provisions of subdivision 7.

22 Sec. 8. Minnesota Statutes 2004, section 256J.626,  
23 subdivision 7, is amended to read:

24 Subd. 7. [PERFORMANCE BASE FUNDS.] (a) Beginning calendar  
25 year 2005, each county and tribe will be allocated 95 percent of  
26 their initial calendar year allocation. Counties and tribes  
27 will be allocated additional funds based on performance as  
28 follows:

29 (1) for calendar year 2005, a county or tribe that achieves  
30 a 30 percent rate or higher on the MFIP participation rate under  
31 section 256J.751, subdivision 2, clause (8), as averaged across  
32 the four quarterly measurements for the most recent year for  
33 which the measurements are available, will receive an additional  
34 allocation equal to 2.5 percent of its initial allocation; and

35 (2) for calendar year 2006, a county or tribe that achieves  
36 a 40 percent rate or a five percentage point improvement over

1 the previous year's MFIP participation rate under section  
2 256J.751, subdivision 2, clause (8), as averaged across the four  
3 quarterly measurements for the most recent year for which the  
4 measurements are available, will receive an additional  
5 allocation equal to 2.5 percent of its initial allocation; and

6 (3) for calendar year 2007, a county or tribe that achieves  
7 a 50 percent rate or a five percentage point improvement over  
8 the previous year's MFIP participation rate under section  
9 256J.751, subdivision 2, clause (8), as averaged across the four  
10 quarterly measurements for the most recent year for which the  
11 measurements are available, will receive an additional  
12 allocation equal to 2.5 percent of its initial allocation; and

13 (4) for calendar year 2008 and yearly thereafter, a county  
14 or tribe that achieves a 50 percent MFIP participation rate  
15 under section 256J.751, subdivision 2, clause (8), as averaged  
16 across the four quarterly measurements for the most recent year  
17 for which the measurements are available, will receive an  
18 additional allocation equal to 2.5 percent of its initial  
19 allocation; and

20 (5) for calendar years 2005 and thereafter, a county or  
21 tribe that performs above the top of its annualized range of  
22 expected performance on the three-year self-support index under  
23 section 256J.751, subdivision 2, clause (7), ~~in-both~~

24 ~~measurements-in-the-preceding-year~~ will receive an additional  
25 allocation equal to five percent of its initial allocation; or

26 (6) for calendar years 2005 and thereafter, a county or  
27 tribe that performs within its range of expected performance on  
28 the annualized three-year self-support index under section  
29 256J.751, subdivision 2, clause (7), ~~in-both-measurements-in-the~~  
30 ~~preceding-year,-or-above-the-top-of-its-range-of-expected~~  
31 ~~performance-in-one-measurement-and-within-its-expected-range-of~~  
32 ~~performance-in-the-other-measurement,~~ will receive an additional  
33 allocation equal to 2.5 percent of its initial allocation.

34 (b) Performance-based funds for a federally approved tribal  
35 TANF program in which the state and tribe have in place a  
36 contract under section 256.01, addressing consolidated funding,

1 will be allocated as follows:

2 (1) for calendar year 2006 and yearly thereafter, a tribe  
3 that achieves the participation rate approved in its federal  
4 TANF plan using the average of four quarterly measurements for  
5 the most recent year for which the measurements are available,  
6 will receive an additional allocation equal to 2.5 percent of  
7 its initial allocation; and

8 (2) for calendar years 2006 and thereafter, a tribe that  
9 performs above the top of its annualized range of expected  
10 performance on the three-year self-support index under section  
11 256J.751, subdivision 2, clause (7), will receive an additional  
12 allocation equal to five percent of its initial allocation; or

13 (3) for calendar years 2006 and thereafter, a tribe that  
14 performs within its range of expected performance on the  
15 annualized three-year self-support index under section 256J.751,  
16 subdivision 2, clause (7), will receive an additional allocation  
17 equal to 2.5 percent of its initial allocation.

18 ~~(b)~~ (c) Funds remaining unallocated after the  
19 performance-based allocations in paragraph (a) are available to  
20 the commissioner for innovation projects under subdivision 5.

21 ~~(c)~~ (d)(1) If available funds are insufficient to meet  
22 county and tribal allocations under paragraph (a), the  
23 commissioner may make available for allocation funds that are  
24 unobligated and available from the innovation projects through  
25 the end of the current biennium.

26 (2) If after the application of clause (1) funds remain  
27 insufficient to meet county and tribal allocations under  
28 paragraph (a), the commissioner must proportionally reduce the  
29 allocation of each county and tribe with respect to their  
30 maximum allocation available under paragraph (a).

31 Sec. 9. Minnesota Statutes 2004, section 256J.626,  
32 subdivision 8, is amended to read:

33 Subd. 8. [REPORTING REQUIREMENT AND REIMBURSEMENT.] (a)  
34 The commissioner shall specify requirements for reporting  
35 according to section 256.01, subdivision 2, clause (17). Each  
36 county or tribe shall be reimbursed for eligible expenditures up

1 to the limit of its allocation and subject to availability of  
2 funds.

3 (b) Reimbursements for county administrative-related  
4 expenditures determined through the income maintenance random  
5 moment time study shall be reimbursed at a rate of 50 percent of  
6 eligible expenditures.

7 (c) The commissioner of human services shall review county  
8 and tribal agency expenditures of the MFIP consolidated fund as  
9 appropriate and may reallocate unencumbered or unexpended money  
10 appropriated under this section to those county and tribal  
11 agencies that can demonstrate a need for additional money: as  
12 follows:

13 (1) to the extent that particular county or tribal  
14 allocations are reduced from the previous year's amount due to  
15 the phase-in under subdivision 6, paragraph (b), clauses (4) to  
16 (6), those tribes or counties would have first priority for  
17 reallocated funds; and

18 (2) to the extent that unexpended funds are insufficient to  
19 cover demonstrated need, funds will be prorated to those  
20 counties and tribes in relation to demonstrated need.

21 Sec. 10. Minnesota Statutes 2004, section 256J.751,  
22 subdivision 2, is amended to read:

23 Subd. 2. [QUARTERLY COMPARISON REPORT.] The commissioner  
24 shall report quarterly to all counties on each county's  
25 performance on the following measures:

26 (1) percent of MFIP caseload working in paid employment;

27 (2) percent of MFIP caseload receiving only the food  
28 portion of assistance;

29 (3) number of MFIP cases that have left assistance;

30 (4) ~~federal-participation-requirements-as-specified-in~~

31 ~~Title-1-of-Public-Law-104-193,~~

32 (5) median placement wage rate;

33 (6) (5) caseload by months of TANF assistance;

34 (7) (6) percent of MFIP and diversionary work program (DWP)

35 cases off cash assistance or working 30 or more hours per week  
36 at one-year, two-year, and three-year follow-up points from a

1 baseline quarter. This measure is called the self-support  
2 index. ~~Twice-annually,~~ The commissioner shall report quarterly  
3 an expected range of performance for each county, county  
4 grouping, and tribe on the self-support index. The expected  
5 range shall be derived by a statistical methodology developed by  
6 the commissioner in consultation with the counties and tribes.  
7 The statistical methodology shall control differences across  
8 counties in economic conditions and demographics of the MFIP and  
9 DWP case load; and

10 ~~(8)~~ (7) the MFIP work participation rate, defined as the  
11 participation requirements specified in title 1 of Public Law  
12 104-193 applied to all MFIP cases except child only cases and  
13 cases exempt under section 256J.56.

14 Sec. 11. Minnesota Statutes 2004, section 256J.751,  
15 subdivision 5, is amended to read:

16 Subd. 5. [FAILURE TO MEET FEDERAL PERFORMANCE STANDARDS.]

17 (a) If sanctions occur for failure to meet the performance  
18 standards specified in title 1 of Public Law 104-193 of the  
19 Personal Responsibility and Work Opportunity Act of 1996, the  
20 state shall pay 88 percent of the sanction. The remaining 12  
21 percent of the sanction will be paid by the counties. The  
22 county portion of the sanction will be distributed across all  
23 counties in proportion to each county's percentage of the MFIP  
24 average monthly caseload during the period for which the  
25 sanction was applied.

26 (b) If a county fails to meet the performance standards  
27 specified in title 1 of Public Law 104-193 of the Personal  
28 Responsibility and Work Opportunity Act of 1996 for any year,  
29 the commissioner shall work with counties to organize a joint  
30 state-county technical assistance team to work with the county.  
31 The commissioner shall coordinate any technical assistance with  
32 other departments and agencies including the Departments of  
33 Employment and Economic Development and Education as necessary  
34 to achieve the purpose of this paragraph.

35 (c) For state performance measures, a low-performing county  
36 is one that:

1 (1) performs below the bottom of their expected range for  
2 the measure in subdivision 2, clause (7), in both-measurements  
3 during-the an annualized measurement reported in October of each  
4 year; or

5 (2) performs below 40 percent for the measure in  
6 subdivision 2, clause (8), as averaged across the four quarterly  
7 measurements for the year, or the ten counties with the lowest  
8 rates if more than ten are below 40 percent.

9 (d) Low-performing counties under paragraph (c) must engage  
10 in corrective action planning as defined by the commissioner.  
11 The commissioner may coordinate technical assistance as  
12 specified in paragraph (b) for low-performing counties under  
13 paragraph (c).

14 Sec. 12. [REPEALER.]

15 Minnesota Rules, part 9500.1206, subparts 20, 26d, and 27,  
16 are repealed.

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**626.5551 ALTERNATIVE RESPONSE PROGRAMS FOR CHILD PROTECTION ASSESSMENTS OR INVESTIGATIONS.**

Subdivision 1. Programs authorized. (a) A county may establish a program that uses alternative responses to reports of child maltreatment under section 626.556, as provided in this section.

(b) The alternative response program is a voluntary program on the part of the family, which may include a family assessment and services approach under which the local welfare agency assesses the risk of abuse and neglect and the service needs of the family and arranges for appropriate services, diversions, referral for services, or other response identified in the plan under subdivision 4.

(c) This section may not be used for reports of maltreatment in facilities required to be licensed under sections 144.50 to 144.58; 241.021; 245A.01 to 245A.16; or chapter 245B, or in a school as defined in sections 120A.05, subdivisions 9, 11, and 13; and 124D.10, or in a nonlicensed personal care provider association as defined in sections 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

Subd. 2. Use of alternative response or investigation.

(a) Upon receipt of a report under section 626.556, the local welfare agency in a county that has established an alternative response program under this section shall determine whether to conduct an investigation using the traditional investigative model under section 626.556 or to use an alternative response as appropriate to prevent or provide a remedy for child maltreatment.

(b) The local welfare agency may conduct an investigation of any report using the traditional investigative model under section 626.556. However, the local welfare agency must use the traditional investigative model under section 626.556 to investigate reports involving substantial child endangerment. For purposes of this subdivision, substantial child endangerment includes when a person responsible for a child's care, by act or omission, commits or attempts to commit an act against a child under their care that constitutes any of the following:

(1) egregious harm as defined in section 260C.007, subdivision 14;

(2) sexual abuse as defined in section 626.556, subdivision 2, paragraph (a);

(3) abandonment under section 260C.301, subdivision 2;

(4) neglect as defined in section 626.556, subdivision 2, paragraph (c), that substantially endangers the child's physical or mental health, including a growth delay, which may be referred to as failure to thrive, that has been diagnosed by a physician and is due to parental neglect;

(5) murder in the first, second, or third degree under section 609.185; 609.19; or 609.195;

(6) manslaughter in the first or second degree under section 609.20 or 609.205;

(7) assault in the first, second, or third degree under section 609.221; 609.222; or 609.223;

(8) solicitation, inducement, and promotion of prostitution under section 609.322;

(9) criminal sexual conduct under sections 609.342 to 609.3451;

(10) solicitation of children to engage in sexual conduct under section 609.352;

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(11) malicious punishment or neglect or endangerment of a child under section 609.377 or 609.378; or

(12) use of minor in sexual performance under section 617.246.

(c) Nothing in this section gives a county any broader authority to intervene, assess, or investigate a family other than under section 626.556.

(d) In addition, in all cases the local welfare agency shall notify the appropriate law enforcement agency as provided in section 626.556, subdivision 3.

(e) The local welfare agency shall begin an immediate investigation under section 626.556 if at any time when it is using an alternative response it determines that an investigation is required under paragraph (b) or would otherwise be appropriate. The local welfare agency may use an alternative response to a report that was initially referred for an investigation if the agency determines that a complete investigation is not required. In determining that a complete investigation is not required, the local welfare agency must document the reason for terminating the investigation and consult with:

(1) the local law enforcement agency, if the local law enforcement is involved, and notify the county attorney of the decision to terminate the investigation; or

(2) the county attorney, if the local law enforcement is not involved.

Subd. 3. **Documentation.** When a case in which an alternative response was used is closed, the local welfare agency shall document the outcome of the approach, including a description of the response and services provided and the removal or reduction of risk to the child, if it existed. Records maintained under this section must contain the documentation and must be retained for at least four years.

Subd. 4. **Plan.** The county community social service plan required under section 256E.09 must address the extent that the county will use the alternative response program authorized under this section, based on the availability of new federal funding that is earned and other available revenue sources to fund the additional cost to the county of using the program. To the extent the county uses the program, the county must include the program in the community social service plan and in the program evaluation under section 256E.10. The plan must address alternative responses and services that will be used for the program and protocols for determining the appropriate response to reports under section 626.556 and address how the protocols comply with the guidelines of the commissioner under subdivision 5.

Subd. 5. **Commissioner of human services to develop guidelines.** The commissioner of human services, in consultation with county representatives, may develop guidelines defining alternative responses and setting out procedures for family assessment and service delivery under this section. The commissioner may also develop guidelines for counties regarding the provisions of section 626.556 that continue to apply when using an alternative response under this section. The commissioner may also develop forms, best practice guidelines, and training to assist counties in implementing alternative responses under this section.

**Consolidated Fiscal Note – 2005-06 Session**

**Bill #:** S1710-2E **Complete Date:** 05/04/05

**Chief Author:** LOUREY, BECKY

**Title:** CHILD PROTECTION & CHILD CARE PROV

<b>Fiscal Impact</b>	<b>Yes</b>	<b>No</b>
State	X	
Local		X
Fee/Departmental Earnings	X	
Tax Revenue		X

**Agencies:** Human Services Dept (04/22/05)  
Public Safety Dept (04/21/05)

Supreme Court (05/04/05)

This table reflects fiscal impact to state government. Local government impact is reflected in the narrative only.

Dollars (in thousands)	FY05	FY06	FY07	FY08	FY09
<b>Net Expenditures</b>					
Misc Special Revenue Fund		9	9	9	9
Public Safety Dept		9	9	9	9
<b>Revenues</b>					
Misc Special Revenue Fund		9	9	9	9
Public Safety Dept		9	9	9	9
<b>Net Cost &lt;Savings&gt;</b>					
Misc Special Revenue Fund		0	0	0	0
Public Safety Dept		0	0	0	0
<b>Total Cost &lt;Savings&gt; to the State</b>					

	FY05	FY06	FY07	FY08	FY09
<b>Full Time Equivalents</b>					
-- No Impact --					
<b>Total FTE</b>					

**Consolidated EBO Comments**

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: DOUG GREEN  
Date: 05/04/05 Phone: 286-5618

**Fiscal Note – 2005-06 Session**

**Bill #:** S1710-2E **Complete Date:** 04/22/05

**Chief Author:** LOUREY, BECKY

**Title:** CHILD PROTECTION & CHILD CARE PROV

<b>Fiscal Impact</b>	<b>Yes</b>	<b>No</b>
State		X
Local		X
Fee/Departmental Earnings		X
Tax Revenue		X

**Agency Name:** Human Services Dept

This table reflects fiscal impact to state government. Local government impact is reflected in the narrative only.

<b>Dollars (in thousands)</b>	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Expenditures</b>					
-- No Impact --					
<b>Less Agency Can Absorb</b>					
-- No Impact --					
<b>Net Expenditures</b>					
-- No Impact --					
<b>Revenues</b>					
-- No Impact --					
<b>Net Cost &lt;Savings&gt;</b>					
-- No Impact --					
<b>Total Cost &lt;Savings&gt; to the State</b>					

	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Full Time Equivalent</b>					
-- No Impact --					
<b>Total FTE</b>					

**Narrative: SF 1710-2E**

**Bill Description**

**Article 1 Child Welfare: Alternative Response**

This article amends Maltreatment of Minors statutes to integrate an approach for dealing with less serious child protection cases by working with families to develop or restore a safe and nurturing home environment for the child.

**Article 2 – Child Welfare: Permanency**

This article proposes improvements and streamlining provisions related to permanency for children. This article includes language that

- Clarifies venue, records, and background checks in adoption statutes;
- Clarifies permanency requirements in adoption assistance agreements;
- Amends juvenile court statutes to strengthen compliance with federal Title IV-E requirements;
- Clarifies service and permanency requirements when a child is removed due to egregious harm; and
- Changes certain terminology to be consistent with the Minnesota Rules of Juvenile Court.

**Article 3 – Child Care**

This article proposes to revise current law to allow child care providers to be eligible for child care assistance for their own children during authorized activities. Additionally, this article

- Allows counties to have families fill out a streamlined *Change Report Form* rather than requiring a full redetermination if a family reports a change. A full re-determination of eligibility for child care will still be required every six months; however, a simplified process will be used when small changes occur during the interim; and
- Expands the types of families who are included in the reallocation formula used to redistribute BSF funds among counties. The current formula includes families who are on the waiting list but does not include families whose cases have been closed due to a reduction in the county allocation. By modifying the reallocation formula to include these cases, funds could be redistributed more quickly to the counties with greatest need.

**Article 4 - Child Support**

This article proposes language change current law to :

- Clarify that the public authority can ask for location and asset information about program participants of third party contractors of employers, financial institutions, utility companies, etc who hold, administer or distribute such information;
- Make changes to the way other orders are considered in determining net income for guidelines support calculations;
- Improve the process for suspending and reinstating collection of child care support amounts; and
- Change current law support to 12 months of consecutive payments, from 36 months, before the obligor may bring a motion to stop interest charging.

**Article 5 - Family Supports**

This article proposes to make language changes for:

- Authorizing the use of up to 10% of Transitional Housing Program funding for more than 24 months in order to better serve long-term homeless currently cycling through transitional housing;
- Changing the housing with services statute to allow supportive housing clients, as defined in the Governor's Initiative to End Homelessness, to voluntarily register as housing with services;
- Allowing registered supportive housing to contract to receive Group Residential Housing (GRH) payments so that eligible homeless adults will be able to use GRH to pay for permanent supportive housing and a GRH client to continue to receive a GRH service payment if relocating from a shelter to supportive housing;
- Deleting obsolete language and uses more recent definitions of professionals qualified to determine a person's illness, injury or incapacity ; and
- Improving the MFIP Consolidated Fund formula by phasing-in an adjusted caseload factor that takes into consideration caseload difficulty.

**Assumptions**

None

Expenditure and/or Revenue Formula

None

Long-term Fiscal Considerations

None

Local Government Costs

None

References/Sources

Anne Martineau Children & Family Services  
651-296-0310

Agency Contact Name: John Anderson 296-1257  
FN Coord Signature: STEVE BARTA  
Date: 04/21/05 Phone: 296-5685

EBO Comments

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: DOUG GREEN  
Date: 04/22/05 Phone: 286-5618

**Fiscal Note – 2005-06 Session**

**Bill #:** S1710-2E **Complete Date:** 04/21/05

**Chief Author:** LOUREY, BECKY

**Title:** CHILD PROTECTION & CHILD CARE PROV

<b>Fiscal Impact</b>	<b>Yes</b>	<b>No</b>
State	X	
Local		X
Fee/Departmental Earnings	X	
Tax Revenue		X

**Agency Name:** Public Safety Dept

This table reflects fiscal impact to state government. Local government impact is reflected in the narrative only.

<b>Dollars (in thousands)</b>	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Expenditures</b>					
Misc Special Revenue Fund		9	9	9	9
<b>Less Agency Can Absorb</b>					
-- No Impact --					
<b>Net Expenditures</b>					
Misc Special Revenue Fund		9	9	9	9
<b>Revenues</b>					
Misc Special Revenue Fund		9	9	9	9
<b>Net Cost &lt;Savings&gt;</b>					
Misc Special Revenue Fund		0	0	0	0
<b>Total Cost &lt;Savings&gt; to the State</b>					

	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Full Time Equivalent</b>					
-- No Impact --					
<b>Total FTE</b>					

**Bill Description**

SF 1710, Article 2, section 5, authorizes Adoption agencies to obtain state and national background checks on prospective adoptive parents and household members over the age of 13. To obtain a national background check, the individual must supply a set of classifiable fingerprints which will be submitted to the BCA and forwarded to the FBI.

**Assumptions**

There is a \$29 fee for each national background check. The national checks will only include checks done by governmental entities.

**Expenditure and/or Revenue Formula**

An estimate of 300 FBI record checks per year @ \$29.00 per record check equals \$8700.

**Long-Term Fiscal Considerations**

**Local Government Costs**

**References/Sources**

Agency Contact Name: Julie LeTourneau 651 473-2480  
FN Coord Signature: FRANK AHRENS  
Date: 04/20/05 Phone: 296-9484

**EBO Comments**

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: NORMAN FOSTER  
Date: 04/21/05 Phone: 215-0594

**Fiscal Note – 2005-06 Session**

**Bill #:** S1710-2E **Complete Date:** 05/04/05

**Chief Author:** LOUREY, BECKY

**Title:** CHILD PROTECTION & CHILD CARE PROV

<b>Fiscal Impact</b>	<b>Yes</b>	<b>No</b>
State		X
Local		X
Fee/Departmental Earnings		X
Tax Revenue		X

**Agency Name:** Supreme Court

This table reflects fiscal impact to state government. Local government impact is reflected in the narrative only.

<b>Dollars (in thousands)</b>	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Expenditures</b>					
-- No Impact --					
<b>Less Agency Can Absorb</b>					
-- No Impact --					
<b>Net Expenditures</b>					
-- No Impact --					
<b>Revenues</b>					
-- No Impact --					
<b>Net Cost &lt;Savings&gt;</b>					
-- No Impact --					
<b>Total Cost &lt;Savings&gt; to the State</b>					

	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Full Time Equivalents</b>					
-- No Impact --					
<b>Total FTE</b>					

This bill version has no fiscal effect on our agency.

FN Coord Signature: JUDY REHAK  
Date: 05/04/05 Phone: 297-7800

**EBO Comments**

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: JIM KING  
Date: 05/04/05 Phone: 296-7964