

**Senate Counsel, Research,
and Fiscal Analysis**

G-17 STATE CAPITOL
75 REV. DR. MARTIN LUTHER KING, JR. BLVD.
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Senate

State of Minnesota

S.F. No. 617 - Relating to Counties

Author: Senator Cal Larson

Prepared by: Daniel P. McGowan, Senate Counsel (651/296-4397)



Date: April 6, 2005

The proposed legislation provides that if a county through its social service agency or other county authority removes a child from its parental home and the removal is found by district court to be inappropriate, the county is liable for all the costs related to the removal, including attorney fees and other legal costs of the parents, and the costs of care for the child while in county control during the period of removal. Before such a finding could be made, a hearing in a district court where the county, parents, other interested parties, and witnesses may be heard must be held.

DPM:vs

Senator Larson introduced--

S.F. No. 617: Referred to the Committee on State and Local Government Operations.

1 A bill for an act
2 relating to counties; providing for the costs of
3 certain actions relating to children; proposing coding
4 for new law in Minnesota Statutes, chapter 393.

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

6 Section 1. [393.15] [CHILDREN; COSTS OF INAPPROPRIATE
7 REMOVAL.]

8 If a county, through its local social services agency or
9 other county authority, removes a child from its parental home
10 and the removal is found by the district court to be
11 inappropriate, after a hearing where the county, the parents,
12 other interested parties, and witnesses may be heard, the county
13 shall be liable for all costs related to the removal, including
14 the attorney fees and other legal costs of the parents and the
15 costs of care for the child while in county control during the
16 period of removal.

1 Senator Higgins from the Committee on State and Local
2 Government Operations, to which was referred

3 S.F. No. 617: A bill for an act relating to counties;
4 providing for the costs of certain actions relating to children;
5 proposing coding for new law in Minnesota Statutes, chapter 393.

6 Reports the same back with the recommendation that the bill
7 do pass and be re-referred to the Committee on Judiciary.
8 Report adopted.

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.....
(Committee Chair)

April 6, 2005.....
(Date of Committee recommendation)

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Senate

State of Minnesota

S.F. No. 663 - Relating to Conflicts of Interest

Author: Senator Gary Kubly

Prepared by: Daniel P. McGowan, Senate Counsel (651/296-4397) 

Date: April 6, 2005

The proposed legislation adds an additional exception from the conflict of interest for public officials provisions in Minnesota Statutes, section 471.87, and provides an exception that would allow a local government to contract with a volunteer ambulance service to pay compensation and retirement benefits to its members. This new provision would be essentially the same as that provided in current law for volunteer fire departments.

DPM:vs

**Senators Kubly, Frederickson, Langseth, Senjem and Johnson, D.E. introduced--
S.F. No. 663: Referred to the Committee on State and Local Government Operations.**

1 A bill for an act
2 relating to local government; adding an exception to
3 the ban on public officers having an interest in a
4 contract; amending Minnesota Statutes 2004, section
5 471.88, by adding a subdivision.

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

7 Section 1. Minnesota Statutes 2004, section 471.88, is
8 amended by adding a subdivision to read:

9 Subd. 6a. [CONTRACT WITH VOLUNTEER AMBULANCE SERVICE.] A
10 contract with a volunteer ambulance service for the payment of
11 compensation to its members or for the payment of retirement
12 benefits to these members.


1 Senator Higgins from the Committee on State and Local
2 Government Operations, to which was referred

3 S.F. No. 663: A bill for an act relating to local
4 government; adding an exception to the ban on public officers
5 having an interest in a contract; amending Minnesota Statutes
6 2004, section 471.88, by adding a subdivision.

7 Reports the same back with the recommendation that the bill
8 do pass and be placed on the Consent Calendar. Report adopted.

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.....
(Committee Chair)

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April 6, 2005.....
(Date of Committee recommendation)

**Senate Counsel, Research,
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Senate

State of Minnesota

S.F. No. 1624 - Public Employment Vacation and Sick Leave for Veterans

Author: Senator David Hann

Prepared by: Thomas S. Bottern, Senate Counsel (651/296-3810) *TSB*

Date: April 6, 2005

Existing law requires the state and its public subdivisions to reinstate employees who have engaged in active service in the military. The law requires reinstatement with the same rights regarding seniority status and vacation and sick leave as if the employee had been actually employed during leave. This bill clarifies that an employee returning to public employment from active duty is entitled to vacation and sick leave with pay for the time period covering entry into active military service until the date of reinstatement. This bill would also authorize accrual of vacation and sick leave without regard to any other limits on the accrual of vacation and sick leave under any applicable civil service rules.

Section 2 clarifies that additional provisions governing cities, counties, townships, and other political subdivisions that provide those units of government with discretion to continue benefits for their employees during active service do not supercede the requirements contained in section 1 of the bill.

Each section in the bill is made effective the day following final enactment and applies to any public office or employee in active military service on or after September 11, 2001.

TSB:vs

Senators Hann, Belanger, Vickerman and Dille introduced--

S.F. No. 1624: Referred to the Committee on Agriculture, Veterans and Gaming.

1 A bill for an act

2 relating to the military; clarifying statutes
3 pertaining to the accumulation of vacation and sick
4 leave by public officers and employees while on
5 military leave and upon reinstatement in public office
6 or employment; authorizing payment for some or all of
7 the accumulated leave; amending Minnesota Statutes
8 2004, sections 192.261, subdivision 2; 471.975.

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

10 Section 1. Minnesota Statutes 2004, section 192.261,
11 subdivision 2, is amended to read:

12 Subd. 2. [REINSTATEMENT.] Except as otherwise hereinafter
13 provided, upon the completion of such service such officer or
14 employee shall be reinstated in the public position, which was
15 held at the time of entry into such service, or a public
16 position of like seniority, status, and pay if such is available
17 at the same salary which the officer or employee would have
18 received if the leave had not been taken, upon the following
19 conditions: (1) that the position has not been abolished or
20 that the term thereof, if limited, has not expired; (2) that the
21 officer or employee is not physically or mentally disabled from
22 performing the duties of such position; (3) that the officer or
23 employee makes written application for reinstatement to the
24 appointing authority within 90 days after termination of such
25 service, or 90 days after discharge from hospitalization or
26 medical treatment which immediately follows the termination of,
27 and results from, such service; provided such application shall

1 be made within one year and 90 days after termination of such
2 service notwithstanding such hospitalization or medical
3 treatment; (4) that the officer or employee submits an honorable
4 discharge or other form of release by proper authority
5 indicating that the officer's or employee's military or naval
6 service was satisfactory. Upon such reinstatement the officer
7 or employee shall have the same rights with respect to accrued
8 and future seniority status, efficiency rating, vacation, sick
9 leave, and other benefits as if that officer or employee had
10 been actually employed during the time of such leave. The
11 officer or employee reinstated under this section is entitled to
12 vacation and sick leave with pay as provided in any applicable
13 civil service rules, collective bargaining agreement, or
14 compensation plan, and accumulates vacation and sick leave from
15 the time the person enters active military service until the
16 date of reinstatement without regard to any otherwise applicable
17 limits on civil service rules limiting the number of days which
18 may be accumulated. No officer or employee so reinstated shall
19 be removed or discharged within one year thereafter except for
20 cause, after notice and hearing; but this shall not operate to
21 extend a term of service limited by law.

22 [EFFECTIVE DATE.] This section is effective the day
23 following final enactment and applies to any public officer or
24 public employee serving in active military service on or after
25 September 11, 2001.

26 Sec. 2. Minnesota Statutes 2004, section 471.975, is
27 amended to read:

28 471.975 [MAY PAY DIFFERENTIAL OF RESERVE ON ACTIVE DUTY.]

29 (a) Except as provided in paragraph (b), a statutory or
30 home rule charter city, county, town, or other political
31 subdivision may pay to each eligible member of the National
32 Guard or other reserve component of the armed forces of the
33 United States an amount equal to the difference between the
34 member's basic active duty military salary and the salary the
35 member would be paid as an active political subdivision
36 employee, including any adjustments the member would have

1 received if not on leave of absence. This payment may be made
2 only to a person whose basic active duty military salary is less
3 than the salary the person would be paid as an active political
4 subdivision employee. Back pay authorized by this section may
5 be paid in a lump sum. Payment under this section must not
6 extend beyond four years from the date the employee reported for
7 active service, plus any additional time the employee may be
8 legally required to serve.

9 (b) Subject to the limits under paragraph (g), each school
10 district shall pay to each eligible member of the National Guard
11 or other reserve component of the armed forces of the United
12 States an amount equal to the difference between the member's
13 basic active duty military salary and the salary the member
14 would be paid as an active school district employee, including
15 any adjustments the member would have received if not on leave
16 of absence. The pay differential must be based on a comparison
17 between the member's daily rate of active duty pay, calculated
18 by dividing the member's military monthly salary by the number
19 of paid days in the month, and the member's daily rate of pay
20 for the member's school district salary, calculated by dividing
21 the member's total school district salary by the number of
22 contract days. The member's salary as a school district
23 employee must include the member's basic salary and any
24 additional salary the member earns from the school district for
25 cocurricular activities. The differential payment under this
26 paragraph must be the difference between the daily rates of
27 military pay times the number of school district contract days
28 the member misses because of military active duty. This payment
29 may be made only to a person whose basic active duty military
30 salary is less than the salary the person would be paid as an
31 active school district employee. Payments may be made at the
32 intervals at which the member received pay as a school district
33 employee. Payment under this section must not extend beyond
34 four years from the date the employee reported for active
35 service, plus any additional time the employee may be legally
36 required to serve.

1 (c) An eligible member of the reserve components of the
2 armed forces of the United States is a reservist or National
3 Guard member who was an employee of a political subdivision at
4 the time the member reported for active service on or after May
5 29, 2003, or who is on active service on May 29, 2003.

6 (d) ~~Notwithstanding other obligations under law and~~ Except
7 as provided in paragraph (e) and elsewhere in Minnesota
8 Statutes, a statutory or home rule charter city, county, town,
9 or other political subdivision has total discretion regarding
10 employee benefit continuation for a member who reports for
11 active service and the terms and conditions of any benefit.

12 (e) A school district must continue the employee's
13 enrollment in health and dental coverage, and the employer
14 contribution toward that coverage, until the employee is covered
15 by health and dental coverage provided by the armed forces. If
16 the employee had elected dependent coverage for health or dental
17 coverage as of the time that the employee reported for active
18 service, a school district must offer the employee the option to
19 continue the dependent coverage at the employee's own expense.
20 A school district must permit the employee to continue
21 participating in any pretax account in which the employee
22 participated when the employee reported for active service, to
23 the extent of employee pay available for that purpose.

24 (f) For purposes of this section, "active service" has the
25 meaning given in section 190.05, subdivision 5, but excludes
26 service performed exclusively for purposes of:

27 (1) basic combat training, advanced individual training,
28 annual training, and periodic inactive duty training;

29 (2) special training periodically made available to reserve
30 members; and

31 (3) service performed in accordance with section 190.08,
32 subdivision 3.

33 (g) A school district making payments under paragraph (b)
34 shall place a sum equal to any difference between the amount of
35 salary that would have been paid to the employee who is
36 receiving the payments and the amount of salary being paid to

1 substitutes for that employee into a special fund that must be
2 used to pay or partially pay the deployed employee's payments
3 under paragraph (b). A school district is required to pay only
4 this amount to the deployed school district employee.

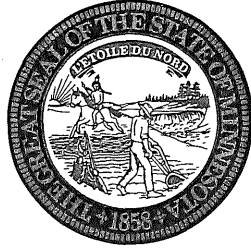
5 [EFFECTIVE DATE.] This section is effective the day
6 following final enactment and applies to any public officer or
7 public employee serving in active military service on or after
8 September 11, 2001.

SF 162A

Research Department

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Minnesota House of Representatives

February 22, 2005

Officer Paul Barnes
St. Louis Park Police Department
3015 Raleigh Ave.
St. Louis Park, Minnesota 55416

Dear Officer Barnes:

This letter is written in response to your request for clarification of Minnesota Statutes pertaining to the granting of vacation and sick leave to state and local government employees who are ordered into active military service and who, upon completion of that service, return to their previous positions in government employment.

Background

You have noted that upon returning in April, 2004 from leave for military service, including deployment for war service in Iraq, you successfully resumed your employment with the St. Louis Park Police Department (the SLP/PD). Soon after, you inquired of the police department and other appropriate city officials regarding your various employment-related rights under federal and state law during the time of your military leave.

Your discussions with city officials, your union representative, and other returning veterans employed in other jurisdictions, has lead you to believe that under state law (M.S. § 192.261, subd. 2), you are entitled to the vacation and sick time (which is combined in the SLP/PD as "flex time") that you would have accrued had you not been on military leave. As of this date, however, the city is still not convinced of that viewpoint.¹

In the fall of 2004, you asked for further clarification from Representative Jim Rhodes, then Chair of the Minnesota House of Representatives Governmental Operations and Veterans Affairs Committee, who assigned the question to myself as House Research Department staff for that committee.

¹ To clarify, you are not basing your argument on federal law – USERRA, the Uniformed Services Employment and Reemployment Rights Act of 1994, coded as 38 U.S.C. § 4301 et seq. The relevant section of USERRA law essentially states that, at a minimum, a public or private employer must provide to an employee who is on a military leave of absence the *same benefits* that the employer generally provides to employees on any other unpaid leave of absence.



In a memo to Representative Rhodes dated October 11, 2004, *we concluded that, as a municipal employee returning from military leave, you are indeed entitled under Minnesota Statutes to the vacation and sick time (i.e., "flex time," in the parlance of the SLP/PD) that you would have accrued had you not been on military leave.* As noted in that memo, this conclusion was based on the plain language of M.S. § 192.261, as well as the precedent of the standing interpretation of that law by the Minnesota Department of Employee Relations for state employees, as well as a long list of (over 15) Attorney General opinions interpreting that statute dating to WWII.

However, you note that, as of this date, the city of St. Louis Park has not yet agreed with your request by awarding the flex time due to you in accordance with M.S. § 192.261. You have noted that the city, in its discussions with the Minnesota League of Cities, is awaiting the interpretation of a more recent statute – *The Salary Continuation Act of 2003* – as it relates to the original law on which you base your claim.

Original Law

Minnesota Statutes, § 192.261, subdivision 2 provides that when a public employee who was on leave to engage in active military services is reinstated to public employment:

"Upon such reinstatement the officer or employee shall have the same rights with respect to accrued and future seniority status, efficiency rating, vacation, sick leave, and other benefits as if that officer or employee had been actually employed during the time of such leave."

As noted above and in our earlier memo to Representative Rhodes, there have been many Attorney Generals' opinions dating to the WWII era interpreting this law to mean that when a person who had been on active military service is reinstated, the person must be credited with vacation and sick leave that would have accrued if the person had been employed during the period of active service. Current state personnel policy, and that of at least some political subdivisions, is consistent with the Attorney General's interpretation.

Salary Continuation Law of 2003

Minnesota Statutes § 471.975 authorizes political subdivisions of the state to pay to eligible members of the National Guard or other military Reserves who are ordered to active military service the difference between the member's basic active duty military salary and the salary the person would be paid as an active political subdivision employee. Subdivision (d) of that statute states:

(d) Notwithstanding other obligations under law and except as provided in paragraph (e), a statutory or home rule charter city, county, town, or other political subdivision has total discretion regarding employee benefit continuation for a member who reports for active service and the terms and conditions of any benefit. (Paragraph

(e) requires payment of certain salary continuation for eligible school district employees.)²

Comparison with the Original Law

The question arises regarding whether the salary continuation law of 2003 (§471.975, subd. (d)) supersedes the original law (§192.261, subd. 2) with regard to the crediting of vacation and sick leave time upon an employee's reinstatement following military leave. In other words, does the 2003 language make the crediting of vacation and sick leave for periods of active service discretionary, rather than mandatory?

Under the following analysis, we conclude that § 192.261 governs in your specific circumstance, since it applies upon the employee's *reinstatement*, and is not a situation of benefit *continuation*.

- As used in the 2003 law, vacation and sick leave would likely be considered a "benefit". Vacation and sick leave are commonly understood as employee benefits. Also, the language of § 192.261 cited above refers to "vacation, sick leave, and other benefits," showing that in the context of chapter 192 vacation and sick leave are considered "benefits".
- The 2003 law, through the use of the phrase "Notwithstanding other obligations under law", specifically overrides pre-existing obligations relating to "employee benefit continuation." To the extent that § 192.261 deals with employee benefit continuation, there is a strong argument that the 2003 law supersedes it. Under this interpretation, the employer would have total discretion to credit vacation and sick leave for an employee on leave for active military duty.
- On the other hand, § 192.261 arguably *does not deal with* "employee benefit continuation." Rather, it deals with rights "*upon reinstatement*".

In other words, combining the 2003 law with § 192.261, *an employee does not continue to accrue vacation and sick leave while on active military duty, unless the employer uses its discretion* under § 471.975 to provide this benefit continuation. If the employee doesn't return to the public position, the employee would have only the vacation and sick leave that had already accrued up to the date that the employee left for active service.

However, upon reinstatement (if this occurs) to public service, § 192.261 requires the employer to credit the employee with vacation and sick leave that would have accrued during the period of active service.

² Minnesota Statutes § 471.975 was enacted during the Persian Gulf War by *Laws 1991, Ch.345, Art. 1*. It was amended by *Laws 2003, Ch. 123, sec. 2*, to update its language to apply to the current global war on terrorism. Paragraph (d) was included in that amendment. The statute was further amended by *Laws 2004, Ch. 256, Art. 1, sec. 6*, to require payment of a certain salary continuation by school districts.

In conclusion, § 471.975 should be read to deal with *benefit continuation, which is discretionary*, while § 192.261 should be read to deal with *benefit reinstatement, which is mandatory*. Thus, it is our interpretation that § 192.261 is not superceded by § 471.975, and that, upon your reinstatement to your previous position following your return from active military duty the City of St. Louis Park as your employer must credit you with the vacation and sick leave time (its "flextime") that you would have earned had you "been actually employed during the time of such leave."

If the statutory language were considered ambiguous, general principles of statutory construction would apply. For example, a court might look to contemporaneous legislative history, or to the occasion and necessity for the law and the circumstances under which it was enacted.

Having been the House Research analyst chiefly responsible for HF274, the enacting legislation in 2003, I can speak to the legislative history of that enactment. Unfortunately, the most relevant committee tapes are blank for that hearing (the House Government Operations committee clerk believes they forgot to press *record*).

I remember this enactment well, having personally done the bill drafting for it when it was first enacted in 1991, and then again when it was revised in 2003, having spent considerable time working on this legislation during both of those legislative sessions. Both times, the bill originated here in the House.³

While House Research rarely speaks to legislative intent for past enactments, for this particular statute I would not hesitate to relate my very clear understanding that the chief author of HF294 fully intended this bill, to provide new benefits (differential pay) to National Guard and other military Reserve members who have been ordered to active duty, without in any way limiting or diminishing existing benefits under law.

Regarding the "notwithstanding" clause of paragraph (d), to the best of my knowledge the language of paragraph (d) was brought to the chief author by an outside lobbyist for use as an author's amendment to ensure that political public employers would not be required to continue family health insurance benefits during a soldier's mobilization period. To the best of my knowledge, the only discussion of that provision pertained to health insurance; there was no legislative intent to undermine the provisions of § 192.261. From the vantage point of the present, however, it would have been a clearer expression of that legislative intent had I objected to the use of the "notwithstanding" clause and suggested eliminating it from the paragraph.

In closing, I hope that the City of St. Louis Park and the League of Minnesota Cities will find this analysis helpful for understanding our position in support of your interpretation that under § 192.261, the city of St. Louis Park is obligated to award you the vacation and sick days that you would have accrued had you actually been employed by the city during the time of your military leave. Please feel free to share this letter with your city and the League as you wish. As you know, I have been contacted by a number of interested legislators on your behalf about this issue, and I will be sharing this letter with them as well.

³ The chief author was Representative Edwina Garcia in 1991, and Representative Rob Eastlund in 2003. The following ten co-authors are listed for HF294 from 2003: Eastlund; Rhodes; Cornish; Kahn; Nelson, P.; Larson; Tinglestad; Erickson; Abeler; Anderson, B.

On behalf of the legislature, I am pleased to be of service to you and the interested legislators on this important matter. Thank you for your own service to and sacrifices for our nation and community, both while in military service and now in your role as a policeman. I hope you find this information helpful for acquiring the employment benefits due to you.

Sincerely,



James D. Cleary

Legislative Analyst for Military and Veterans Affairs
Minnesota House of Representatives

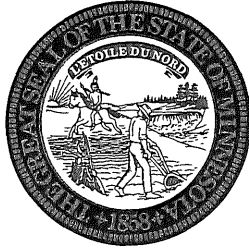
JC/jb

SF 1624

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Minnesota House of Representatives

October 11, 2004

TO: Representative Jim Rhodes

FROM: Jim Cleary, Legislative Analyst (651-296-5053) *JC*

RE: Employment and re-employment rights for citizen-soldiers ordered into active military service

Background to your Constituent's Question:

This memo is in response to your request for assistance in answering some questions for your constituent, Officer Paul Barnes, an investigator with the St. Louis Park Police Department who is also a citizen-soldier who has recently returned from a period of active military service in Iraq. As you authorized, I have contacted Officer Barnes directly for a more detailed discussion of his situation and concern.

Officer Barnes noted that upon returning in April, 2004 from his leave for military service he successfully resumed his employment with the St. Louis Park Police Department (the SLP/PD). Soon after, he inquired of the police department and other appropriate city officials regarding his various employment-related rights under federal and state law during the time of his military leave.

Such discussions by Officer Barnes with city officials, his union representative, and other returning veterans, has lead him to believe that under state law, he may be entitled to the vacation and sick time (which is combined in the SLP/PD as "flex time") that he would have accrued had he not been on military leave. As of this date, however, the city is not convinced of that viewpoint.¹

¹ Note that Officer Barnes is not basing his argument on federal law – USERRA, or the Uniformed Services Employment and Reemployment Rights Act of 1994, coded as 38 U.S.C. § 4301 et seq. The relevant section of USERRA law essentially states that, at a minimum, a public or private employer must provide to an employee who is on a military leave of absence the *same benefits* that the employer generally provides to employees on any other unpaid leave of absence. It is not yet clear to me whether the City of St. Louis Park provides any accumulated vacation and sick time to employees on regular unpaid leave of absence.

That then is the concern that prompted Officer Barnes to contact you, and it is the question upon which this memo focuses.

Research, Analysis and Conclusion:

In developing this response, I reviewed both federal USERRA law and state military leave law,² as well as three very informative explanatory memos on these laws compiled by private labor law firms. I have also consulted a published announcement on reemployment rights from the Minnesota Department of Employee Relations, and have chatted with a State JAG official for additional insights.³ Finally, I have reviewed the extensive list of Minnesota Attorney General opinions issued since the pertinent state law was enacted in 1941.

On the basis of this information, it appears clear to House Research that Officer Barnes is correct in interpreting Minnesota Statutes, section 192.261 as entitling him, as a public employee of (the state or) a political subdivision to accumulate vacation and sick leave time from the date on which he entered active military service until the date of reinstatement in his employment with the St. Louis Park Police Department (without regard to any limitation by civil service rules as to number of days which may be accumulated).

The following information supports this interpretation and conclusion.

I hope that you and Officer Barnes find this memo informative and useful in considering the issue of concern. Please do not hesitate to call on me for additional research on this important topic, if needed; I would be happy to assist you further with it.

A. The Plain Language of the Law

Minnesota Statutes, section 192.261 is the principal state law establishing employment rights protections for state or local public employees who during times of war or national emergency enter, voluntarily or involuntarily, into active military service. This statute states quite clearly that such employees shall be entitled to leave of absence from public office or employment without pay during such military service, with the right of reinstatement in the public position following that service.

The statute further states:

“Upon such reinstatement the officer or employee shall have the same rights with respect to accrued and future seniority status, efficiency rating, vacation, sick leave, and other benefits as if that officer or employee had been actually employed during the time of such leave.” (Minn. Stat. § 192.261, subd. 2.)

² Minnesota Statutes, section 291.261 (Leave of Absence).

³ The Minnesota National Guard itself has not taken a formal position on the issue.

B. DOER's Interpretation for State Employees

The Minnesota Department of Employee Relations (DOER), in a March 13, 2003 memo from the commissioner to the department's human resource and labor relations directors, interprets state law as follows:

"Further, upon such reinstatement, the employee has the same rights with respect to accrued and future seniority status, efficiency rating, vacation, sick leave, and other benefits as if that employee had been actually employed during the time of such leave. ***According to this language, it is clear that state employees continue to accrue vacation and sick leave hours during their absence when on military leave.***" (Minnesota Department of Employee Relations, commissioner's memo PERSL #1375, dated March 13, 2003; italics and bolding added.)

Thus, the official interpretation of Minnesota Statutes, section 192.216 by the state of Minnesota for state government employees is that a public employee on military leave of absence continues to accrue vacation and sick time during the person's military leave just as if the person had actually been employed by the state during that leave. Moreover, it is important to note in the context of Officer Barnes' legislative inquiry that the statutory language specifically includes all state and local government employees – i.e., "*any officer or employee of the state or of any political subdivision, municipal corporation, or other public agency of the state . . .*" (Minnesota Statutes, section 192.261, subd. 2, cross-referenced from subd. 3.) Thus, the same statutory meaning is applicable to local government officials and employees as pertains to state government officials and employees.

C. Attorney General's Opinions

The following case law and selected Attorney General's opinions interpreting Minnesota Statutes 192.216 support the conclusion stated above.

- **Construction and application.** Case law has determined that "*This section is not limited to war or other emergency.*" (*Byrne v. Independent School Dist. No. 237*, 1975, 305 Minn. 49, 232 N.W.2nd 432).
- **Construction with other laws.** That court ruling (*Byrne v. Independent School District No. 237*) further notes that Minnesota Statutes §§ 192.26 and 192.61 are "*liberally construed so as to effectively implement their basic purposes and are available to all who perform military service, whether such service is voluntary or involuntary.*" (*Id.*)
- **Purpose.** The Attorney General has noted that "*Legislative intent in adopting Laws 1941, c. 120 (§§ 192.26 to 192.264), was, among other things, to insure public employees against being deprived of benefits which would have been theirs if they had not entered the armed forces.*" (Op. Atty. Gen. 120, March 14, 1946.)
- **Jurisdiction.** The Attorney General has also noted that a "*Village is without authority to adopt a policy governing military leaves that is inconsistent with statutory provisions.*" (Op. Atty. Gen., 469-B, May 4, 1951.)

- **Public employees – generally.** The Attorney General has noted that the statute applies to all state and local public employees, irrespective of whether one’s position is or is not in the classified civil service, *“This section, as amended by Laws 1945 c. 489, does not distinguish between classified and unclassified employees.”* (Op.Atty.Gen., 644-D, Nov. 6, 1945.)
- **Benefits – In general.** The Attorney General has specifically noted that *“If employee would have been entitled at any time to any of the benefits referred to in subdivision 2 of this section, as amended by Laws 1945, c. 489, had such employee been at his work instead of serving in armed forces, employee’s rights to such benefits accrued at such time and employee became entitled to such benefits as of such time upon compliance with conditions, precedent to reinstatement.”* (Op.Atty.Gen., 210-H-1a, April 25, 1946.)
- **Vacation and sick leave – in general.** The Attorney General has noted that a *“Veteran reinstated under this section . . . is entitled to vacation with pay and sick leave as provided in civil service rules and accumulates vacation and sick leave from time he enters military service until date of reinstatement without regard to limitation by civil service rules as to number of days which may be accumulated.”* (Op.Atty.Gen., 120, January 25, 1946.)
- **Entitlement, vacation and sick leave.** Other Attorney General opinions specifically address the entitlement of vacation and sick leave, as follows:
 - *“Veteran, who returned to position with municipality upon discharge from armed forces, upon reinstatement was entitled to accrued vacation. . . .”* (Op.Atty.Gen., 310-H-1-a, Jan. 8, 1953.)
 - *“Soldier returning to his position as chief of police was entitled to vacation which he would otherwise have earned if he took vacation while he was still chief of police.”* (Op.Atty.Gen., 120, Feb. 3, 1948.)
 - *“Where right of police officers to vacations has been fixed by rules of police civil service commission, right of police officer who served in armed forces during World War II to receive on his return and compliance with the conditions of this section and § 419.06 the vacation which he would have received if he had not been serving in armed forces is secured to him by this section.”* (Id.)
- **Computation, vacation and sick leave.** The following items are Attorney General opinions bearing on the computation of vacation and sick leave time for employees on military leave.
 - *“County Highway Department employee reinstated to his position after service in Armed Forces of United States was entitled to vacation time equivalent to period of vacation he would have received if he had been an employee of county during time during which he was in service and rule prohibiting accumulation of vacation time was not applicable.”* (Ops.Atty.Gen., 120, Jan. 24, 1955.)
 - *“Where during employee’s absence on military leave, employing authority, by virtue either of civil service rules or of custom, granted vacations to employees,*

employee on reinstatement from military leave is entitled to total amount of vacation to which such employee would have been entitled to during period of military leave if he had been actually at work.” (Op.Atty.Gen., 120, 310-H-1-a, Feb. 5, 1946.)

- *“Under this section as amended by Laws 1945, c. 489, returning veteran employed by county is entitled to accumulated vacation time and sick leave, to be computed according to the established practice or custom of each of the county offices and for the full period of his military leave.” (Op.Atty.Gen., 120, Nov. 29, 1945.)*
- **Payments, vacation and sick leave.** Additional Attorney General’s opinions reinforce the interpretation of Minnesota Statutes, section 192.216 that a public official or employee is entitled to accrue vacation and sick time benefits while on military leave, and also clarify that the employer and employee may agree to payment in lieu of the actual use of such accrued time, but that the public employer may not require such in-lieu payment.
 - *“Where police officer was in military service and accumulated vacation rights which he exercised upon being reinstated into his position, city may determine for itself upon what basis payment should be made for vacation period.” (Op.Atty.Gen. 120, Nov. 7, 1946.)*
 - *“Employee of city police department who is under civil service is entitled on return from military service to accrued vacation leave, but city may not pay such employee in lieu of granting such accrued vacation leave.” (Op.Atty.Gen., 120, Sept. 5, 1946.)*
 - *“Employee entitled to vacation accumulated while on military leave may take such vacation only at such times as may be approved by appointing authority, though appointing authority’s action must not be arbitrary and may not unreasonably defer the taking of the vacation, so that for all practical purposes employee is deprived of vacation rights.” (Op.Atty.Gen., 120, June 3, 1946.)*

SF1624



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www.doer.state.mn.us

DATE: March 13, 2003

TO: Human Resource Directors/Designees
Labor Relations Directors/Designees

FROM: Cal R. Ludeman
Commissioner

RE: **Military Leave and Insurance Continuation Issues**

PERSL #1375

See page 3
re: HF 1575
SF 1624

Background:

Due to the recent increased use of military leave by State employees, DOER has received many inquiries about the use of military leave under both state and federal law. In this memo, we attempt to provide responses to some of the most frequently asked questions regarding the use of military leave. You should understand that most of these questions relate to extended military leaves longer than 30 days.

Question: Should employees on extended military leave be allowed to take one day of vacation per payroll period to extend the employer contribution for insurance benefits?

Answer: No. Employees on extended military leave cannot use one day of vacation per payroll period to extend the employer contribution for insurance benefits. The service member and dependents have health and dental insurance coverage available immediately after reporting for duty if called for active duty of 30 days or more. Coverage is available at no cost. Under federal law, the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), the State must also offer COBRA benefit continuation for persons who are absent from work to serve in the military. Upon the employee's return to employment following the military service, the State must provide health insurance coverage immediately with no waiting period or exclusions for pre-existing conditions, unless the exclusions apply to injuries or conditions that were incurred as a result of the military service.

This is also consistent with the language in the insurance article of the labor agreements and Plans which provides that an employee on an unpaid leave of absence may not use vacation leave for the purposes of maintaining eligibility for an Employer Contribution by keeping the employee on a state payroll for one (1) working day per pay period (e.g., AFSCME contract, Article 19, Section 3.D.2.).

Question: Should employees on extended military leave be allowed to use vacation while they are on military leave?

Answer: Yes, employees may use their vacation accruals prior to any unpaid leave of absence. There may be no break between active work status and the use of such vacation. The federal law (The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)) permits employees on military leave to use vacation benefits during the period of the employee's military service. As stated above, the employees are not permitted to use the vacation "for the purpose of" maintaining the Employer Contribution for health insurance. We have also been recently advised that employees on military leave do not have the right to use vacation sporadically (e.g., a day or week at a time during the unpaid leave).

Question: Upon return from military leave, is an employee entitled to return to his/her former position?

Answer: It depends. The position into which a person is reinstated is based on the length of the leave and whether the employee continues to be qualified for that position.

Under USERRA, a person whose military service lasts 1 to 90 days must be "promptly reemployed" in the following order of priority:

1. In the job the person would have held had the person remained continuously employed so long as the person is qualified for the job, or can become qualified after reasonable efforts by the employer to qualify the person; or,
2. If the employee cannot become qualified for the position described above in (1), in the position the employee held on the date the employee commenced the service so long as the person is qualified for the job or could become qualified after reasonable efforts by the employer; or
3. If the employee cannot become qualified for either of the above positions (other than for a disability incurred in or aggravated by the military service), in any other position that is the nearest approximation of (1) for which the person is qualified, with full seniority.

If the military service lasts 90 days or more, the employee must be promptly reemployed in the following order of priority:

1. In the job the person would have held had the person remained continuously employed, or a position of equivalent seniority, status and pay so long as the person is qualified for the job, or can become qualified after reasonable efforts by the employer to qualify the person; or,
2. If the employee cannot become qualified for the position in (1), in the employee's pre-service position so long as the person is qualified for the job or could become qualified after reasonable efforts by the employer; or
3. If the employee cannot become qualified for the position in either (1) or (2), in any other position which is the nearest approximation of (1) for which the person is qualified, with full seniority.

Please note that in many cases, options (1) and (2) in both scenarios are likely to be the same, i.e., the position that the employee held at the time the employee commenced military service. However, if the person would have been promoted with reasonable certainty had the person not been absent, the person would be entitled to the promotion upon reinstatement. On the other hand, the position could be at a lower level than the one previously held, it could be a different job, or it could conceivably be in layoff status.

State law also provides that a state employee who takes unpaid military leave is entitled to reinstatement. Although the conditions for reinstatement are slightly different depending on the type of leave, the law generally provides that state employees returning from military leave are entitled to be returned to their former position or a comparable position of "like seniority, status and pay."

Further, upon such reinstatement, the employee has the same rights with respect to accrued and future seniority status, efficiency rating, vacation, sick leave, and other benefits as if that employee had been actually employed during the time of such leave. According to this language, it is clear that state employees continue to accrue vacation and sick leave hours during their absence when on military leave.

The same statute, 192.261, applies to both state & local gov. employees.

NOTE: If an employee incurs or aggravates a disability during the military service that affects the employee's ability to return to employment, you should consult with your labor relations representative to determine the employee's rights to reinstatement.

Question: May you treat the employee differently depending on whether the military leave is for voluntary service or for involuntary (mandated) service?

Answer: No. Neither state nor federal law allows the employer to distinguish between voluntary and involuntary service. In fact, the federal act specifically prohibits the employer from making any such distinction. 38 U.S.C. Sec. 4312(h). Further, the Minnesota courts have held that the protection of the state military leave law is available to all persons who perform military service, whether that service is voluntary or involuntary.

Federal Guidance Available: If you would like further guidance on these issues under the federal law, there are helpful questions & answers on the Department of Labor's USERRA Advisor website (<http://www.dol.gov/elaws>).

cc: DOER Labor Relations/Compensation Staff
DOER Employee Insurance Division Staff
DDIRs

1 Senator Higgins from the Committee on State and Local
2 Government Operations, to which was re-referred

3 S.F. No. 1624: A bill for an act relating to the military;
4 clarifying statutes pertaining to the accumulation of vacation
5 and sick leave by public officers and employees while on
6 military leave and upon reinstatement in public office or
7 employment; authorizing payment for some or all of the
8 accumulated leave; amending Minnesota Statutes 2004, sections
9 192.261, subdivision 2; 471.975.

10 Reports the same back with the recommendation that the bill
11 do pass. Report adopted.

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Randall Higgins
.....
(Committee Chair)

April 6, 2005.....
(Date of Committee recommendation)

**Senate Counsel, Research,
and Fiscal Analysis**

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Senate

State of Minnesota

S.F. No. 789 - First Engrossment - Game and Fish

Author: Senator Tom Saxhaug

Prepared by: Greg Knopff, Legislative Analyst *gk*
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Date: April 4, 2005

S.F. No. 789 contains a number of changes to the game and fish laws. Except as specified, provisions are from the administration's recommended changes to the game and fish laws.

Section 1 [Game and Fish Rules; Tagging and Registration of Fish] adds the tagging and registration of fish as a purpose for use of the expedited rule process.

Section 2 [Minnow Definition] adds willow cats and stonecats to the definition of minnows for the purpose of the game and fish laws.

Section 3 [Undressed Bird Definition; Turkey] adds turkey to the birds that may be transported with one leg and foot, fully feathered head, or wing intact.

Section 4 [Wild Animal Dens, Nests, Houses, or Dams; Commissioner's Authority] allows the Commissioner of Natural Resources to destroy undesirable or predatory wild animal dens, nests, houses, or dams.

Section 5 [Wild Animal Dens, Nests, Houses, or Dams; Permits] allows the Commissioner of Natural Resources to issue a permit to destroy the dens, nests, houses, or dams of wild animals causing damage to property.

Section 6 [Replacement Deer Licenses] broadens the authority for the Commissioner of Natural Resources to provide replacement deer licenses. The replacement license may

be issued only when the applicant has not used any tags for the license. The Commissioner may issue the replacement licenses when:

- (1) the season for the license has not yet opened;
- (2) the person is upgrading from a regular firearms or archery deer license to a deer license that is valid in multiple zones; or
- (3) as otherwise prescribed by rule of the Commissioner.

Section 7 [Resident License Requirements] specifies that to obtain a resident license a person age 21 and older must possess a current Minnesota driver's license, possess a current Minnesota identification card, or show other evidence of residency when the license or identification card would violate the Religious Freedom Restoration Act of 1993.

Section 8 [License Period; Nonresidents from Certain States] makes licenses from certain states invalid for the first two weeks of the fishing season. The restriction does not apply to a licensee who is staying at a hotel, motel, or resort within Minnesota. This section also directs the Commissioner of Natural Resources to specify various fishing zones for nonresident fishing licenses. (Effective the day following final enactment). This is from S.F. No. 655 (Pariseau), as amended by subcommittee.

Section 9 [Turkey Hunting; Under Age 12] allows a person under the age of twelve to hunt turkey if the person is within an arm's reach of their parent or guardian.

Section 10 [Free Deer License for Tenants; Agricultural Land] provides that the free deer for tenant of agricultural land may hunt only on the land leased for agricultural purposes.

Section 11 [Trapping; Turkey Hunting; Minimum Age] specifies that the minimum age for trapping fisher, otter, bobcat, or pine marten is eight. This section also allows a resident under the age of 12 to apply for a turkey license if they hunt within an arm's reach of their parent or guardian. The second part of this section is from a subcommittee amendment.

Section 12 [Preference to Service Members] allows a person, who has served in the active service during the last 24 months, first preference in the selection for hunting and fishing licenses and permits. This preference does not apply to licenses for taking moose, elk, or prairie chicken. (Effective the day following final enactment.) This is from S.F. No. 825 (Kleis), as amended by subcommittee.

Section 13 [Nonresident Licenses] requires nonresidents from certain states to purchase the seven-day license to take fish, unless the nonresident is staying at a hotel, motel, or resort within Minnesota. This is from S.F. No. 655 (Pariseau), as amended by subcommittee.

Section 14 [Nonresident Fishing Boats] requires nonresidents from certain states to pay \$250 for a seven-day license for use of inland waters. The fee does not apply to a nonresident who is staying at a hotel, motel, or resort within Minnesota. This is from S.F. No. 655 (Pariseau), as amended by subcommittee.

Section 15 [Permits for Use of Live Ammunition on Birds] specifies that permits for field trials for use of live ammunition on birds will be issued to organizations. Permits for training hunting dogs will be issued to individuals. This section also specifies the markings that need to be on the birds for use in the field trials or training.

Section 16 [Trappers Association Certificate] requires the trappers association providing training to issue a certificate. This is from S.F. No. 1238 (Pariseau), as amended by subcommittee.

Section 17 [Trapper Education Requirement] requires persons born after December 31, 1989, and who have not been issued a previous trapping license to have a trapper education certificate to obtain a trapping license. This is from S.F. No. 1238 (Pariseau), as amended by subcommittee.

Section 18 [M-1 Carbine] allows a person to use an M-1 carbine to take big game. This was a subcommittee amendment.

Section 19 [Scopes on Muzzleloaders; Visually Impaired Hunters] streamlines the process for a permit to allow visually impaired hunters to use a scope on a muzzleloader during the muzzleloader season.

Section 20 [Laser Sights] allows a person who is totally blind to use laser sights when participating in an assisted hunting opportunity.

Section 21 [Computer-Assisted Remote Hunters Prohibition] prohibits the sale, possession, or use of computer software or service that is used in the taking of wild animals by remote operations.

Sections 22 and 23 [Permit to Snare] eliminates the special permit requirement for snaring lynx, bobcat, and fox. Snares may be used only as prescribed by the Commissioner of Natural Resources. This is from S.F. No. 1156 (Pariseau).

Section 24 [Wild Animal Dens, Nests, Houses, or Dams; Permits] allows the Commissioner of Natural Resources to issue a permit to destroy the dens, nests, houses, or dams of wild animals causing damage to property.

Section 25 [Upland Game Bird Season] allows the Commissioner of Natural Resources to extend upland game bird seasons to January 3. This was a subcommittee report.

Section 26 [Duck Season] prohibits the opening of regular duck season before the Saturday nearest October 1. This was subcommittee amendment.

Section 27 [Restrictions on Waterfowl Hunting on Public Waters] eliminates the restrictions on taking migratory waterfowl, coots, and rails on open water on rivers and streams that are no more than 100 yards wide.

Section 28 [Motorized Decoy Ban] expands the motorized decoy ban to include any motorized device to attract migratory birds, including geese. This section also extends the motorized decoy ban to wildlife management areas for the entire duck season and allows the Commissioner of Natural Resources to close specific public waters to use of motorized decoys at any time during the duck season.

Section 29 [Disposal of State Hatchery Products] expands the provision on disposal of state fish hatchery eggs and fry to include all hatchery products and expands on how the products can be exchanged. Under the changes, hatchery products can be:

- (1) exchanged with other government agencies for any fish and wildlife resources of equal value;
- (2) transferred to colleges or universities for research purposes; or
- (3) sold to a school, museum, or commercial enterprise for education or display purposes, as long as the fair market value of the sales is \$25 or less.

Section 30 [Fish Measurement] provides that fish measurement is from the tip of the nose or jaw, whichever longer, to the farthest tip of the tail.

Section 31 [Possession of Spears, Dip Nets, Bows and Arrows, and Spear Guns] authorizes the commissioner of natural resources to prescribe conditions for a person to possess spears, dip nets, bows and arrows, and spear guns during the fishing season. This is from S.F. No. 847 (Sparks), as amended by committee.

Section 32 [Fishing Season] extends the end of the fishing season to the last Sunday in February. This was a subcommittee amendment.

Section 33 [Walleye Limits] provides that only one walleye over 20 inches may be part of the daily limit.

Section 34 [Net Limits for Lake of the Woods and Rainy Lake] eliminates obsolete language on commercial fishing restrictions for Lake of the Woods and Rainy Lake.

Section 35 [Rules; Conforming Changes] allows the Commissioner of Natural Resources to use the good cause exemption to amend rules relating to fish length measurement and the end of the fishing season.

Section 36 [Repealer] repeals statutory provisions relating to brook trout fishing in forest fire hazard areas, use of live raccoons for dog training, use of all-terrain vehicles and snowmobiles by beaver and otter trappers, Mississippi River fish refuge authorities, and obsolete commercial fishing restrictions on Lake of the Woods and Rainy Lake. This section also repeals agency rules on snare permits.

GK:dv

1

A bill for an act

2 relating to natural resources; modifying game and fish
3 law provisions; modifying authority to take animals
4 causing damage; modifying the use of scopes by
5 visually impaired hunters; modifying certain license
6 requirements; providing for fishing restrictions on
7 residents from certain states; establishing a boat
8 access fee for residents of certain states; providing
9 for trapper education requirements; providing
10 preference for military members who were on active
11 service; prohibiting computer-assisted remote hunting;
12 eliminating the permit requirement to take lynx,
13 bobcat, and fox with a snare; modifying certain
14 seasons; modifying restrictions on taking waterfowl;
15 authorizing rulemaking; modifying requirements for
16 field training hunting dogs; modifying trapping
17 provisions; modifying restrictions on decoys;
18 modifying disposition of state hatchery products;
19 modifying fishing and commercial fishing provisions;
20 repealing authority for the Mississippi River Fish
21 Refuge; repealing authority to issue certain orders;
22 amending Minnesota Statutes 2004, sections 84.027,
23 subdivision 13; 97A.015, subdivisions 29, 49; 97A.045,
24 subdivision 1; 97A.401, subdivision 5; 97A.405,
25 subdivision 4, by adding a subdivision; 97A.411,
26 subdivision 1; 97A.435, subdivision 2; 97A.441,
27 subdivision 7; 97A.451, subdivision 3; 97A.465, by
28 adding a subdivision; 97A.475, subdivision 7, by
29 adding a subdivision; 97B.005, subdivision 3; 97B.025;
30 97B.031, subdivisions 1, 5; 97B.111, subdivision 2;
31 97B.625, subdivision 2; 97B.631, subdivision 2;
32 97B.655, subdivision 2; 97B.711, subdivision 1;
33 97B.803; 97B.805, subdivision 1; 97B.811, subdivision
34 4a; 97C.203; 97C.327; 97C.345, subdivision 2; 97C.395,
35 subdivision 1; 97C.401, subdivision 2; 97C.825,
36 subdivision 5; proposing coding for new law in
37 Minnesota Statutes, chapter 97B; repealing Minnesota
38 Statutes 2004, sections 88.27; 97B.005, subdivision 4;
39 97B.935; 97C.015; 97C.403; 97C.825, subdivisions 6, 7,
40 8, 9; Minnesota Rules, part 6234.2300, subparts 2, 3.

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

42 Section 1. Minnesota Statutes 2004, section 84.027,
43 subdivision 13, is amended to read:

1 Subd. 13. [GAME AND FISH RULES.] (a) The commissioner of
2 natural resources may adopt rules under sections 97A.0451 to
3 97A.0459 and this subdivision that are authorized under:

4 (1) chapters 97A, 97B, and 97C to set open seasons and
5 areas, to close seasons and areas, to select hunters for areas,
6 to provide for tagging and registration of game and fish, to
7 prohibit or allow taking of wild animals to protect a species,
8 to prevent or control wildlife disease, and to prohibit or allow
9 importation, transportation, or possession of a wild animal;

10 (2) sections 84.093, 84.15, and 84.152 to set seasons for
11 harvesting wild ginseng roots and wild rice and to restrict or
12 prohibit harvesting in designated areas; and

13 (3) section 84D.12 to designate prohibited invasive
14 species, regulated invasive species, unregulated nonnative
15 species, and infested waters.

16 (b) If conditions exist that do not allow the commissioner
17 to comply with sections 97A.0451 to 97A.0459, the commissioner
18 may adopt a rule under this subdivision by submitting the rule
19 to the attorney general for review under section 97A.0455,
20 publishing a notice in the State Register and filing the rule
21 with the secretary of state and the Legislative Coordinating
22 Commission, and complying with section 97A.0459, and including a
23 statement of the emergency conditions and a copy of the rule in
24 the notice. The notice may be published after it is received
25 from the attorney general or five business days after it is
26 submitted to the attorney general, whichever is earlier.

27 (c) Rules adopted under paragraph (b) are effective upon
28 publishing in the State Register and may be effective up to
29 seven days before publishing and filing under paragraph (b), if:

30 (1) the commissioner of natural resources determines that
31 an emergency exists;

32 (2) the attorney general approves the rule; and

33 (3) for a rule that affects more than three counties the
34 commissioner publishes the rule once in a legal newspaper
35 published in Minneapolis, St. Paul, and Duluth, or for a rule
36 that affects three or fewer counties the commissioner publishes

1 the rule once in a legal newspaper in each of the affected
2 counties.

3 (d) Except as provided in paragraph (e), a rule published
4 under paragraph (c), clause (3), may not be effective earlier
5 than seven days after publication.

6 (e) A rule published under paragraph (c), clause (3), may
7 be effective the day the rule is published if the commissioner
8 gives notice and holds a public hearing on the rule within 15
9 days before publication.

10 (f) The commissioner shall attempt to notify persons or
11 groups of persons affected by rules adopted under paragraphs (b)
12 and (c) by public announcements, posting, and other appropriate
13 means as determined by the commissioner.

14 (g) Notwithstanding section 97A.0458, a rule adopted under
15 this subdivision is effective for the period stated in the
16 notice but not longer than 18 months after the rule is adopted.

17 Sec. 2. Minnesota Statutes 2004, section 97A.015,
18 subdivision 29, is amended to read:

19 Subd. 29. [MINNOWS.] "Minnows" means: (1) members of the
20 minnow family, Cyprinidae, except carp and goldfish; (2) members
21 of the mudminnow family, Umbridae; (3) members of the sucker
22 family, Catostomidae, not over 12 inches in length; (4)
23 bullheads, ciscoes, lake whitefish, goldeyes, and mooneyes, not
24 over seven inches long; and (5) leeches; and (6) tadpole madtoms
25 (willow cats) and stonecats.

26 [EFFECTIVE DATE.] This section is effective the day
27 following final enactment.

28 Sec. 3. Minnesota Statutes 2004, section 97A.015,
29 subdivision 49, is amended to read:

30 Subd. 49. [UNDRESSED BIRD.] "Undressed bird" means:

31 (1) a bird, excluding migratory waterfowl, pheasant,
32 Hungarian partridge, turkey, or grouse, with feet and feathered
33 head intact;

34 (2) a migratory waterfowl, excluding geese, with a fully
35 feathered wing and head attached;

36 (3) a pheasant, Hungarian partridge, turkey, or grouse with

1 one leg and foot or the fully feathered head or wing intact; or
2 (4) a goose with a fully feathered wing attached.

3 Sec. 4. Minnesota Statutes 2004, section 97A.045,
4 subdivision 1, is amended to read:

5 Subdivision 1. [DUTIES; GENERALLY.] The commissioner shall
6 do all things the commissioner determines are necessary to
7 preserve, protect, and propagate desirable species of wild
8 animals. The commissioner shall make special provisions for the
9 management of fish and wildlife to ensure recreational
10 opportunities for anglers and hunters. The commissioner shall
11 acquire wild animals for breeding or stocking and may dispose of
12 or destroy undesirable or predatory wild animals and their dens,
13 nests, houses, or dams.

14 Sec. 5. Minnesota Statutes 2004, section 97A.401,
15 subdivision 5, is amended to read:

16 Subd. 5. [WILD ANIMALS DAMAGING PROPERTY.] Special permits
17 may be issued with or without a fee to take protected wild
18 animals that are damaging property or to remove or destroy their
19 dens, nests, houses, or dams. A special permit issued under
20 this subdivision to take beaver must state the number to be
21 taken.

22 Sec. 6. Minnesota Statutes 2004, section 97A.405,
23 subdivision 4, is amended to read:

24 Subd. 4. [REPLACEMENT LICENSES.] (a) The commissioner may
25 permit licensed firearms deer hunters to change zone, license,
26 or season options ~~before-the-regular-firearms-deer-season~~
27 begins. The commissioner may issue a replacement license if the
28 applicant submits the original firearms deer license and unused
29 tags that ~~is~~ are being replaced and the applicant pays any
30 increase in cost between the original and the replacement
31 license. When a person submits both an archery and a firearms
32 license for replacement, the commissioner may apply the value of
33 both licenses towards the replacement license fee.

34 (b) A replacement license may be issued only if the
35 applicant has not used any tag from the original license and
36 meets the conditions of paragraph (c). The original license and

1 all unused tags for that license must be submitted to the
2 issuing agent at the time the replacement license is issued.

3 (c) A replacement license may be issued under the following
4 conditions, or as otherwise prescribed by rule of the
5 commissioner:

6 (1) when the season for the license being surrendered has
7 not yet opened; or

8 (2) when the person is upgrading from a regular firearms or
9 archery deer license to a deer license that is valid in multiple
10 zones.

11 (d) Notwithstanding section 97A.411, subdivision 3, a
12 replacement license is valid immediately upon issuance if the
13 license being surrendered is valid at that time.

14 Sec. 7. Minnesota Statutes 2004, section 97A.405, is
15 amended by adding a subdivision to read:

16 Subd. 5. [RESIDENT LICENSES.] To obtain a resident
17 license, a resident 21 years of age or older must:

18 (1) possess a current Minnesota driver's license;

19 (2) possess a current identification card issued by the
20 commissioner of public safety; or

21 (3) present evidence showing proof of residency in cases
22 when clause (1) or (2) would violate the Religious Freedom
23 Restoration Act of 1993, Public Law 103-141.

24 Sec. 8. Minnesota Statutes 2004, section 97A.411,
25 subdivision 1, is amended to read:

26 Subdivision 1. [LICENSE PERIOD.] (a) Except as provided in
27 paragraphs (b), (c), and (d), and (e), a license is valid during
28 the lawful time within the license year that the licensed
29 activity may be performed. A license year begins on the first
30 day of March and ends on the last day of February.

31 (b) A license issued under section 97A.475, subdivision 6,
32 clause (5), 97A.475, subdivision 7, clause (2), (3), (5), or
33 (6), or 97A.475, subdivision 12, clause (2), is valid for the
34 full license period even if this period extends into the next
35 license year, provided that the license period selected by the
36 licensee begins at the time of issuance.

1 (c) When the last day of February falls on a Saturday, an
2 annual resident or nonresident fish house or dark house license,
3 including a rental fish house or dark house license, obtained
4 for the license year covering the last day of February, is valid
5 through Sunday, March 1 and the angling license of the fish
6 house licensee is extended through March 1.

7 (d) A lifetime license issued under section 97A.473 or
8 97A.474 is valid during the lawful time within the license year
9 that the licensed activity may be performed for the lifetime of
10 the licensee.

11 (e) A license issued under section 97A.474, subdivision 2,
12 or 97A.475, subdivision 7, to a person who is domiciled in a
13 state or province that prohibits Minnesota residents from taking
14 game fish or small game during a part of the season that is open
15 to residents of that state is not valid for taking game fish
16 during the first 14 days of the season prescribed under section
17 97C.395, subdivision 1, paragraph (a), clause (1). This
18 paragraph does not apply to a licensee who is a currently
19 registered guest at a hotel, motel, or resort located in
20 Minnesota.

21 (f) The commissioner shall specify various fishing zones
22 for which nonresident fishing licenses will be available, and
23 may specify the number of nonresident licenses that may be
24 issued in each zone and the manner in which the licenses are to
25 be issued. The commissioner shall designate no more than three
26 zones under this paragraph.

27 [EFFECTIVE DATE.] This section is effective the day
28 following final enactment.

29 Sec. 9. Minnesota Statutes 2004, section 97A.435,
30 subdivision 2, is amended to read:

31 Subd. 2. [ELIGIBILITY.] Persons eligible for a turkey
32 license shall be determined by this section and commissioner's
33 rule. A person is eligible for a turkey license only if the
34 person is at least age 16 before the season opens or, possesses
35 a firearms safety certificate, or, if under age 12, is
36 accompanied by a parent or guardian. Persons under age 12 must

1 be within arm's reach of their parent or guardian while hunting.

2 Sec. 10. Minnesota Statutes 2004, section 97A.441,
3 subdivision 7, is amended to read:

4 Subd. 7. [OWNERS OR TENANTS OF AGRICULTURAL LAND.] (a) The
5 commissioner may issue, without a fee, a license to take an
6 antlerless deer to a person who is an owner or tenant and is
7 living and actively farming on at least 80 acres of agricultural
8 land, as defined in section 97B.001, in deer permit areas that
9 have deer archery licenses to take additional deer under section
10 97B.301, subdivision 4. A person may receive only one license
11 per year under this subdivision. For properties with co-owners
12 or cotenants, only one co-owner or cotenant may receive a
13 license under this subdivision per year. The license issued
14 under this subdivision is restricted to the land ~~owned or~~ leased
15 for agricultural purposes or owned by the holder of the license
16 within the permit area where the qualifying land is located.
17 The holder of the license may transfer the license to the
18 holder's spouse or dependent. Notwithstanding sections 97A.415,
19 subdivision 1, and 97B.301, subdivision 2, the holder of the
20 license may purchase an additional license for taking deer and
21 may take an additional deer under that license.

22 (b) A person who obtains a license under paragraph (a) must
23 allow public deer hunting on their land during that deer hunting
24 season, with the exception of the first Saturday and Sunday
25 during the deer hunting season applicable to the license issued
26 under section 97A.475, subdivision 2, clauses (4) and (13).

27 Sec. 11. Minnesota Statutes 2004, section 97A.451,
28 subdivision 3, is amended to read:

29 Subd. 3. [RESIDENTS UNDER AGE 16; SMALL GAME.] (a) A
30 resident under age 16 may not obtain a small game license but
31 may take small game by firearms or bow and arrow without a
32 license if the resident is:

33 (1) age 14 or 15 and possesses a firearms safety
34 certificate;

35 (2) age 13, possesses a firearms safety certificate, and is
36 accompanied by a parent or guardian; or

1 (3) age 12 or under and is accompanied by a parent or
2 guardian.

3 (b) A resident under age 16 may take small game by trapping
4 without a small game license, but a resident 13 years of age or
5 older must have a trapping license. A resident under age 13 may
6 trap without a trapping license, but may not trap fisher, otter,
7 bobcat, or pine marten unless the resident is at least age 8.

8 (c) A resident under age 12 may apply for a turkey license
9 and may take a turkey without a firearms safety certificate if
10 they are supervised by an adult parent or guardian who has a
11 firearms safety certificate and who is within arm's reach at all
12 times while hunting.

13 Sec. 12. Minnesota Statutes 2004, section 97A.465, is
14 amended by adding a subdivision to read:

15 Subd. 5. [PREFERENCE TO SERVICE MEMBERS.] (a) For purposes
16 of this subdivision:

17 (1) "qualified service member or veteran" means a Minnesota
18 resident who is currently serving, or has served at any time
19 during the past 24 months, in active service as a member of the
20 United States armed forces, including the National Guard or
21 other military reserves; and

22 (2) "active service" means service defined under section
23 190.05, subdivision 5b or 5c.

24 (b) Notwithstanding any other provision of this chapter,
25 chapter 97B or 97C, or administrative rules, the commissioner
26 may give first preference to qualified service members or
27 veterans in any drawing or lottery involving the selection of
28 applicants for hunting or fishing licenses, permits, and special
29 permits. This subdivision does not apply to licenses or permits
30 for taking moose, elk, or prairie chickens. Actions of the
31 commissioner under this subdivision are not rules under the
32 Administrative Procedures Act and section 14.386 does not apply.

33 [EFFECTIVE DATE.] This section is effective the day
34 following final enactment.

35 Sec. 13. Minnesota Statutes 2004, section 97A.475,
36 subdivision 7, is amended to read:

1 Subd. 7. [NONRESIDENT FISHING.] (a) Fees for the following
2 licenses, to be issued to nonresidents, are:

3 (1) to take fish by angling, \$34;

4 (2) to take fish by angling limited to seven consecutive
5 days selected by the licensee, \$24;

6 (3) to take fish by angling for a 72-hour period selected
7 by the licensee, \$20;

8 (4) to take fish by angling for a combined license for a
9 family, \$46;

10 (5) to take fish by angling for a 24-hour period selected
11 by the licensee, \$8.50; and

12 (6) to take fish by angling for a combined license for a
13 married couple, limited to 14 consecutive days selected by one
14 of the licensees, \$35.

15 (b) A nonresident who is domiciled in a state or province
16 that prohibits Minnesota residents from taking game fish or
17 small game during a part of the season that is open to residents
18 of that state is prohibited from purchasing a license under
19 paragraph (a), clauses (1), (3), (4), (5), and (6), and must
20 purchase a license under paragraph (a), clause (2), to take fish
21 in the state for a seven-day period. This paragraph does not
22 apply to a person who is a currently registered guest at a
23 hotel, motel, or resort located in Minnesota.

24 Sec. 14. Minnesota Statutes 2004, section 97A.475, is
25 amended by adding a subdivision to read:

26 Subd. 7a. [NONRESIDENT FISHING BOATS.] A boat that is
27 registered in a state or province that prohibits Minnesota
28 residents from taking game fish or small game during a part of
29 the season that is open to residents of that state and used for
30 fishing on inland waters of Minnesota must be licensed for use
31 on Minnesota inland waters. The license fee under this
32 subdivision is \$250 and is valid for seven consecutive days.
33 The license may be renewed for additional seven-day periods
34 after payment of an additional \$250 fee. This subdivision does
35 not apply to a person who is a currently registered guest at a
36 hotel, motel, or resort located in Minnesota.

1 Sec. 15. Minnesota Statutes 2004, section 97B.005,
2 subdivision 3, is amended to read:

3 Subd. 3. [PERMITS FOR ORGANIZATIONS AND INDIVIDUALS TO USE
4 GAME BIRDS AND FIREARMS.] (a) The commissioner may issue special
5 permits, without a fee, to organizations and individuals to use
6 firearms and live ammunition on domesticated birds or banded
7 game birds from game farms.

8 (b) Permits for holding field trials and may be issued to
9 organizations. The permit shall specify the dates and locations
10 of the field trial. The commissioner may limit the number of
11 dates approved for any organization.

12 (c) Permits for training hunting dogs may be issued to an
13 individual.

14 (d) Domesticated birds, other than pigeons, and game farm
15 birds used for trials or training under this section must be
16 clearly marked with dye or a streamer attached to a leg in a
17 manner that makes them visually identifiable prior to being
18 taken.

19 Sec. 16. Minnesota Statutes 2004, section 97B.025, is
20 amended to read:

21 97B.025 [HUNTER AND TRAPPER EDUCATION.]

22 (a) The commissioner may establish education courses for
23 hunters and trappers. The commissioner shall collect a fee from
24 each person attending a course. A fee shall be collected for
25 issuing a duplicate certificate. The commissioner shall
26 establish the fees in a manner that neither significantly
27 overrecovers nor underrecovers costs, including overhead costs,
28 involved in providing the services. The fees are not subject to
29 the rulemaking provisions of chapter 14 and section 14.386 does
30 not apply. The commissioner may establish the fees
31 notwithstanding section 16A.1283. The fees shall be deposited
32 in the game and fish fund and the amount thereof is appropriated
33 annually to the Enforcement Division of the Department of
34 Natural Resources for the administration of the program. In
35 addition to the fee established by the commissioner for each
36 course, instructors may charge each person up to the established

1 fee amount for class materials and expenses. School districts
2 may cooperate with the commissioner and volunteer instructors to
3 provide space for the classroom portion of the training.

4 (b) The commissioner shall enter into an agreement with a
5 statewide nonprofit trappers association to conduct a trapper
6 education program. At a minimum, the program must include at
7 least six hours of classroom, electronic, or correspondence
8 instruction and in the field training. The program must include
9 a review of state trapping laws and regulations, trapping
10 ethics, the setting and tending of traps and snares, tagging and
11 registration requirements, and the preparation of pelts. The
12 association shall issue a certificate to persons who complete
13 the program. The association shall be responsible for all costs
14 of conducting the education program, and shall not charge any
15 fee for attending the course.

16 Sec. 17. [97B.026] [TRAPPER EDUCATION CERTIFICATE
17 REQUIREMENT.]

18 A person born after December 31, 1989, and who has not been
19 issued a trapping license in a previous license year, may not
20 obtain a trapping license unless the person has been issued a
21 trapper education certificate under section 97B.025, paragraph
22 (b).

23 [EFFECTIVE DATE.] This section is effective March 1, 2007.

24 Sec. 18. Minnesota Statutes 2004, section 97B.031,
25 subdivision 1, is amended to read:

26 Subdivision 1. [FIREARMS AND AMMUNITION THAT MAY BE USED
27 TO TAKE BIG GAME.] (a) A person may take big game with a firearm
28 only if:

29 (1) the rifle, shotgun, and handgun used is a caliber of at
30 least .23 inches;

31 (2) the firearm is loaded only with single projectile
32 ammunition;

33 (3) a projectile used is a caliber of at least .23 inches
34 and has a soft point or is an expanding bullet type;

35 (4) the ammunition has a case length of at least 1.285
36 inches;

1 (5) the muzzle-loader used is incapable of being loaded at
2 the breech;

3 (6) the smooth-bore muzzle-loader used is a caliber of at
4 least .45 inches; and

5 (7) the rifled muzzle-loader used is a caliber of at least
6 .40 inches.

7 ~~(b) A person may not take big game with a .30-caliber M-1~~
8 ~~carbine cartridge.~~

9 ~~(c)~~ Notwithstanding paragraph (a), clause (4), a person may
10 take big game with a ten millimeter cartridge that is at least
11 0.95 inches in length, a .45 Winchester Magnum cartridge, or a
12 .50 A. E. (Action Express) handgun cartridge.

13 Sec. 19. Minnesota Statutes 2004, section 97B.031,
14 subdivision 5, is amended to read:

15 Subd. 5. [SCOPES; VISUALLY IMPAIRED HUNTERS.] (a)
16 Notwithstanding any other law to the contrary, the commissioner
17 may issue a special permit, without a fee, to use a muzzleloader
18 with a scope to take deer during the muzzleloader season to a
19 person who obtains the required licenses and who has a visual
20 impairment. The scope may not have magnification capabilities.

21 (b) The visual impairment must be to the extent that the
22 applicant is unable to identify targets and the rifle sights at
23 the same time without a scope. The visual impairment and
24 specific conditions must be established by medical evidence
25 verified in writing by a licensed physician, ophthalmologist, or
26 optometrist. The commissioner may request additional
27 information from the physician if needed to verify the
28 applicant's eligibility for the permit. ~~Notwithstanding section~~
29 ~~97A.4187, the commissioner may, in consultation with appropriate~~
30 ~~advocacy groups, establish reasonable minimum standards for~~
31 ~~permits to be issued under this subdivision.~~

32 (c) A permit issued under this subdivision may be valid for
33 up to five years, based on the permanence of the visual
34 impairment as determined by the licensed physician,
35 ophthalmologist, or optometrist.

36 (d) The permit must be in the immediate possession of the

1 permittee when hunting under the special permit.

2 (e) The commissioner may deny, modify, suspend, or revoke a
3 permit issued under this subdivision for cause, including a
4 violation of the game and fish laws or rules.

5 ~~(e)~~ (f) A person who knowingly makes a false application or
6 assists another in making a false application for a permit under
7 this subdivision is guilty of a misdemeanor. A physician,
8 ophthalmologist, or optometrist who fraudulently certifies to
9 the commissioner that a person is visually impaired as described
10 in this subdivision is guilty of a misdemeanor.

11 Sec. 20. Minnesota Statutes 2004, section 97B.111,
12 subdivision 2, is amended to read:

13 Subd. 2. [PERMIT FOR ORGANIZATION.] (a) The commissioner
14 may issue a special permit without a fee to a nonprofit
15 organization to provide an assisted hunting opportunity to
16 physically disabled hunters. The assisted hunting opportunity
17 may take place:

18 (1) in areas designated by the commissioner under
19 subdivision 1; or

20 (2) on private property or a licensed shooting preserve.

21 (b) The sponsoring organization shall provide a physically
22 capable person to assist each disabled hunter with
23 safety-related aspects of hunting and, notwithstanding section
24 97B.081, a person with a physical disability who is totally
25 blind may use laser sights.

26 (c) The commissioner may impose reasonable permit
27 conditions.

28 Sec. 21. [97B.115] [COMPUTER-ASSISTED REMOTE HUNTING
29 PROHIBITION.]

30 No person shall operate, provide, sell, use or offer to
31 operate, provide, sell or use any computer software or service
32 that allows a person, not physically present at the site, to
33 remotely control a weapon that could be used to take any wild
34 animal by remote operation, including, but not limited to,
35 weapons or devices set up to fire through the use of the
36 Internet or through a remote control device.

1 Sec. 22. Minnesota Statutes 2004, section 97B.625,
2 subdivision 2, is amended to read:

3 Subd. 2. [~~PERMIT-REQUIRED-TO~~ USE OF A SNARE.] A person may
4 not use a snare to take lynx or bobcat ~~except-under-a-permit~~
5 ~~from,~~ as prescribed by the commissioner, without a permit.

6 Sec. 23. Minnesota Statutes 2004, section 97B.631,
7 subdivision 2, is amended to read:

8 Subd. 2. [~~PERMIT-REQUIRED-TO~~ USE OF A SNARE.] A person may
9 not use a snare to take fox ~~except-under-a-permit-from,~~ as
10 prescribed by the commissioner, without a permit.

11 Sec. 24. Minnesota Statutes 2004, section 97B.655,
12 subdivision 2, is amended to read:

13 Subd. 2. [SPECIAL PERMIT FOR TAKING PROTECTED WILD
14 ANIMALS.] The commissioner may issue special permits under
15 section 97A.401, subdivision 5, to take protected wild animals
16 that are damaging property or to remove or destroy their dens,
17 nests, houses, or dams.

18 Sec. 25. Minnesota Statutes 2004, section 97B.711,
19 subdivision 1, is amended to read:

20 Subdivision 1. [SEASONS FOR CERTAIN UPLAND GAME BIRDS.]

21 (a) The commissioner may, by rule, prescribe an open season in
22 designated areas between September 16 and ~~December-31~~ January 3
23 for:

- 24 (1) pheasant;
- 25 (2) ruffed grouse;
- 26 (3) sharp tailed grouse;
- 27 (4) Canada spruce grouse;
- 28 (5) prairie chicken;
- 29 (6) gray partridge;
- 30 (7) bob-white quail; and
- 31 (8) turkey.

32 (b) The commissioner may by rule prescribe an open season
33 for turkey in the spring.

34 Sec. 26. Minnesota Statutes 2004, section 97B.803, is
35 amended to read:

36 97B.803 [MIGRATORY WATERFOWL SEASONS AND LIMITS.]

1 (a) The commissioner shall prescribe seasons, limits, and
2 areas for taking migratory waterfowl in accordance with federal
3 law.

4 (b) The regular duck season may not open before the
5 Saturday closest to October 1.

6 Sec. 27. Minnesota Statutes 2004, section 97B.805,
7 subdivision 1, is amended to read:

8 Subdivision 1. [HUNTER MUST BE CONCEALED.] (a) A person
9 may not take migratory waterfowl, coots, or rails in open water
10 unless the person is:

11 (1) within a natural growth of vegetation sufficient to
12 partially conceal the person or boat; or

13 (2) on a river or stream that is not more than 100 yards in
14 width; or

15 (3) pursuing or shooting wounded birds.

16 (b) A person may not take migratory waterfowl, coots, or
17 rails in public waters from a permanent artificial blind or sink
18 box.

19 Sec. 28. Minnesota Statutes 2004, section 97B.811,
20 subdivision 4a, is amended to read:

21 Subd. 4a. [RESTRICTIONS ON CERTAIN MOTORIZED DECOYS.] From
22 the opening day of the duck season through the Saturday nearest
23 October 8, a person may not use a motorized decoy ~~on-public~~
24 ~~waters-with-visible,-moving-parts-that-are-above-the-water~~
25 surface, or other motorized device designed to attract migratory
26 birds, to take migratory waterfowl,-other-than-geese. During
27 the remainder of the duck season, the commissioner may, by rule,
28 designate all or any portion of a wetland or lake closed to the
29 use of motorized decoys or motorized devices designed to attract
30 migratory birds. On water bodies and lands fully contained
31 within wildlife management area boundaries, a person may not use
32 motorized decoys or motorized devices designed to attract
33 migratory birds at any time during the duck season.

34 Sec. 29. Minnesota Statutes 2004, section 97C.203, is
35 amended to read:

36 97C.203 [DISPOSAL OF STATE HATCHERY EGGS-OR-FRY PRODUCTS.]

1 The commissioner shall dispose of ~~game-fish-eggs-and-fry~~
2 fish hatchery products according to the following order of
3 priorities:

4 (1) distribution of fish eggs and fry to state hatcheries
5 to hatch fry or raise fingerlings for stocking waters of the
6 state for recreational fishing;

7 (2) transfer to other government agencies in exchange for
8 fish or wildlife resources of equal value or private fish
9 hatcheries in exchange for fish to be stocked in waters of the
10 state for recreational fishing;

11 (3) ~~sale of-fish-eggs-and-fry~~ to private fish hatcheries or
12 licensed aquatic farms at a price not less than the fair
13 wholesale market value, established as the average price charged
14 at the state's private hatcheries and contiguous states per
15 volume rates; and

16 (4) transfer to other government agencies, colleges, or
17 universities for cooperative fish management and research
18 purposes; and

19 (5) sale of not more than \$25 fair market value to any
20 school, museum, or commercial enterprise for curriculum
21 implementation, educational programs, public exhibition, or
22 cooperative displays.

23 [EFFECTIVE DATE.] This section is effective the day
24 following final enactment.

25 Sec. 30. Minnesota Statutes 2004, section 97C.327, is
26 amended to read:

27 97C.327 [MEASUREMENT OF FISH LENGTH.]

28 For the purpose of determining compliance with size limits
29 for fish in this chapter or in rules of the commissioner, the
30 length of a fish must be measured from the tip of the nose or
31 jaw, whichever is longer, to the farthest tip of the tail when
32 fully extended.

33 Sec. 31. Minnesota Statutes 2004, section 97C.345,
34 subdivision 2, is amended to read:

35 Subd. 2. [POSSESSION.] (a) Except as specifically
36 authorized, a person may not possess a spear, fish trap, net,

1 dip net, seine, or other device capable of taking fish on or
2 near any waters. Possession includes personal possession and in
3 a vehicle.

4 (b) A person may possess spears, dip nets, bows and arrows,
5 and spear guns allowed under section 97C.381 on or near waters
6 between sunrise and sunset from May 1 to the ~~third~~ last Sunday
7 in February, or as otherwise prescribed by the commissioner.

8 Sec. 32. Minnesota Statutes 2004, section 97C.395,
9 subdivision 1, is amended to read:

10 Subdivision 1. [DATES FOR CERTAIN SPECIES.] (a) The open
11 seasons to take fish by angling are as follows:

12 (1) for walleye, sauger, northern pike, muskellunge,
13 largemouth bass, and smallmouth bass, the Saturday two weeks
14 prior to the Saturday of Memorial Day weekend to the ~~third~~ last
15 Sunday in February;

16 (2) for lake trout, from January 1 to October 31;

17 (3) for brown trout, brook trout, rainbow trout, and
18 splake, between January 1 to October 31 as prescribed by the
19 commissioner by rule except as provided in section 97C.415,
20 subdivision 2; and

21 (4) for salmon, as prescribed by the commissioner by rule.

22 (b) The commissioner shall close the season in areas of the
23 state where fish are spawning and closing the season will
24 protect the resource.

25 Sec. 33. Minnesota Statutes 2004, section 97C.401,
26 subdivision 2, is amended to read:

27 Subd. 2. [WALLEYE; NORTHERN PIKE.] (a) Except as provided
28 in ~~paragraphs~~ paragraph (b) and ~~(c)~~, a person may not take ~~no~~
29 more than one walleye larger than ~~24~~ 20 inches and one northern
30 pike larger than 30 inches daily.

31 (b) The restrictions in paragraph (a) do not apply to
32 boundary waters.

33 ~~(c)-On-lake-of-the-Woods,-a-person-may-take-no-more-than~~
34 ~~one-walleye-larger-than-19.5-inches-and-one-northern-pike-larger~~
35 ~~than-36-inches-daily-~~

36 [EFFECTIVE DATE.] This section is effective March 1, 2006.

1 Sec. 34. Minnesota Statutes 2004, section 97C.825,
2 subdivision 5, is amended to read:

3 Subd. 5. [NET LIMITS FOR LAKE OF THE WOODS AND RAINY
4 LAKE.] (a) The maximum amount of nets permitted to be licensed
5 shall be:

6 ~~(a) (1) in Lake of the Woods, 50-pound nets, 80,000-feet-of~~
7 ~~gill-nets-or~~ 160 submerged trap nets, and 80 fyke or staked trap
8 ~~nets.--licenses-for-submerged-trap-nets-may-be-issued-instead-of~~
9 ~~licenses-for-gill-nets-in-the-ratio-of-not-more-than-one~~
10 ~~submerged-trap-net-per-500-feet-of-gill-net,-and-the-maximum~~
11 ~~permissible-amount-of-gill-nets-shall-be-reduced-by-500-feet-for~~
12 ~~each-submerged-trap-net-licensed-;~~ and

13 ~~(b) (2) in Rainy Lake, 20-pound nets and 20,000-feet-of~~
14 ~~gill-nets.~~

15 ~~(c)-When-a-licensee-has-had-a-license-revoked-or~~
16 ~~surrendered,-the-commissioner-shall-not-be-required-to-issue~~
17 ~~licenses-for-the-amount-of-netting-previously-authorized-under~~
18 ~~the-revoked-or-surrendered-license.~~

19 ~~(d) (b) Commercial fishing may be prohibited in the~~
20 ~~Minnesota portions of international waters when it is prohibited~~
21 ~~in the international waters by Canadian authorities.~~

22 ~~(e)-The-commissioner-may-adopt-rules-to-limit-the-total~~
23 ~~amount-of-game-fish-taken-by-commercial-fishing-operators-in~~
24 ~~Lake-of-the-Woods-in-any-one-season-and-shall-apportion-the~~
25 ~~amount-to-each-licensee-in-accordance-with-the-number-and-length~~
26 ~~of-nets-licensed.~~

27 Sec. 35. [CONFORMING CHANGES; RULES.]

28 The commissioner may use the good cause exemption under
29 Minnesota Statutes, section 14.388, subdivision 1, clause (3),
30 to amend rules to conform to sections 30 and 32. Minnesota
31 Statutes, section 14.386, does not apply to the rulemaking under
32 this section except to the extent provided under Minnesota
33 Statutes, section 14.388.

34 Sec. 36. [REPEALER.]

35 (a) Minnesota Statutes 2004, sections 88.27; 97B.005,
36 subdivision 4; 97B.935; 97C.015; 97C.403; and 97C.825,

1 subdivisions 6, 7, 8, and 9, are repealed.

2 (b) Minnesota Rules, part 6234.2300, subparts 2 and 3, are
3 repealed.

APPENDIX
Repealed Minnesota Statutes for S0789-1

88.27 FISHING RESTRICTIONS; BROOK TROUT.

When after investigation the director shall determine that conditions conducive to forest fire hazards exist at any place in the forest areas of the state in the vicinity of any waters frequented by persons taking or attempting to take brook trout and that the presence of persons attracted by the opportunities for taking brook trout in such vicinity tends to aggravate fire hazards the director may by written order with the approval of the director of game and fish, prohibit or restrict, upon such conditions as the director of lands and forestry and the director of game and fish may prescribe, the taking of brook trout in such waters during such period in any year as they may deem necessary for the purpose of reducing such fire hazards.

Every such order, together with the written approval of the director of game and fish appended thereto, shall be filed in the office of the director of lands and forestry and a duplicate thereof filed in the office of the director of game and fish. The director of lands and forestry shall cause a copy of the order and approval to be published at least once in a qualified legal newspaper published at the county seat of each county affected by the order, or in some other legal newspaper of the county, if there be none published at the county seat, and the order shall take effect and be in force in each such county from and after the date of publication therein.

After the taking effect of any such order it shall be unlawful to take or attempt to take brook trout in violation thereof and any person who shall do so shall be guilty of a misdemeanor.

Any such order may be modified or rescinded at any time.

This section shall not be deemed to supersede or repeal any existing law relating to the taking of brook trout, but shall be construed as supplementary thereto. No law relating to the taking of brook trout hereafter enacted shall be construed as inconsistent herewith unless it is expressly provided therein that this section shall be superseded, amended, modified, or repealed, in whole or in part, or unless the future law specifically relates to the subject matter of this section.

97B.005 TRAINING DOGS.

Subd. 4. Use of raccoons. The commissioner may issue special permits, without a fee, to possess one raccoon to train dogs for raccoon hunting.

97B.935 USE OF VEHICLES FOR TRAPPING BEAVER AND OTTER.

Subdivision 1. General prohibition. Except as provided in this section, a person may not use a snowmobile or an all-terrain vehicle during the open season for beaver or otter, and for two days after the open seasons end, to transport or check beaver or otter traps or to transport beaver or otter carcasses or pelts.

Subd. 2. Allowed in designated counties. The commissioner may, by rule, designate counties where snowmobiles and all-terrain vehicles may be used to transport and check beaver and otter traps and to transport beaver or otter carcasses or pelts.

Subd. 3. Special permit for disabled. The commissioner may issue a special permit, in the manner provided in section 97B.055, subdivision 3, to use a snowmobile or all-terrain vehicle to transport or check beaver or otter traps or to transport beaver or otter carcasses or pelts to a licensed trapper physically unable to walk as specified in section

APPENDIX
Repealed Minnesota Statutes for S0789-1

97B.055, subdivision 3.

97C.015 MISSISSIPPI RIVER FISH REFUGE.

Subdivision 1. **Establishment.** The portion of the Mississippi River described in subdivision 3 is a fish refuge when the commissioner concludes a fish refuge agreement with the appropriate state authority in Wisconsin. The agreement must require that a similar fish refuge is established in the Wisconsin waters of the Mississippi River described in subdivision 3.

Subd. 2. **Fishing restriction.** A person may not take fish from a fish refuge after it is established under this section.

Subd. 3. **Location.** The location of the fish refuge is the portion of the Mississippi River downstream from lock and dam No. 3 located at milepost 796.9 above the mouth of the Ohio River, to the downstream end of Diamond Island located at milepost 794.8.

97C.403 RAINY RIVER WALLEYE RESTRICTIONS.

Subdivision 1. **Possession limit.** The possession limit for walleyes taken from the Rainy River is six per day.

Subd. 2. **Size limit.** (a) Except as provided in paragraph (b), only one walleye over 19-1/2 inches in length may be included in the limit taken from the Rainy River each day.

(b) From March 1 until April 14, a person may take walleyes from the Rainy River but the walleyes possessed for a limit may not exceed 19-1/2 inches.

Subd. 3. **Open season.** The open season for walleye in the Rainy River is from May 15 until April 14.

Subd. 4. **Commissioner's restrictions.** The commissioner shall attempt to negotiate an agreement with the province of Ontario for walleye seasons and limits that substantially comply with subdivisions 1, 2, and 3, and make every effort to bilaterally close the Rainy River during the spawning season between March 1 and April 14. If an agreement is made, the commissioner may, by rule, set different limits and seasons for taking walleyes from the Rainy River in accordance with the agreement, provided the size limits in subdivision 2 are not exceeded.

97C.825 LAKE OF THE WOODS AND RAINY LAKE FISHING.

Subd. 6. **Walleye limits; Lake of the Woods.** The commissioner shall limit the maximum poundage of walleye that may be taken by commercial fishing operators in Lake of the Woods in any one season on the following schedule:

YEAR	SEASONAL COMMERCIAL WALLEYE TAKE IN POUNDS
1984	164,000
1985	150,000
1986	135,000
1987	120,000
1988	100,000
1989	80,000
1990	60,000
1991	30,000
1992	0

The allocation of walleye poundage among the licensees shall be determined by rule of the commissioner.

Subd. 7. **Walleye limits; Rainy Lake.** The commissioner shall limit the maximum poundage of walleye that may be taken by commercial fishing operators in Rainy Lake in

APPENDIX
Repealed Minnesota Statutes for S0789-1

any one season on the following schedule:

YEAR	SEASONAL COMMERCIAL WALLEYE TAKE IN POUNDS
1984	14,500
1985	12,500
1986	10,500
1987	8,500
1988	6,500
1989	4,500
1990	2,500
1991	1,000
1992	0

The seasonal commercial walleye take in pounds in Rainy Lake shall be allocated among the licensees by rule of the commissioner.

Subd. 8. Gill nets; Lake of the Woods and Rainy Lake. Gill net licenses on Lake of the Woods and Rainy Lake shall be canceled after the 1987 license year. A gill net licensee whose license is canceled as provided in this subdivision retains the walleye quota held at the time of cancellation, subject to the quota phase-out schedule in subdivision 6 or 7. Notwithstanding subdivision 1, the licensee may be issued a pound or trap net license for the netting of game fish in accordance with the quota of the licensee.

Subd. 9. Walleye quotas; sale, transfer. An existing licensee may transfer the walleye quota allocated to the licensee under subdivision 6 or 7 to any other existing licensee or, after July 1, 1985, the licensee may sell the quota to the state. If a licensee sells the quota to the state, the licensee must sell the quota for all years remaining in the quota schedule as provided in subdivision 6 or 7. A sale to the state shall be at the present wholesale value of the quota as determined assuming the following:

(1) an allocation to the licensee of the same proportion of the total remaining walleye quota as allocated in the year of sale; and

(2) a walleye wholesale price in the round of \$1.15 per pound. A licensee may elect to receive payment for a sale to the state in a lump sum or in up to four annual installments. A quota sold to the state cancels and is not available for reallocation to another licensee. When a walleye quota is sold to the state and canceled, the gill net license of the licensee is canceled.

1 Senator moves to amend S.F. No. 789 as follows:

2 Page 15, after line 33, insert:

3 "Sec. 29. Minnesota Statutes 2004, section 97B.931,
4 subdivision 2, is amended to read:

5 Subd. 2. [~~BOBY-GRIPPING-TRAPS~~ FREQUENCY.] A ~~body-gripping,~~
6 ~~conibear-type~~ trap or snare need not be tended more frequently
7 than once every third calendar day."

8 Page 18, line 30, delete "30 and 32" and insert "29, 31,
9 and 33"

10 Renumber the sections in sequence and correct the internal
11 references

12 Amend the title accordingly

1 Senator Higgins from the Committee on State and Local
2 Government Operations, to which was re-referred

3 S.F. No. 789: A bill for an act relating to natural
4 resources; modifying game and fish law provisions; modifying
5 authority to take animals causing damage; modifying the use of
6 scopes by visually impaired hunters; modifying certain license
7 requirements; providing for fishing restrictions on residents
8 from certain states; establishing a boat access fee for
9 residents of certain states; providing for trapper education
10 requirements; providing preference for military members who were
11 on active service; prohibiting computer-assisted remote hunting;
12 eliminating the permit requirement to take lynx, bobcat, and fox
13 with a snare; modifying certain seasons; modifying restrictions
14 on taking waterfowl; authorizing rulemaking; modifying
15 requirements for field training hunting dogs; modifying trapping
16 provisions; modifying restrictions on decoys; modifying
17 disposition of state hatchery products; modifying fishing and
18 commercial fishing provisions; repealing authority for the
19 Mississippi River Fish Refuge; repealing authority to issue
20 certain orders; amending Minnesota Statutes 2004, sections
21 84.027, subdivision 13; 97A.015, subdivisions 29, 49; 97A.045,
22 subdivision 1; 97A.401, subdivision 5; 97A.405, subdivision 4,
23 by adding a subdivision; 97A.411, subdivision 1; 97A.435,
24 subdivision 2; 97A.441, subdivision 7; 97A.451, subdivision 3;
25 97A.465, by adding a subdivision; 97A.475, subdivision 7, by
26 adding a subdivision; 97B.005, subdivision 3; 97B.025; 97B.031,
27 subdivisions 1, 5; 97B.111, subdivision 2; 97B.625, subdivision
28 2; 97B.631, subdivision 2; 97B.655, subdivision 2; 97B.711,
29 subdivision 1; 97B.803; 97B.805, subdivision 1; 97B.811,
30 subdivision 4a; 97C.203; 97C.327; 97C.345, subdivision 2;
31 97C.395, subdivision 1; 97C.401, subdivision 2; 97C.825,
32 subdivision 5; proposing coding for new law in Minnesota
33 Statutes, chapter 97B; repealing Minnesota Statutes 2004,
34 sections 88.27; 97B.005, subdivision 4; 97B.935; 97C.015;
35 97C.403; 97C.825, subdivisions 6, 7, 8, 9; Minnesota Rules, part
36 6234.2300, subparts 2, 3.

37 Reports the same back with the recommendation that the bill
38 be amended as follows:

39 Pages 11 and 12, delete section 18

40 Page 15, after line 33, insert:

41 "Sec. 28. Minnesota Statutes 2004, section 97B.931,
42 subdivision 2, is amended to read:

43 Subd. 2. [~~BOBY-GRIPPING-TRAPS~~ FREQUENCY.] A ~~body-gripping,~~
44 ~~conibear-type~~ trap or snare need not be tended more frequently
45 than once every third calendar day."

46 Page 18, line 30, after "sections" insert "28," and after
47 "30" insert a comma

48 Renumber the sections in sequence

49 Amend the title as follows:

50 Page 1, line 30, delete "subdivisions 1, 5" and insert
51 "subdivision 5"

52 Page 1, line 34, after the first semicolon, insert
53 "97B.931, subdivision 2;"

1 And when so amended the bill do pass and be re-referred to
2 the Committee on Finance. Amendments adopted. Report adopted.

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.....
(Committee Chair)

April 6, 2005.....
(Date of Committee recommendation)

**Senate Counsel, Research,
and Fiscal Analysis**

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Senate

State of Minnesota

S.F. No. 1016 - Relating to Noxious Weeds

Author: Senator Pat Pariseau

Prepared by: Daniel P. McGowan, Senate Counsel (651/296-4397)

DPM

Date: April 6, 2005

The proposed bill authorizes a county board to delegate to the county board of adjustment the duties of the appeal committee under Minnesota Statutes, chapter 18, relating to the control and eradication of noxious weeds. Minnesota Statutes, sections 18.76 to 18.88, contain procedures for controlling and eradicating noxious weeds, including section 18.83 in which a weed inspector serves individual notice in writing upon a person who owns, occupies, or is responsible for the maintenance of land needing noxious weed control. The process for appealing the notice under current law is to the appeal committee appointed by the county board. This bill would permit the county board of adjustment to serve as the appeal committee.

DPM:vs

Senators Pariseau, McGinn, Belanger, Marko and Metzen introduced--
S.F. No. 1016: Referred to the Committee on State and Local Government Operations.

1 A bill for an act
2 relating to local government; permitting delegation of
3 duties to board of adjustment; amending Minnesota
4 Statutes 2004, section 18.83, subdivision 3.
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
6 Section 1. Minnesota Statutes 2004, section 18.83,
7 subdivision 3, is amended to read:
8 Subd. 3. [APPEAL OF INDIVIDUAL NOTICE; APPEAL COMMITTEE.]
9 (1) A recipient of an individual notice may appeal, in writing,
10 the order for control or eradication of noxious weeds. This
11 appeal must be filed with a member of the appeal committee in
12 the county where the land is located within two working days of
13 the time the notice is received. The committee must inspect the
14 land specified in the notice and report back to the recipient
15 and the inspector who issued the notice within five working
16 days, either agreeing, disagreeing, or revising the order. The
17 decision may be appealed in district court. If the committee
18 agrees or revises the order, the control or eradication
19 specified in the order, as approved or revised by the committee,
20 may be carried out.
21 (2) The county board of commissioners shall appoint members
22 of the appeal committee. The membership must include a county
23 commissioner or municipal official and a landowner residing in
24 the county. The expenses of the members may be reimbursed by
25 the county upon submission of an itemized statement to the

1 county auditor. At its option the county board of
2 commissioners, by resolution, may delegate the duties of the
3 appeal committee to its board of adjustment established pursuant
4 to section 394.27. When carrying out the duties of the appeal
5 committee, the zoning board of adjustment shall comply with all
6 of the procedural requirements of this section.

7 Sec. 2. [EFFECTIVE DATE.]

8 Section 1 is effective the day after final enactment.

1 Senator Higgins from the Committee on State and Local
2 Government Operations, to which was referred

3 S.F. No. 1016: A bill for an act relating to local
4 government; permitting delegation of duties to board of
5 adjustment; amending Minnesota Statutes 2004, section 18.83,
6 subdivision 3.

7 Reports the same back with the recommendation that the bill
8 do pass and be placed on the Consent Calendar. Report adopted.

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.....
(Committee Chair)

April 6, 2005.....
(Date of Committee recommendation)

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HOUSE OF REPRESENTATIVES

EIGHTY-FOURTH
SESSION

HOUSE FILE No. 1820

March 16, 2005

Authored by Eastlund and Soderstrom

The bill was read for the first time and referred to the Committee on Governmental Operations and Veterans Affairs

March 23, 2005

Committee Recommendation and Adoption of Report:

To Pass as Amended and placed on the Consent Calendar

Read Second Time

1 A bill for an act

2 relating to the Cambridge State Hospital; naming a

3 cemetery; proposing coding for new law in Minnesota

4 Statutes, chapter 246.

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

6 Section 1. [246.325] [GARDEN OF REMEMBRANCE.]

7 The cemetery located on the grounds of the Cambridge State

8 Hospital shall be known as the Garden of Remembrance.

1 Senator moves to amend S.F. No. 1868 as
2 follows:

Page 1, line 5, after "Section 1." insert "[246.325]"

4 Page 1, line 7, after the period, insert "The commissioner
5 of human services shall approve the wording and design for a
6 sign at the cemetary indicating its name. The commissioner may
7 approve a temporary sign before the permanent sign is completed
8 and installed. All costs related to the sign must be paid with
9 nonstate funds."

10 Amend the title as follows:

11 Page 1, line 3, before the period, insert "; providing for
12 a sign; proposing coding for new law in Minnesota Statutes,
13 chapter 246"

1 Senator Higgins from the Committee on State and Local
2 Government Operations, to which was referred

3 H.F. No. 1820: A bill for an act relating to the Cambridge
4 State Hospital; naming a cemetery; proposing coding for new law
5 in Minnesota Statutes, chapter 246.

6 Reports the same back with the recommendation that the bill
7 be amended as follows:

8 Page 1, line 8, after the period, insert "The commissioner
9 of human services shall approve the wording and design for a
10 sign at the cemetery indicating its name. The commissioner may
11 approve a temporary sign before the permanent sign is completed
12 and installed. All costs related to the sign must be paid with
13 nonstate funds."

14 Amend the title as follows:

15 Page 1, line 3, after the semicolon, insert "providing for
16 a sign;"

17 And when so amended the bill do pass and be placed on the
18 Consent Calendar. Amendments adopted. Report adopted.

19
20 (Committee Chair)

21
22 April 6, 2005.....
23 (Date of Committee recommendation)

Senators Kelley and Gaither introduced--
S.F. No. 764: Referred to the Committee on Education.

1 A bill for an act
2 relating to education; authorizing a task force to
3 study the delivery and funding of special education.

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

5 Section 1. [TASK FORCE ON DELIVERY OF SPECIAL EDUCATION TO
6 NONPUBLIC SCHOOL STUDENTS BY PUBLIC SCHOOL DISTRICTS.]

7 Subdivision 1. [PURPOSE; ESTABLISHMENT.] With the
8 congressional reauthorization of the federal Individuals with
9 Disabilities Education Act, a task force on the delivery of
10 special education services to nonpublic school students by
11 public school districts shall be established to compare and
12 evaluate how the individual needs of each child are being met,
13 if services are provided in the least restrictive environment,
14 and whether best practices and program efficiencies are being
15 used in the specific areas of transportation, location of
16 services, and shared time aid.

17 Subd. 2. [MEMBERS.] The governor shall appoint the members
18 of the task force from each of the following:

19 (1) two members from the Department of Education, one
20 representing special education programs and policy and one
21 representing district finances;

22 (2) two special education teachers with one member from a
23 public school and one member from a nonpublic school;

24 (3) two special education administrators with one member

1 from a public school and one member from a nonpublic school;

2 (4) two members with one from each of two special education
3 advocacy organizations;

4 (5) two parents of children receiving special education
5 services with one member from a public school and one member
6 from a nonpublic school;

7 (6) two elementary school principals with one member from a
8 public school and one member from a nonpublic school;

9 (7) two superintendents with one member from a public
10 school district and one member from a nonpublic school district;

11 (8) two school business officials with one from a public
12 school and one from a nonpublic school; and

13 (9) two school board officials with one from a public
14 school and one from a nonpublic school.

15 The task force may select additional members to work on the
16 task force. The commissioner of education shall provide
17 necessary materials and assistance.

18 Subd. 3. [REPORT.] The task force shall submit a report by
19 January 15, 2006, to the house of representatives and senate
20 committees having jurisdiction over education on the delivery of
21 special education services to nonpublic school students by
22 public school districts, to compare and evaluate how the
23 individual needs of each child are being met in the least
24 restrictive environment, and whether best practices and program
25 efficiencies are being used.

26 Subd. 4. [EXPIRATION.] This section expires January 31,
27 2006.

28 [EFFECTIVE DATE.] This section is effective the day
29 following final enactment.

1 Senator Higgins from the Committee on State and Local
2 Government Operations, to which was re-referred

3 S.F. No. 764: A bill for an act relating to education;
4 authorizing a task force to study the delivery and funding of
5 special education.

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

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.....*Junda Higgins*.....
(Committee Chair)

April 6, 2005.....
(Date of Committee recommendation)

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and Fiscal Analysis**

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State of Minnesota

S.F. No. 615 - Relating to the County Surveyor

Author: Senator Betsy Wergin

Prepared by: Daniel P. McGowan, Senate Counsel (651/296-4397)

DPM

Date: April 6, 2005

The proposed legislation authorizes counties by ordinance to require that land surveys done for private parties by licensed land surveyors be filed with the county recorder if there is no county surveyor. Under current law there is no provision for a county to require filings of surveys if there is no county surveyor.

DPM:vs

Senator Wergin introduced--

S.F. No. 615: Referred to the Committee on State and Local Government Operations.

1 A bill for an act
2 relating to counties; providing for alternative filing
3 of surveyys if there is no county surveyor; amending
4 Minnesota Statutes 2004, section 389.08.
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
6 Section 1. Minnesota Statutes 2004, section 389.08, is
7 amended to read:
8 389.08 [FILING OF SURVEYS IN CERTAIN COUNTIES.]
9 In any county ~~in which there is a county surveyor who~~
10 ~~maintains an office on a full-time basis in a building~~
11 ~~maintained by the county for county purposes,~~ the county board
12 may by ordinance adopted in accordance with section 375.51,
13 require that a licensed land surveyor who performs a survey of
14 land for an individual or corporation must file a true and
15 correct copy of the survey in the office of the county surveyor,
16 or if none the county recorder, within 30 days after completion
17 of the survey. The county surveyor, or if none the county
18 board, shall determine the manner of filing, and all incidents
19 thereof. All surveys so filed are public records and must be
20 made available by the county surveyor, or if none the county
21 recorder, at all reasonable times for inspection by any person.

1 Senator Higgins from the Committee on State and Local
2 Government Operations, to which was referred

3 S.F. No. 615: A bill for an act relating to counties;
4 providing for alternative filing of surveyors if there is no
5 county surveyor; amending Minnesota Statutes 2004, section
6 389.08.

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

9 Delete everything after the enacting clause and insert:

10 "Section 1. Minnesota Statutes 2004, section 160.15,
11 subdivision 4, is amended to read:

12 Subd. 4. [FILING OF CERTIFICATE; FEE.] The land surveyor
13 placing and establishing the markers or monuments shall, no
14 later than six months after placing and establishing them, file
15 a certificate to that effect in the office of the ~~county~~
16 ~~recorder,--or-in-the-office-of-the~~ county surveyor where, if the
17 county maintains a full-time office, in the county or
18 counties ~~wherein~~ in which the markers or monuments were placed.
19 If a county in which the markers or monuments were placed does
20 not have a full-time office of the county surveyor, then the
21 land surveyor shall record the certificate in the office of the
22 county recorder of that county. Each certificate must contain
23 only the record of markers and monuments at one corner. ~~The~~
24 ~~county-recorder-may-charge-a-fee-of-50-cents-for-each~~
25 ~~certificate-filed-~~

26 [EFFECTIVE DATE; APPLICATION.] This section is effective
27 August 1, 2005, and applies to markers and monuments placed and
28 established on or after that date.

29 Sec. 2. Minnesota Statutes 2004, section 381.12,
30 subdivision 1, is amended to read:

31 Subdivision 1. [SURVEYOR, EMPLOYMENT.] When the county
32 board determines that the monuments established by the United
33 States in the public lands survey to mark section, quarter
34 section, and meander corners have been destroyed or are becoming
35 obscure, it may employ a licensed surveyor to preserve, restore
36 and mark the corners with a durable magnetic monument. The
37 surveyor shall make full and accurate notes and records from
38 which the entire survey can be relocated, and shall, no later

1 than six months after preserving, restoring, and marking the
2 corners, file a certified copy of the same, with a plat, in the
3 office of the county recorder-or-the-office-of-the-county
4 surveyor if an office is maintained in a building maintained by
5 the county for county purposes on a full-time basis, and if not,
6 shall record it in the office of the county recorder. The
7 monuments are prima facie evidence of the original United States
8 public land survey corners.

9 [EFFECTIVE DATE; APPLICATION.] This section is effective
10 August 1, 2005, and applies to corners preserved, restored, and
11 marked on or after that date.

12 Sec. 3. Minnesota Statutes 2004, section 381.12,
13 subdivision 3, is amended to read:

14 Subd. 3. [U.S. PUBLIC LAND SURVEY MONUMENT RECORD.] (a) A
15 United States public land survey monument record must be
16 prepared as part of any land survey which includes or requires
17 the perpetuation or restoration of a United States public land
18 survey corner and one of the following conditions exists:

19 (1) there is no United States public land survey monument
20 record for the corner on file in the office of the county
21 surveyor or the county recorder for the county in which the
22 corner is located; or

23 (2) the land surveyor who performs the survey accepts a
24 position for the United States public land survey corner which
25 differs from that shown on a United States public land survey
26 monument record filed in the office of the county surveyor where
27 the county maintains a full-time office, or in the office of the
28 county recorder for the county in which the corner is located;
29 or

30 (3) the witness ties referred to in an existing United
31 States public land survey monument record have been destroyed.

32 (b) A United States public land survey monument record must
33 be prepared on a certificate of location of government corner,
34 as specified in section 160.15, subdivision 5.

35 (c) A United States public land survey monument record must
36 show the position of the corner and must include all the

1 following elements:

2 (1) the identity of the corner, as referenced to the United
3 States public land survey system;

4 (2) a description of any record evidence, monument
5 evidence, occupational evidence, testimonial evidence, or any
6 other material evidence considered by the surveyor, and whether
7 the monument was found or placed;

8 (3) if possible, reference ties to at least three witness
9 monuments made of concrete, natural stone, iron, or other
10 equally durable material, including trees;

11 (4) a plan view drawing depicting the relevant monuments
12 and reference ties which is in sufficient detail to enable
13 accurate restoration of the corner position if the corner
14 monument has been disturbed;

15 (5) a description of any significant discrepancy between
16 the position of the corner as restored and the position of that
17 corner as previously restored;

18 (6) whether the corner was restored through acceptance of
19 an obliterated evidence position or a found perpetuated
20 position;

21 (7) whether the corner was restored through lost corner
22 proportionate methods;

23 (8) the directions and distances to other public land
24 survey corners which were used as evidence or used for
25 proportioning in determining the corner positions; and

26 (9) the signature of the land surveyor under whose
27 direction and control the corner position was determined and a
28 statement certifying that the United States public land survey
29 monument record is correct and complete to the best of the
30 surveyor's knowledge and belief.

31 (d) No later than six months after perpetuating or
32 restoring the survey corner, the land surveyor shall file or
33 record the certificate in the same manner as required under
34 subdivision 1.

35 (e) A reasonable fee for professional services may be paid
36 to the surveyor filing or recording the certificate with the

1 respective county, on approval and determination of the fee by
2 resolution of the county board.

3 [EFFECTIVE DATE; APPLICATION.] This section is effective
4 August 1, 2005, and applies to corners perpetuated or restored
5 on or after that date.

6 Sec. 4. Minnesota Statutes 2004, section 389.03, is
7 amended to read:

8 389.03 [COMPENSATION; RECORDS.]

9 (a) Except as otherwise provided by law, the county board
10 shall fix the compensation of county surveyors or their
11 deputies, including their necessary expenses. All records of
12 surveys are public records and must be made available by the
13 county surveyor at all reasonable times to inspection by any
14 person. The county board shall, at the expense of the county,
15 provide to the county surveyor all proper and necessary files
16 for keeping these records. The county survey records must be
17 kept in the office of the county surveyor or of the county
18 recorder of the county. If an office for the county surveyor
19 is maintained in a building maintained by the county for county
20 purposes on a full-time basis, then the records shall be kept in
21 the office of the county surveyor.

22 (b) If a county closes an office of the county surveyor
23 that the county maintained in a building maintained by the
24 county for county purposes on a full-time basis, the county
25 shall transfer all certificates of location of corners filed
26 with that office under section 160.15, subdivision 4, or 381.12,
27 subdivisions 1 and 3, to be recorded in the office of the county
28 recorder.

29 [EFFECTIVE DATE.] This section is effective August 1, 2005."

30 Delete the title and insert:

31 "A bill for an act relating to counties; providing for
32 alternative filing of surveys; modifying requirements for land
33 surveyors; providing for a transfer of records; amending
34 Minnesota Statutes 2004, sections 160.15, subdivision 4; 381.12,
35 subdivisions 1, 3; 389.03."

36 And when so amended the bill do pass. Amendments adopted.
37 Report adopted.

38
39 (Committee Chair)

April 6, 2005.....
(Date of Committee recommendation)

1 Senator moves to amend S.F. No. 615 as follows:

2 Delete everything after the enacting clause and insert:

3 "Section 1. Minnesota Statutes 2004, section 160.15,
4 subdivision 4, is amended to read:

5 Subd. 4. [FILING OF CERTIFICATE; FEE.] The land surveyor
6 placing and establishing the markers or monuments shall, no
7 later than six months after placing and establishing them, file
8 a certificate to that effect in the office of the county
9 recorder, or in the office of the county surveyor where, if the
10 county maintains a full-time office, in the county or
11 counties wherein in which the markers or monuments were placed.
12 If a county in which the markers or monuments were placed does
13 not have a full-time office of the county surveyor, then the
14 land surveyor shall record the certificate in the office of the
15 county recorder of that county. Each certificate must contain
16 only the record of markers and monuments at one corner. The
17 ~~county recorder may charge a fee of 50 cents for each~~
18 ~~certificate filed.~~

19 [EFFECTIVE DATE; APPLICATION.] This section is effective
20 August 1, 2005, and applies to markers and monuments placed and
21 established on or after that date.

22 Sec. 2. Minnesota Statutes 2004, section 381.12,
23 subdivision 1, is amended to read:

24 Subdivision 1. [SURVEYOR, EMPLOYMENT.] When the county
25 board determines that the monuments established by the United
26 States in the public lands survey to mark section, quarter
27 section, and meander corners have been destroyed or are becoming
28 obscure, it may employ a licensed surveyor to preserve, restore
29 and mark the corners with a durable magnetic monument. The
30 surveyor shall make full and accurate notes and records from
31 which the entire survey can be relocated, and shall, no later
32 than six months after preserving, restoring, and marking the
33 corners, file a certified copy of the same, with a plat, in the
34 office of the county recorder or the office of the county
35 surveyor if an office is maintained in a building maintained by
36 the county for county purposes on a full-time basis, and if not,

1 shall record it in the office of the county recorder. The
2 monuments are prima facie evidence of the original United States
3 public land survey corners.

4 [EFFECTIVE DATE; APPLICATION.] This section is effective
5 August 1, 2005, and applies to corners preserved, restored, and
6 marked on or after that date.

7 Sec. 3. Minnesota Statutes 2004, section 381.12,
8 subdivision 3, is amended to read:

9 Subd. 3. [U.S. PUBLIC LAND SURVEY MONUMENT RECORD.] (a) A
10 United States public land survey monument record must be
11 prepared as part of any land survey which includes or requires
12 the perpetuation or restoration of a United States public land
13 survey corner and one of the following conditions exists:

14 (1) there is no United States public land survey monument
15 record for the corner on file in the office of the county
16 surveyor or the county recorder for the county in which the
17 corner is located; or

18 (2) the land surveyor who performs the survey accepts a
19 position for the United States public land survey corner which
20 differs from that shown on a United States public land survey
21 monument record filed in the office of the county surveyor where
22 the county maintains a full-time office, or in the office of the
23 county recorder for the county in which the corner is located;
24 or

25 (3) the witness ties referred to in an existing United
26 States public land survey monument record have been destroyed.

27 (b) A United States public land survey monument record must
28 be prepared on a certificate of location of government corner,
29 as specified in section 160.15, subdivision 5.

30 (c) A United States public land survey monument record must
31 show the position of the corner and must include all the
32 following elements:

33 (1) the identity of the corner, as referenced to the United
34 States public land survey system;

35 (2) a description of any record evidence, monument
36 evidence, occupational evidence, testimonial evidence, or any

1 other material evidence considered by the surveyor, and whether
2 the monument was found or placed;

3 (3) if possible, reference ties to at least three witness
4 monuments made of concrete, natural stone, iron, or other
5 equally durable material, including trees;

6 (4) a plan view drawing depicting the relevant monuments
7 and reference ties which is in sufficient detail to enable
8 accurate restoration of the corner position if the corner
9 monument has been disturbed;

10 (5) a description of any significant discrepancy between
11 the position of the corner as restored and the position of that
12 corner as previously restored;

13 (6) whether the corner was restored through acceptance of
14 an obliterated evidence position or a found perpetuated
15 position;

16 (7) whether the corner was restored through lost corner
17 proportionate methods;

18 (8) the directions and distances to other public land
19 survey corners which were used as evidence or used for
20 proportioning in determining the corner positions; and

21 (9) the signature of the land surveyor under whose
22 direction and control the corner position was determined and a
23 statement certifying that the United States public land survey
24 monument record is correct and complete to the best of the
25 surveyor's knowledge and belief.

26 (d) No later than six months after perpetuating or
27 restoring the survey corner, the land surveyor shall file or
28 record the certificate in the same manner as required under
29 subdivision 1.

30 (e) A reasonable fee for professional services may be paid
31 to the surveyor filing or recording the certificate with the
32 respective county, on approval and determination of the fee by
33 resolution of the county board.

34 [EFFECTIVE DATE; APPLICATION.] This section is effective
35 August 1, 2005, and applies to corners perpetuated or restored
36 on or after that date.

1 Sec. 4. Minnesota Statutes 2004, section 389.03, is
2 amended to read:

3 389.03 [COMPENSATION; RECORDS.]

4 (a) Except as otherwise provided by law, the county board
5 shall fix the compensation of county surveyors or their
6 deputies, including their necessary expenses. All records of
7 surveys are public records and must be made available by the
8 county surveyor at all reasonable times to inspection by any
9 person. The county board shall, at the expense of the county,
10 provide to the county surveyor all proper and necessary files
11 for keeping these records. The county survey records must be
12 kept in the office of the county surveyor or of the county
13 recorder of the county⁷. If an office for the county surveyor
14 is maintained in a building maintained by the county for county
15 purposes on a full-time basis, then the records shall be kept in
16 the office of the county surveyor.

17 (b) If a county closes an office of the county surveyor
18 that the county maintained in a building maintained by the
19 county for county purposes on a full-time basis, the county
20 shall transfer all certificates of location of corners filed
21 with that office under section 160.15, subdivision 4, or 381.12,
22 subdivisions 1 and 3, to be recorded in the office of the county
23 recorder.

24 [EFFECTIVE DATE.] This section is effective August 1, 2005."

25 Amend the title accordingly as follows:
*relating to counties; providing for
alternative filing of surveys; modifying
requirements for land surveyors; providing
for a transfer of records; amending
Minnesota Statutes 2004, sections 160.15
subdivision 4; 381.12, subdivisions 1,
3; 389.03.*