

SUBCOMMITTEE REPORT - WITH AMENDMENTS

TO: Judiciary Committee

FROM: Data Practices Subcommittee

S. F. No. 1833

Amendments:

A-2 written amendment

Subcommittee recommendation:

 And when so amended that the bill be recommended to pass and be referred to the full committee

And when so amended that the bill be laid over for
inclusion in SF 301

March 29, 2005 (date of subcommittee action)

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

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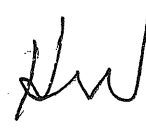
State of Minnesota

S.F. No. 1833 - Comprehensive Incident-Based Reporting

Author: Senator Wesley Skoglund

Prepared by: Harry Walsh, Senate Counsel (651/296-6200)

Date: March 28, 2005



S.F. No. 1833 provides for the treatment of information gathered and disseminated by the Comprehensive Incident-Based Reporting System (CIBRS) managed by the Bureau of Criminal Apprehension (BCA).

Subdivision 1 defines "CIBRS" and "law enforcement agency."

Subdivision 2 allows CIBRS data to be used only by law enforcement agencies and only for criminal investigations and background checks.

Subdivision 3 classifies CIBRS data and regulates changes in classification. CIBRS data becomes private when an investigation becomes inactive or when the data has not been updated for 120 days.


Subdivision 4 limits use of data to law enforcement personnel certified by the BCA.

Subdivision 5 regulates the access to the data of the subject of the data.

Subdivision 6 provides procedures for the challenge to data by the subject of data.

HW:rd

3/29/05

To: Senator Skoglund
From: Richard Neumeister 
Re: S.F. 1833 (CIBRS legislation)

CIBRS is an important tool for law enforcement if set up right with accountability and transparency. CIBRS will collect details on categories of crime, including offenses, weapons, injury, location, property loss and individual characteristics of the victims, offenders, arrestees, and complainants. Addresses will also be included. ANY INCIDENT will be included in CIBRS.

On the CIBRS system will be raw investigative data which may be fraught with inaccuracies until verified with other sources. I have concerns about CIBRS being used for background investigations per page 1, line 25 of the bill. If the bill goes forward as is there will be problems in the reputation and privacy of the individual, timeliness and relevancy issues, and of course which I mentioned incompleteness and inaccuracy. There is also the issue of equality and discrimination.

I suggest that on page 1, line 24 and 25 after offense, everything be deleted *through line 25.*

I am of the opinion existing accountability provisions and administrative penalties need to be reviewed for CIBRS.

Justice Brandeis wrote "The greatest dangers to liberty lurk in the insidious encroachment by men of zeal but without understanding." This is how MJNO came about. It is important that we do not make the same mistake again.

NewsBank InfoWeb

America's Newspapers

POLICE DATA NETWORK CLOSED FOR NOW
SECURITY BREACH ALLEGED AS EXISTING SYSTEM SCRUTINIZED

Saint Paul Pioneer Press

November 1, 2003

Author: PATRICK HOWE

Associated Press

Estimated printed pages: 4

A computer network used to share police files among more than 175 law enforcement departments in Minnesota has been closed after a state lawmaker learned "beyond a shadow of a doubt" someone had hacked into the system to demonstrate its vulnerability.

"A security breach was alleged. We take that extremely seriously. We've taken the system off line in this particular case," Bob Johnson, director of the state's CrimNet program, said Friday.

He said he does not know how long the file sharing system -- known as the Multiple Jurisdictional Network Organization -- will be down.

Johnson said an investigation is under way to confirm whether and how **MJNO** was breached. He stressed that any breach did not compromise parts of CrimNet, the umbrella term describing various efforts to link different criminal justice data systems in the state.

Johnson announced the possible breach at a criminal justice information task force meeting Friday morning after state Rep. Mary Liz Holberg, a Republican from Lakeville, first made the allegation.

Holberg, who already planned to hold hearings on **MJNO**, said in an interview she was approached by a person who is not supposed to have access to the network and who showed her information the system had on her.

"It was proven to me that an individual that was not law enforcement, beyond a shadow of a doubt, had access to the system," she said.

She said she contacted Gov. Tim Pawlenty's office about the flaw and subsequently verified the information was from the system by seeking a copy of her own **MJNO** file from a local police agency.

Police agencies who participate in the system use a password-protected Internet site to access more than 8 million police records, including the names of suspects, witnesses and people who have sought handgun permits in addition to the names of people who have been arrested or convicted of a crime.

Since 2001, when it began operating on a statewide basis, the system has been owned by the private nonprofit Minnesota Chiefs of Police Association, though the state took over its operation as a pilot project in March.

Johnson said the state had been planning security upgrades to the police network.

In an e-mail to members of the network apparently sent Friday, Dennis Delmont, the executive director

of the chiefs association, said the system will be moved behind a Minnesota Bureau of Criminal Apprehension computer firewall and that BCA and CrIMNet computer experts are investigating.

"If there has been an illegal compromise of **MJNO** we will seek criminal prosecution of those responsible," Delmont wrote in a letter obtained by the St. Cloud Times. "If there was no compromise we will try to determine the rationale for such a claim and seek civil and/or legislative relief."

In recent weeks, lawmakers and other critics had begun to raise concerns about the system, questioning its security features as well as the state's involvement.

Agencies in neighboring states have begun to join the network and some officers have access to it from their squad cars.

The basic concept began in 1992, when police in Crystal asked to view the records of their Minneapolis counterparts. In 1997, some 22 police agencies banded together to win a federal grant to build a prototype. Eventually, it was turned over to the nonprofit police chiefs association to run and administer.

So far, the network has been paid for through federal grants and subscribing agencies paying fees of \$50 to \$500. In March, the state leased rights to use it for 18 months in exchange for investing up to \$150,000 to upgrade the system. It's housed on a state Web server -- www.mjno.state.mn.us -- and state employees run it.

The state is exploring absorbing **MJNO** permanently after the lease is up, Johnson said in a recent interview.

When an officer gets a hit on a name searched in the **MJNO** network, the screen he calls up shows the person's name, date of birth, the number and type of case that brought them to police attention and the person's role in the matter.

Delmont, of the chiefs association, said it's up to police to verify the accuracy of the information they access. He said the association doesn't own or alter the data. The **MJNO**, he says, is merely a pipe linking one agency's data to another.

"(Critics are) concerned why the Chiefs of Police Association collects all this information on them. The answer is, we don't," he said. "We facilitate the collection by pointing to the data."

Testimonials on **MJNO**'s Web site laud its ease of use. One investigator says it helped him do in four hours what would have taken his full staff a week. Another boasts that "tools like **MJNO** are changing the way we do business."

Scott Chapman may have been one of the first people outside of law enforcement to become aware of the reach of **MJNO**. He said the experience left him feeling violated.

Last March, Chapman, a computer systems administrator, was at a political rally outside U.S. Rep. John Kline's office. He was carrying a sign reading "Freedom is not free," to balance people protesting the war in Iraq, he said.

As the rally neared an end, a Burnsville police sergeant asked to search his fanny pack. Chapman protested but eventually handed it over. Finding nothing unusual, the officer allowed him to leave.

Chapman said the experience left him shaken and curious why he'd been singled out.

The answer came from a friendly file clerk and the police report on the incident. Chapman learned that the officer was suspicious in part because he'd searched the **MJNO** and found Chapman had requested but been denied a concealed carry permit. (Chapman had since been granted a permit, though that wasn't in the records)

"Here I've done nothing wrong. I've done everything right. I applied for a legal permit and followed the process," Chapman said. "Now I find out that my name is commingled with all of the felons and arrestees and everyone else? It just seems wrong.

"I'm a white guy from the 'burbs and I was stopped and illegally searched. Can you imagine what it must be like for a guy who's not a white guy from the 'burbs?"

His attorney, gun-rights activist David Gross, says he is exploring a possible lawsuit over the incident.

Gross questions the accuracy of the information and the security of the system. He believes the system should be shut down because it was never authorized by the Legislature and doesn't comply with parts of the state's records law, the Data Practices Act.

"There's all sorts of philosophical questions," he said. "What is it? Why did they need to create it? Is it lawful to create it? Why in the hell, if they needed it and wanted it to exist, didn't they go through the state government to create it?"

He said he believes state law demands that citizens have access to any data collected on them, provided they aren't the suspect of an investigation. Delmont said those questions should be taken to the agencies that hold the actual records, not **MJNO**.

Largely thanks to Chapman's efforts to bring the system to their attention, lawmakers are beginning to ask questions.

As a lawmaker who has served on key police and law committees, Holberg said she initially dismissed talk about a secret, privately run database, assuming she would have heard about it if it existed. "I thought it sounded so bizarre it couldn't be true."

Holberg said she can see the benefits of the system to police, but she's grown concerned enough to plan hearings on **MJNO** for the next legislative session.

"There needs to be major big-time discussion from a public policy standpoint before we get much further down the road."

Edition: City
Section: LOCAL
Page: B4

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1 Senator moves to amend S.F. No. 1833 as follows:

2 Page 3, line 15, after the period, insert "The bureau shall
3 by rule under chapter 14 provide procedures for certification of
4 law enforcement agency personnel allowed access to CIBRS data."

5 Page 3, line 18, after the period, insert "The bureau may
6 designate persons who may have access to CIBRS data only as
7 necessary to operate or maintain CIBRS."

8 Page 3, line 20, after "Apprehension" insert "or to a law
9 enforcement agency participating in CIBRS,"

10 Page 3, line 25, delete the first "the" and insert "a
11 participating" and delete "that submitted the" and insert a
12 period

13 Page 3, delete lines 26 and 27, and insert "Private data
14 provided to the subject under this subdivision must also include
15 the name of"

Senator Skoglund introduced--

S.F. No. 1833: Referred to the Committee on Judiciary.

1 A bill for an act

2 relating to government data practices; providing for
3 treatment of data held by the comprehensive
4 incident-based reporting system; proposing coding for
5 new law in Minnesota Statutes, chapter 299C.

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

7 Section 1. [299C.40] [COMPREHENSIVE INCIDENT-BASED
8 REPORTING SYSTEM.]

9 Subdivision 1. [DEFINITIONS.] (a) The definitions in this
10 subdivision apply to this section.

11 (b) "CIBRS" means the Comprehensive Incident-Based
12 Reporting System, located in the Department of Public Safety and
13 managed by the Bureau of Criminal Apprehension, Criminal Justice
14 Information Systems Section. A reference in this section to
15 "CIBRS" includes the Bureau of Criminal Apprehension.

16 (c) "Law enforcement agency" means a Minnesota municipal
17 police department, a Minnesota county sheriff's department, the
18 Bureau of Criminal Apprehension, or the Minnesota State Patrol.

19 Subd. 2. [PURPOSE.] CIBRS is a statewide system containing
20 data from law enforcement agencies. Data in CIBRS must be made
21 available to law enforcement agencies only for purposes of
22 criminal investigations being conducted in order to prepare a
23 case against a person, whether known or unknown, for the
24 commission of a crime or other offense, or for purposes of
25 background investigations required by state statute.

1 Subd. 3. [DATA CLASSIFICATION; GENERAL RULE; CHANGES IN
2 CLASSIFICATION; AUDIT TRAIL.] (a) The classification of data in
3 the law enforcement agency does not change after the data is
4 submitted to CIBRS.

5 (b) Data on individuals created, collected, received,
6 maintained, or disseminated by CIBRS is classified as
7 confidential data on individuals as defined in section 13.02,
8 subdivision 3, and becomes private data on individuals as
9 defined in section 13.02, subdivision 12, as provided by this
10 section.

11 (c) Data not on individuals created, collected, received,
12 maintained, or disseminated by CIBRS is classified as protected
13 nonpublic data as defined in section 13.02, subdivision 13, and
14 becomes nonpublic data as defined in section 13.02, subdivision
15 9, as provided by this section.

16 (d) Confidential or protected nonpublic data created,
17 collected, received, maintained, or disseminated by CIBRS must
18 automatically change classification from confidential data to
19 private data or from protected nonpublic data to nonpublic data
20 on the earlier of the following dates:

21 (1) upon receipt by CIBRS of notice from a law enforcement
22 agency that an investigation has become inactive; or

23 (2) when the data has not been updated by the law
24 enforcement agency that submitted it for a period of 120 days.

25 (e) For the purposes of this section, an investigation
26 becomes inactive upon the occurrence of any of the events listed
27 in section 13.82, subdivision 7, clauses (a) to (c).

28 (f) Ten days before making a data classification change
29 because data has not been updated, CIBRS must notify the law
30 enforcement agency that submitted the data that a classification
31 change will be made on the 120th day. The notification must
32 inform the law enforcement agency that the data will retain its
33 classification as confidential or protected nonpublic data if
34 the law enforcement agency updates the data or notifies CIBRS
35 that the investigation is still active before the 120th day. A
36 new 120-day period begins if the data is updated or if a law

1 enforcement agency notifies CIBRS that an active investigation
2 is continuing.

3 (g) A law enforcement agency that submits data to CIBRS
4 must notify CIBRS if an investigation has become inactive so
5 that the data is classified as private data or nonpublic data.
6 The law enforcement agency must provide this notice to CIBRS
7 within ten days after an investigation becomes inactive.

8 (h) All queries and responses and all actions in which data
9 is submitted to CIBRS, changes classification, or is
10 disseminated by CIBRS to any law enforcement agency must be
11 recorded in the CIBRS audit trail.

12 Subd. 4. [ACCESS TO CIBRS DATA BY LAW ENFORCEMENT AGENCY
13 PERSONNEL.] Only law enforcement agency personnel with
14 certification from the Bureau of Criminal Apprehension may
15 access CIBRS data. Access to CIBRS data by particular law
16 enforcement agency personnel may be limited through the use of
17 purpose codes that correspond to the official duties and
18 training level of the personnel.

19 Subd. 5. [ACCESS TO CIBRS DATA BY DATA SUBJECT.] Upon
20 request to the Bureau of Criminal Apprehension an individual
21 shall be informed whether the individual is the subject of
22 private or confidential data held by CIBRS. An individual who
23 is the subject of private data held by CIBRS may obtain access
24 to the data by making a request to the Bureau of Criminal
25 Apprehension or to the law enforcement agency that submitted the
26 data to CIBRS. When providing private data to the subject, the
27 Bureau of Criminal Apprehension must also include the name of
28 the law enforcement agency that submitted the data to CIBRS and
29 the name, telephone number, and address of the responsible
30 authority of that law enforcement agency.

31 Subd. 6. [CHALLENGE TO COMPLETENESS AND ACCURACY OF DATA.]
32 An individual who is the subject of public or private data held
33 by CIBRS and who wants to challenge the completeness or accuracy
34 of the data under section 13.04, subdivision 4, must notify in
35 writing the responsible authority of the participating law
36 enforcement agency. A law enforcement agency must notify the

1 Bureau of Criminal Apprehension when data held by CIBRS is
2 challenged. The notification must identify the data that was
3 challenged and the subject of the data. CIBRS must include any
4 notification received under this paragraph whenever
5 disseminating data about which no determination has been made.
6 When the responsible authority of a law enforcement agency
7 completes, corrects, or destroys successfully challenged data,
8 the corrected data must be submitted to CIBRS and any future
9 dissemination must be of the corrected data.

SUBCOMMITTEE REPORT - WITH AMENDMENTS

TO: Judiciary Committee

FROM: Data Practices Subcommittee

S. F. No. 1253

Amendments:

A-1 written amendment as amended
pg 1 ln 7 after bids insert "relating to events
involving the City of St. Paul"

Subcommittee recommendation:

And when so amended that the bill be recommended to pass and be referred to the full committee

And when so amended that the bill _____

March 29, 2005 (date of subcommittee action)

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

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Senate

State of Minnesota

**S.F. No. 1253 - Management and Operation of
RiverCentre Complex (Judiciary Issue)**

Author: Senator Sandra L. Pappas

Prepared by: Harry Walsh, Senate Counsel (651/296-6200)

Date: March 22, 2005

S.F. No. 1253 allows the city of Saint Paul to establish a nonprofit organization to manage the RiverCentre complex. Section 3, subdivision 3, makes the Open Meeting Law and the Data Practices Act apply to the nonprofit organization.

HW:cs



Senators Pappas, Moua, Anderson and Cohen introduced--

S.F. No. 1253: Referred to the Committee on State and Local Government Operations.

1 A bill for an act
2 relating to local government; authorizing the city of
3 St. Paul to participate in the creation of, and to
4 contract with, a nonprofit organization for management
5 and operation of the RiverCentre complex.

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

7 Section 1. [DEFINITIONS.]

8 Subdivision 1. [APPLICATION.] For the purposes of this
9 act, the terms defined in this section have the meanings given
10 them.

11 Subd. 2. [CITY.] "City" means the city of St. Paul, its
12 mayor, city council, and any other board, authority, commission,
13 or officer authorized by law, charter, or ordinance to exercise
14 city powers of the nature referred to in this act.

15 Subd. 3. [RIVERCENTRE COMPLEX.] "RiverCentre complex"
16 means collectively the auditorium, convention, conference and
17 education center, arena, and parking ramp facilities presently
18 and commonly known as the Roy Wilkins Auditorium, St. Paul
19 RiverCentre, Xcel Energy Center, and RiverCentre Parking Ramp,
20 including all property, real or personal, tangible or
21 intangible, located in the city, intended to be used as part of
22 the RiverCentre complex or additions to or extensions of it.

23 Sec. 2. [ST. PAUL; CREATION OF NONPROFIT ORGANIZATION.]

24 Subdivision 1. [AUTHORITY TO CREATE A NONPROFIT
25 ORGANIZATION.] As required under Minnesota Statutes, section

1 465.717, and notwithstanding any other law, city charter
2 provision, or ordinance to the contrary, the city of St. Paul
3 may participate in the creation of a nonprofit organization for
4 the purposes provided in this act.

5 Subd. 2. [GOVERNING BOARD; APPOINTMENT PROCESS.] (a) The
6 mayor of the city, subject to approval by the city council,
7 shall appoint a majority of the members of the governing board
8 of the nonprofit organization performing all or a part of the
9 activities necessary to carry out the purposes specified in this
10 act. The mayor of the city may designate any officer or
11 employee of the city to serve as a member of the governing board
12 of any nonprofit organization.

13 (b) In addition to the appointments made by the mayor under
14 paragraph (a), the mayor of the city shall designate three
15 members of the city council to serve on the governing board of
16 the nonprofit organization.

17 (c) Notwithstanding any provision contained in the articles
18 of incorporation and bylaws of the nonprofit organization, any
19 member of the governing board appointed by the mayor may be
20 removed only by the mayor of the city for cause.

21 Subd. 3. [PRESIDENT.] The governing board of the nonprofit
22 organization shall select, subject to the approval of the mayor
23 of the city, a president to serve as chief executive officer and
24 general manager of the nonprofit organization.

25 Subd. 4. [CONFLICTS OF INTEREST.] The procedures in
26 Minnesota Statutes, section 317A.255, subdivision 1, paragraph
27 (b), relating to director conflicts of interest, are not
28 required if the contract or other transaction is between the
29 city and the nonprofit organization.

30 Sec. 3. [RIVERCENTRE MANAGEMENT; OPERATIONS CONTRACT.]

31 Subdivision 1. [AUTHORITY TO CONTRACT WITH NONPROFIT
32 ORGANIZATION.] The city may enter into an agreement with the
33 nonprofit organization created in section 2 to equip, maintain,
34 manage, and operate all or a portion of the RiverCentre complex
35 and to manage and operate a convention bureau to market and
36 promote the city as a tourist or convention center. Except as

1 otherwise provided in this act, the nonprofit organization may
2 only contract and utilize and expend funds for these purposes
3 under the direction of its governing board, subject to the
4 accounting, financial reporting, and other conditions that the
5 city may prescribe in a contract made under this act between the
6 city and the nonprofit organization. The nonprofit organization
7 may use the services of the office of the city attorney and the
8 city's purchasing department. All activities performed to carry
9 out these purposes are deemed to be for a public purpose.

10 Subd. 2. [BONDHOLDERS' RIGHTS AND RIVERCENTRE COMPLEX TAX
11 EXEMPTIONS PRESERVED.] (a) The city must protect the rights of
12 holders of bonds issued for the RiverCentre complex, including
13 preserving the tax-exempt status of the bonds.

14 (b) The use and operation of the RiverCentre complex by the
15 nonprofit organization with which the city contracts under this
16 act is a use, lease, or occupancy for public, governmental, and
17 municipal purposes, and the complex is exempt from taxation by
18 the state or any political subdivision of the state during such
19 use, to the extent it would be exempt if the complex was
20 equipped, maintained, managed, and operated by the city.

21 (c) Gross receipts of tickets and admissions to events at
22 the RiverCentre complex sponsored by the nonprofit organization
23 created in section 2 do not qualify for the sales tax exemption
24 under Minnesota Statutes, section 297A.70, subdivision 10.

25 Subd. 3. [APPLICABLE GENERAL LAWS.] The following statutes
26 apply to the nonprofit organization with which the city
27 contracts under this act the same as they apply to the city, to
28 the extent practicable:

29 (a) Minnesota Statutes, chapter 13D, the Minnesota Open
30 Meeting Law; and

31 (b) Minnesota Statutes, chapter 13, the Government Data
32 Practices Act.

33 Subd. 4. [SUCCESSION.] The nonprofit organization with
34 which the city contracts under this act is the successor to all
35 powers, rights, assets, privileges, and interests held and
36 enjoyed by the RiverCentre authority on the effective date of

1 this act, and established by the provisions of Laws 1967,
2 chapter 459, sections 1, 2, 4, and 8, subdivisions 2 and 3,
3 clause (3), as amended; Laws 1982, chapter 523, article 25,
4 sections 4 and 5, as amended; Laws 1998, chapter 404, sections
5 81 and 82; and Minnesota Statutes, section 297A.98. On the
6 effective date of the contract between the city and the
7 nonprofit organization authorized by this act, the RiverCentre
8 authority ceases to exist for only so long as the contract is in
9 effect, and all other laws or provisions specifically relating
10 to the RiverCentre authority and the RiverCentre complex that
11 are not otherwise referenced in this act, do not apply to the
12 nonprofit organization.

13 Sec. 4. [LIABILITY.]

14 The nonprofit organization with which the city contracts
15 under this act is a "municipality," and the officers, directors,
16 employees, and agents of the nonprofit organization are
17 "employees, officers, or agents," under Minnesota Statutes,
18 chapter 466, relating to tort liability. The city must defend,
19 save harmless, and indemnify the nonprofit organization,
20 including the nonprofit's officers, directors, employees, and
21 agents, against any claim or demand arising out of the nonprofit
22 organization's performance under the contract.

23 Sec. 5. [EFFECTIVE DATE.]

24 This act is effective the day after the city council and
25 the chief clerical officer of the city of St. Paul have timely
26 completed their compliance with Minnesota Statutes, section
27 645.023, subdivisions 2 and 3.

1 Senator moves to amend S.F. No. 1253 as follows:
2 Page 3, line 27, delete everything after "city"
3 Page 3, line 28, delete everything before the colon
4 Page 3, line 32, before the period, insert ", except that
5 data received, created, or maintained by the nonprofit
6 organization in the course of preparing or submitting requests
7 for proposals or requests for bids shall be classified as
8 nonpublic data under Minnesota Statutes, section 13.02,
9 subdivision 9, or private data on individuals under Minnesota
10 Statutes, section 13.02, subdivision 12, for five years from the
11 date the data was initially received, created, or maintained by
12 the nonprofit organization. The nonprofit organization shall be
13 a civic center authority for purposes of Minnesota Statutes,
14 section 13.55"

SUBCOMMITTEE REPORT - WITH AMENDMENTS

TO: Judiciary Committee

FROM: Data Practices Subcommittee

S. F. No. 1729

Amendments:

Oral Amendment

pg 3 ln 20 delete "venture capital"

Subcommittee recommendation:

And when so amended that the bill be recommended to pass and be referred to the full committee

And when so amended that the bill _____

March 29, 2005 (date of subcommittee action)

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

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Senate
State of Minnesota

S.F. No. 1729 - State Board of Investment Venture Capital

Author: Senator Steve Kelley
Prepared by: Harry Walsh, Senate Counsel (651/296-6200)
Date: March 23, 2005



S.F. No. 1729 allows the State Board of Investment to make venture capital investments with funds in the environmental and natural resources trust fund.

Section 1 classifies as nonpublic the financial and proprietary data acquired by the Board in connection with venture investments. An exception makes certain data public that is related to the amount, market value, board commitment, rate of return, and industry in which the investments are made.

Section 2 adds an entry to the index of classified data in chapter 13.

Section 3 requires the Board, until June 30, 2019, to invest between \$25 million and \$50 million from the trust fund in early stage venture capital investments. Various conditions are placed on the investment:

- Minnesota assets must amount to half of each investment vehicle;
- the Board may not finance more than half of a vehicle;
- no new investments may be made after June 30, 2008; and
- reinvestment is permitted.

HW:cs

Senators Kelley, Sams, Rosen, Kiscaden and Frederickson introduced--
S.F. No. 1729: Referred to the Committee on Judiciary.

1 A bill for an act

2 relating to the State Board of Investment; authorizing
3 venture capital investments using the environmental
4 and natural resources trust fund; classifying data
5 related to certain venture capital investments;
6 amending Minnesota Statutes 2004, sections 11A.24,
7 subdivision 6; 13.635, by adding a subdivision;
8 proposing coding for new law in Minnesota Statutes,
9 chapter 116P.

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

11 Section 1. Minnesota Statutes 2004, section 11A.24,
12 subdivision 6, is amended to read:

13 Subd. 6. [OTHER INVESTMENTS.] (a) In addition to the
14 investments authorized in subdivisions 1 to 5, and subject to
15 the provisions in paragraph (b), the state board may invest
16 funds in:

17 (1) venture capital investment businesses through
18 participation in limited partnerships, trusts, private
19 placements, limited liability corporations, limited liability
20 companies, limited liability partnerships, and corporations;

21 (2) real estate ownership interests or loans secured by
22 mortgages or deeds of trust or shares of real estate investment
23 trusts through investment in limited partnerships, bank
24 sponsored collective funds, trusts, mortgage participation
25 agreements, and insurance company commingled accounts, including
26 separate accounts;

27 (3) regional and mutual funds through bank sponsored

1 collective funds and open-end investment companies registered
2 under the Federal Investment Company Act of 1940, and closed-end
3 mutual funds listed on an exchange regulated by a governmental
4 agency;

5 (4) resource investments through limited partnerships,
6 trusts, private placements, limited liability corporations,
7 limited liability companies, limited liability partnerships, and
8 corporations; and

9 (5) international securities.

10 (b) The investments authorized in paragraph (a) must
11 conform to the following provisions:

12 (1) the aggregate value of all investments made according
13 to paragraph (a), clauses (1) to (4), may not exceed 35 percent
14 of the market value of the fund for which the state board is
15 investing;

16 (2) there must be at least four unrelated owners of the
17 investment other than the state board for investments made under
18 paragraph (a), clause (1), (2), (3), or (4);

19 (3) state board participation in an investment vehicle is
20 limited to 20 percent thereof for investments made under
21 paragraph (a), clause (1), (2), (3), or (4); and

22 (4) state board participation in a limited partnership does
23 not include a general partnership interest or other interest
24 involving general liability. The state board may not engage in
25 any activity as a limited partner which creates general
26 liability.

27 (c) All financial or proprietary data received, prepared,
28 used, or retained by the state board in connection with
29 investments authorized by paragraph (a), clause (1), (2), or
30 (4), are nonpublic data under section 13.02, subdivision 9. As
31 used in this paragraph, "financial or proprietary data" means
32 information, as determined by the executive director, that is of
33 a financial or proprietary nature, the release of which could
34 cause competitive harm to the state board, the legal entity in
35 which the state board has invested or has considered an
36 investment, the managing entity of an investment, or a portfolio

1 company in which the legal entity holds an interest. Regardless
2 of whether they could be considered financial or proprietary
3 data, the following data received, prepared, used, or retained
4 by the state board in connection with investments authorized by
5 paragraph (a), clause (1), (2), or (4), are public at all times:

6 (1) the name and industry group classification of the legal
7 entity in which the state board has invested or in which the
8 state board has considered an investment;

9 (2) the state board commitment amount, if any;

10 (3) the funded amount of the state board's commitment to
11 date, if any;

12 (4) the market value of the investment by the state board;

13 (5) the state board's internal rate of return for the
14 investment, including expenditures and receipts used in the
15 calculation of the investment's internal rate of return; and

16 (6) the age of the investment in years.

17 Sec. 2. Minnesota Statutes 2004, section 13.635, is
18 amended by adding a subdivision to read:

19 Subd. 1a. [STATE BOARD OF INVESTMENT.] Certain government
20 data of the State Board of Investment related to venture capital
21 investments are classified under section 11A.24, subdivision 6.

22 Sec. 3. [116P.081] [MINNESOTA EARLY STAGE VENTURE CAPITAL
23 INVESTMENTS.]

24 (a) For purposes of this section, "Minnesota early stage
25 company" means an early stage company with its headquarters and
26 principal place of business located in this state.

27 (b) Until June 30, 2019, the State Board of Investment must
28 invest at least \$25,000,000 of the principal of the Minnesota
29 environmental and natural resources trust fund in early stage
30 venture capital investments, subject to the following conditions:

31 (1) the board may not make initial investments of more than
32 a total of \$50,000,000 under this section;

33 (2) each separate investment vehicle must commit 50 percent
34 or more of its assets to investments in Minnesota early stage
35 companies;

36 (3) the board's investment may not exceed 50 percent of the

1 total investment in an investment vehicle;

2 (4) no new investment vehicles may be purchased after June
3 30, 2008; and

4 (5) the board may reinvest returns from investments made
5 under this section.

6 The board may set evaluation criteria for investment
7 vehicles and fund managers of investments under this section
8 different from those it uses for other investments.

9 (c) This section expires August 1, 2019.

10 Sec. 4. [EFFECTIVE DATE.]

11 This act is effective the day following final enactment.

SUBCOMMITTEE REPORT - WITH AMENDMENTS

TO: Judiciary Committee

FROM: Data Practices Subcommittee

S . F. No. 853

Amendments:

A-4 written amendment

Subcommittee recommendation:

 And when so amended that the bill be recommended to pass and be referred to the full committee

And when so amended that the bill be laid over for
inclusion in SF 301

March 29, 2005 (date of subcommittee action)

Bill Summary**Senate**

Senate Counsel & Research

State of Minnesota

S.F. No. 853 - Electronic Meaning Authorizations For Certain Boards

Author: Senator David H. Senjem
Prepared by: Thomas S. Bottern, Senate Counsel (651/296-3810)
Date: February 23, 2005

This bill authorizes several specified boards and advisory councils to conduct meetings of their members by telephone or other electronic means provided that certain conditions are met. This authorization requires a specific exemption from the open meeting law, Minnesota Statutes, chapter 13D. This bill provides the same conditions for each exception:

- (1) all members must be able to hear one another regardless of their physical location;
- (2) members of the public present at the regular meeting location must be able to hear all discussion and testimony and all votes;
- (3) at least one member must be physically present at the regular meeting location; and
- (4) all votes must be conducted by roll call.

In addition, the bill specifies that each member present by telephone or electronic means is considered present for purposes of determining a quorum, requires that the entity conducting the meeting, to the extent practicable, allow a person to monitor a meeting electronically from a remote location, and that the board provide notice in advance of the meeting that some members may participate by telephone or other electronic means.

The following specific authorizations for conducting meetings by telephone or other electronic means are provided in the bill:

Section 1-The Minnesota Agricultural and Economic Development Board;

Section 2-The Small Business Development Center Advisory Board;

Section 3-The Minnesota Job Skills Partnership Board;

Section 4-The Governor's Workforce Development Council;

Section 5-The Urban Initiative Board; and

Section 6-The Explore Minnesota Tourism Council.

1 Senator moves to amend S.F. No. 853 as follows:

2 Page 1, line 13, delete "Notwithstanding section 13D.01 and"

3 Page 1, line 22, after "hear" insert "clearly and
4 understand"

5 Page 2, lines 20 and 21, delete "Notwithstanding section
6 13D.01 and"

7 Page 2, line 30, after "hear" insert "clearly and
8 understand"

9 Page 3, lines 19 and 20, delete "Notwithstanding section
10 13D.01 and"

11 Page 3, line 28, after "hear" insert "clearly and
12 understand"

13 Page 4, lines 17 and 18, delete "Notwithstanding section
14 13D.01 and"

15 Page 4, line 26, after "hear" insert "clearly and
16 understand"

17 Page 5, lines 15 and 16, delete "Notwithstanding section
18 13D.01 and"

19 Page 5, line 24, after "hear" insert "clearly and
20 understand"

21 Page 7, line 15, delete "Notwithstanding section 13D.01 and"

22 Page 7, line 24, after "hear" insert "clearly and
23 understand"

24 Amend the title as follows:

25 Page 1, line 3, delete "political subdivisions and"

1 . A bill for an act

2 relating to state government; allowing certain
3 political subdivisions and boards to conduct meetings
4 by telephone or other electronic means; amending
5 Minnesota Statutes 2004, sections 116J.68, by adding a
6 subdivision; 116L.03, by adding a subdivision;
7 116L.665, by adding a subdivision; 116M.15, by adding
8 a subdivision; 116U.25; proposing coding for new law
9 in Minnesota Statutes, chapter 41A.

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

11 Section 1. [41A.0235] [BOARD MEETINGS BY TELEPHONE OR
12 OTHER ELECTRONIC MEANS.]

13 (a) Notwithstanding section 13D.01 and if compliance with
14 section 13D.02 is impractical, the Minnesota Agricultural and
15 Economic Development Board may conduct a meeting of its members
16 by telephone or other electronic means so long as the following
17 conditions are met:

18 (1) all members of the board participating in the meeting,
19 wherever their physical location, can hear one another and can
20 hear all discussion and testimony;

21 (2) members of the public present at the regular meeting
22 location of the board can hear all discussion and testimony and
23 all votes of members of the board;

24 (3) at least one member of the board is physically present
25 at the regular meeting location; and

26 (4) all votes are conducted by roll call, so each member's
27 vote on each issue can be identified and recorded.

1 (b) Each member of the board participating in a meeting by
2 telephone or other electronic means is considered present at the
3 meeting for purposes of determining a quorum and participating
4 in all proceedings.

5 (c) If telephone or other electronic means is used to
6 conduct a meeting, the board, to the extent practical, shall
7 allow a person to monitor the meeting electronically from a
8 remote location. The board may require the person making such a
9 connection to pay for documented marginal costs that the board
10 incurs as a result of the additional connection.

11 (d) If telephone or other electronic means is used to
12 conduct a regular, special, or emergency meeting, the board
13 shall provide notice of the regular meeting location, of the
14 fact that some members may participate by telephone or other
15 electronic means, and of the provisions of paragraph (c). The
16 timing and method of providing notice is governed by section
17 13D.04.

18 Sec. 2. Minnesota Statutes 2004, section 116J.68, is
19 amended by adding a subdivision to read:

20 Subd. 5. [ADVISORY BOARD MEETINGS.] (a) Notwithstanding
21 section 13D.01 and if compliance with section 13D.02 is
22 impractical, the Small Business Development Center Advisory
23 Board, created pursuant to United State Code, title 15, section
24 648, may conduct a meeting of its members by telephone or other
25 electronic means so long as the following conditions are met:

26 (1) all members of the board participating in the meeting,
27 wherever their physical location, can hear one another and can
28 hear all discussion and testimony;

29 (2) members of the public present at the regular meeting
30 location of the board can hear all discussion and testimony and
31 all votes of members of the board;

32 (3) at least one member of the board is physically present
33 at the regular meeting location; and

34 (4) all votes are conducted by roll call, so each member's
35 vote on each issue can be identified and recorded.

36 (b) Each member of the board participating in a meeting by

1 telephone or other electronic means is considered present at the
2 meeting for purposes of determining a quorum and participating
3 in all proceedings.

4 (c) If telephone or other electronic means is used to
5 conduct a meeting, the board, to the extent practical, shall
6 allow a person to monitor the meeting electronically from a
7 remote location. The board may require the person making such a
8 connection to pay for documented marginal costs that the board
9 incurs as a result of the additional connection.

10 (d) If telephone or other electronic means is used to
11 conduct a regular, special, or emergency meeting, the board
12 shall provide notice of the regular meeting location, of the
13 fact that some members may participate by telephone or other
14 electronic means, and of the provisions of paragraph (c). The
15 timing and method of providing notice is governed by section
16 13D.04.

17 Sec. 3. Minnesota Statutes 2004, section 116L.03, is
18 amended by adding a subdivision to read:

19 Subd. 8. [BOARD MEETINGS.] (a) Notwithstanding section
20 13D.01 and if compliance with section 13D.02 is impractical, the
21 Minnesota Job Skills Partnership Board may conduct a meeting of
22 its members by telephone or other electronic means so long as
23 the following conditions are met:

24 (1) all members of the board participating in the meeting,
25 wherever their physical location, can hear one another and can
26 hear all discussion and testimony;

27 (2) members of the public present at the regular meeting
28 location of the board can hear all discussion and testimony and
29 all votes of members of the board;

30 (3) at least one member of the board is physically present
31 at the regular meeting location; and

32 (4) all votes are conducted by roll call, so each member's
33 vote on each issue can be identified and recorded.

34 (b) Each member of the board participating in a meeting by
35 telephone or other electronic means is considered present at the
36 meeting for purposes of determining a quorum and participating

1 in all proceedings.

2 (c) If telephone or other electronic means is used to
3 conduct a meeting, the board, to the extent practical, shall
4 allow a person to monitor the meeting electronically from a
5 remote location. The board may require the person making such a
6 connection to pay for documented marginal costs that the board
7 incurs as a result of the additional connection.

8 (d) If telephone or other electronic means is used to
9 conduct a regular, special, or emergency meeting, the board
10 shall provide notice of the regular meeting location, of the
11 fact that some members may participate by telephone or other
12 electronic means, and of the provisions of paragraph (c). The
13 timing and method of providing notice is governed by section
14 13D.04.

15 Sec. 4. Minnesota Statutes 2004, section 116L.665, is
16 amended by adding a subdivision to read:

17 Subd. 2a. [COUNCIL MEETINGS.] (a) Notwithstanding section
18 13D.01 and if compliance with section 13D.02 is impractical, the
19 Governor's Workforce Development Council may conduct a meeting
20 of its members by telephone or other electronic means so long as
21 the following conditions are met:

22 (1) all members of the council participating in the
23 meeting, wherever their physical location, can hear one another
24 and can hear all discussion and testimony;

25 (2) members of the public present at the regular meeting
26 location of the council can hear all discussion and testimony
27 and all votes of members of the council;

28 (3) at least one member of the council is physically
29 present at the regular meeting location; and

30 (4) all votes are conducted by roll call, so each member's
31 vote on each issue can be identified and recorded.

32 (b) Each member of the council participating in a meeting
33 by telephone or other electronic means is considered present at
34 the meeting for purposes of determining a quorum and
35 participating in all proceedings.

36 (c) If telephone or other electronic means is used to

1 conduct a meeting, the council, to the extent practical, shall
2 allow a person to monitor the meeting electronically from a
3 remote location. The council may require the person making such
4 a connection to pay for documented marginal costs that the
5 council incurs as a result of the additional connection.

6 (d) If telephone or other electronic means is used to
7 conduct a regular, special, or emergency meeting, the council
8 shall provide notice of the regular meeting location, of the
9 fact that some members may participate by telephone or other
10 electronic means, and of the provisions of paragraph (c). The
11 timing and method of providing notice is governed by section
12 13D.04.

13 Sec. 5. Minnesota Statutes 2004, section 116M.15, is
14 amended by adding a subdivision to read:

15 Subd. 5. [BOARD MEETING.] (a) Notwithstanding section
16 13D.01 and if compliance with section 13D.02 is impractical, the
17 Urban Initiative Board may conduct a meeting of its members by
18 telephone or other electronic means so long as the following
19 conditions are met:

20 (1) all members of the board participating in the meeting,
21 wherever their physical location, can hear one another and can
22 hear all discussion and testimony;

23 (2) members of the public present at the regular meeting
24 location of the board can hear all discussion and testimony and
25 all votes of members of the board;

26 (3) at least one member of the board is physically present
27 at the regular meeting location; and

28 (4) all votes are conducted by roll call, so each member's
29 vote on each issue can be identified and recorded.

30 (b) Each member of the board participating in a meeting by
31 telephone or other electronic means is considered present at the
32 meeting for purposes of determining a quorum and participating
33 in all proceedings.

34 (c) If telephone or other electronic means is used to
35 conduct a meeting, the board, to the extent practical, shall
36 allow a person to monitor the meeting electronically from a

1 remote location. The board may require the person making such a
2 connection to pay for documented marginal costs that the board
3 incurs as a result of the additional connection.

4 (d) If telephone or other electronic means is used to
5 conduct a regular, special, or emergency meeting, the board
6 shall provide notice of the regular meeting location, of the
7 fact that some members may participate by telephone or other
8 electronic means, and of the provisions of paragraph (c). The
9 timing and method of providing notice is governed by section
10 13D.04.

11 Sec. 6. Minnesota Statutes 2004, section 116U.25, is
12 amended to read:

13 116U.25 [EXPLORE MINNESOTA TOURISM COUNCIL.]

14 (a) The director shall be advised by the Explore Minnesota
15 Tourism Council consisting of up to 28 voting members appointed
16 by the governor for four-year terms, including:

17 (1) the director of Explore Minnesota Tourism who serves as
18 the chair;

19 (2) eleven representatives of statewide associations
20 representing bed and breakfast establishments, golf, festivals
21 and events, counties, convention and visitor bureaus, lodging,
22 resorts, trails, campgrounds, restaurants, and chambers of
23 commerce;

24 (3) one representative from each of the four tourism
25 marketing regions of the state as designated by the office;

26 (4) six representatives of the tourism business
27 representing transportation, retail, travel agencies, tour
28 operators, travel media, and convention facilities;

29 (5) one or more ex-officio nonvoting members including at
30 least one from the University of Minnesota Tourism Center;

31 (6) four legislators, two from each house, one each from
32 the two largest political party caucuses in each house,
33 appointed according to the rules of the respective houses; and

34 (7) other persons, if any, as designated from time to time
35 by the governor.

36 (b) The council shall act to serve the broader interests of

1 tourism in Minnesota by promoting activities that support,
2 maintain, and expand the state's domestic and international
3 travel market, thereby generating increased visitor
4 expenditures, tax revenue, and employment.

5 (c) Filling of membership vacancies is as provided in
6 section 15.059. The terms of one-half of the members shall be
7 coterminous with the governor and the terms of the remaining
8 one-half of the members shall end on the first Monday in January
9 one year after the terms of the other members. Members may
10 serve until their successors are appointed and qualify. Members
11 are not compensated. A member may be reappointed.

12 (d) The council shall meet at least four times per year and
13 at other times determined by the council. Notwithstanding
14 section 15.059, the council does not expire.

15 (e) Notwithstanding section 13D.01 and if compliance with
16 section 13D.02 is impractical, the Explore Minnesota Tourism
17 Council may conduct a meeting of its members by telephone or
18 other electronic means so long as the following conditions are
19 met:

20 (1) all members of the council participating in the
21 meeting, wherever their physical location, can hear one another
22 and can hear all discussion and testimony;

23 (2) members of the public present at the regular meeting
24 location of the council can hear all discussion and testimony
25 and all votes of members of the council;

26 (3) at least one member of the council is physically
27 present at the regular meeting location; and

28 (4) all votes are conducted by roll call, so each member's
29 vote on each issue can be identified and recorded.

30 (f) Each member of the council participating in a meeting
31 by telephone or other electronic means is considered present at
32 the meeting for purposes of determining a quorum and
33 participating in all proceedings.

34 (g) If telephone or other electronic means is used to
35 conduct a meeting, the council, to the extent practical, shall
36 allow a person to monitor the meeting electronically from a

1 remote location. The council may require the person making such
2 a connection to pay for documented marginal costs that the
3 council incurs as a result of the additional connection.

4 (h) If telephone or other electronic means is used to
5 conduct a regular, special, or emergency meeting, the council
6 shall provide notice of the regular meeting location, of the
7 fact that some members may participate by telephone or other
8 electronic means, and of the provisions of paragraph (g). The
9 timing and method of providing notice is governed by section
10 13D.04.

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

2 Page .., after line .., insert:

3 "Sec. .. Minnesota Statutes 2004, section 270B.01,
4 subdivision 5, is amended to read:

5 Subd. 5. [TAXPAYER IDENTITY.] "Taxpayer identity" means
6 the name of a person with respect to whom a return is filed, or
7 the person's mailing address, or the person's taxpayer
8 identifying number. "Taxpayer identity" does not include the
9 state taxpayer identifying number of a business entity, which is
10 classified as public data.

11 [EFFECTIVE DATE.] This section is effective the day
12 following final enactment.

13 Sec. .. Minnesota Statutes 2004, section 270B.03,
14 subdivision 1, is amended to read:

15 Subdivision 1. [WHO MAY INSPECT.] Returns and return
16 information must, on request, be made open to inspection by or
17 disclosure to the data subject. The request must be made in
18 writing or in accordance with written procedures of the chief
19 disclosure officer of the department that have been approved by
20 the commissioner to establish the identification of the person
21 making the request as the data subject. For purposes of this
22 chapter, the following are the data subject:

- 23 (1) in the case of an individual return, that individual;
- 24 (2) in the case of an income tax return filed jointly,
25 either of the individuals with respect to whom the return is
26 filed;

27 ~~(3) in-the-case-of-a-partnership-return, any person who was~~
28 ~~a member of the partnership during any part of the period~~
29 ~~covered by the return;~~

30 ~~(4) in-the-case-of-the-return-of-a-corporation-or-its~~
31 ~~subsidiary;~~

32 ~~(i) any person designated by resolution of the board of~~
33 ~~directors or other similar governing body;~~

34 ~~(ii) any officer or employee of the corporation upon~~
35 ~~written request signed by any officer and attested to by the~~
36 ~~secretary or another officer;~~

1 ~~(iii)-any-bona-fide-shareholder-of-record-owning-one~~
2 ~~percent-or-more-of-the-outstanding-stock-of-the-corporation;~~

3 ~~(iv)-if-the-corporation-is-a-corporation-that-has-made-an~~
4 ~~election-under-section-1362-of-the-Internal-Revenue-Code-of~~
5 ~~1986,-as-amended-through-December-31,-1988,-any-person-who-was-a~~
6 ~~shareholder-during-any-part-of-the-period-covered-by-the-return~~
7 ~~during-which-an-election-was-in-effect;-or~~

8 ~~(v)-if-the-corporation-has-been-dissolved,-any-person~~
9 ~~authorized-by-state-law-to-act-for-the-corporation-or-any-person~~
10 ~~who-would-have-been-authorized-if-the-corporation-had-not-been~~
11 ~~dissolved~~ in the case of a return filed by a business entity, an
12 officer of a corporation, a shareholder owning more than one
13 percent of the stock, or any shareholder of an S corporation; a
14 general partner in a partnership; the owner of a sole
15 proprietorship; a member or manager of a limited liability
16 company; a participant in a joint venture; the individual who
17 signed the return on behalf of the business entity; or an
18 employee who is responsible for handling the tax matters of the
19 business entity, such as the tax manager, bookkeeper, or
20 managing agent;

21 ~~(5)~~ (4) in the case of an estate return:

22 (i) the personal representative or trustee of the estate;
23 and

24 (ii) any beneficiary of the estate as shown on the federal
25 estate tax return;

26 ~~(6)~~ (5) in the case of a trust return:

27 (i) the trustee or trustees, jointly or separately; and
28 (ii) any beneficiary of the trust as shown in the trust
29 instrument;

30 ~~(7)~~ (6) if liability has been assessed to a transferee
31 under section 289A.31, subdivision 3, the transferee is the data
32 subject with regard to the returns and return information
33 relating to the assessed liability;

34 ~~(8)~~ (7) in the case of an Indian tribal government or an
35 Indian tribal government-owned entity,

36 (i) the chair of the tribal government, or

1 (ii) any person authorized by the tribal government; and
2 ~~(9)~~ (8) in the case of a successor as defined in section
3 270.102, subdivision 1, paragraph (b), the successor is the data
4 subject and information may be disclosed as provided by section
5 270.102, subdivision 4.

6 **[EFFECTIVE DATE.]** This section is effective the day
7 following final enactment."

8 Renumber the sections in sequence and correct the internal
9 references

10 Amend the title accordingly

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

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Senate
State of Minnesota

S.F. No. 1209 - Regulating Tax Preparers

Author: Senator

Prepared by: Harry Walsh, Senate Counsel (651/296-6200)

Date: March 28, 2005

S.F. No. 1209, as introduced, regulated providers of tax preparation services. The bill has been used as a vehicle for other legislation. This summary reviews its original contents.

Several sections of the bill amended subdivisions of Minnesota Statutes, section 270.30, which governs tax preparers.

Section 1 simplified the scope provision of subdivision 1. The exceptions are moved to subdivision 8.

Section 2 made subdivision 2 applicable to paid tax preparers only and removes the requirement that tax preparers itemize the cost of electronic filing separately.

Section 3 made penalties public data.

Sections 4 and 5 required the accountants' and lawyers' boards to refer complaints to the Commissioner of Revenue if the boards do not have jurisdiction over their subject.

Section 6 required the commissioner to refer complaints about accountants and lawyers to their respective boards.

Section 7 made information about individual subjects private data until a penalty is imposed.

Section 8 exempted various regulated professions and occasional preparers from the enforcement provisions of section 270.30.

Section 9 provided for publication of a list of tax preparers who have violated the section. Provisions is made for the contents of the list, its form, exceptions, notice, removal of names, retraction, and damages.

Section 10 required electronic filing under ordinary circumstances.

Section 11 allowed the commissioner to terminate or suspend the authority of a preparer to file electronically if the preparer has violated regulations.

HW:rdr

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

2 Page ..., after line ..., insert:

3 "Sec. .. Minnesota Statutes 2004, section 270.30,

4 subdivision 1, is amended to read:

5 Subdivision 1. [SCOPE.] ~~(a)~~ This section applies to a
6 person who ~~offers, provides, or facilitates the provision of~~
7 ~~refund-anticipation loans, as part of or in connection with the~~
8 ~~provision of~~ tax preparation services.

9 ~~(b) This section does not apply to:~~

10 ~~(1) a tax preparer who provides tax preparation services~~
11 ~~for fewer than six clients in a calendar year;~~

12 ~~(2) the provision by a person of tax preparation services~~
13 ~~to a spouse, parent, grandparent, child, or sibling; and~~

14 ~~(3) the provision of services by an employee for an~~
15 ~~employer.~~

16 Sec. .. Minnesota Statutes 2004, section 270.30,

17 subdivision 5, is amended to read:

18 Subd. 5. [ITEMIZED BILL REQUIRED.] A tax preparer who
19 provides services for a fee or other consideration must provide
20 an itemized statement of the charges for services, at least
21 separately stating the charges for:

22 (1) return preparation; and

23 (2) ~~electronic filing; and~~

24 ~~(3) providing or facilitating a refund anticipation loan.~~

25 Sec. .. Minnesota Statutes 2004, section 270.30,

26 subdivision 6, is amended to read:

27 Subd. 6. [ENFORCEMENT; PENALTIES.] The commissioner may
28 impose an administrative penalty of not more than \$1,000 per
29 violation of subdivision 3, 4, or 5. The commissioner may
30 terminate a tax preparer's authority to transmit returns
31 electronically to the state, if the commissioner determines the
32 tax preparer engaged in a pattern and practice of violating this
33 section. Imposition of a penalty under this subdivision is
34 subject to the contested case procedure under chapter 14. The
35 commissioner shall collect the penalty in the same manner as the
36 income tax. Penalties imposed under this subdivision are public

1 data.

2 Sec. .. Minnesota Statutes 2004, section 270.30, is
3 amended by adding a subdivision to read:

4 Subd. 6a. [EXCHANGE OF DATA; STATE BOARD OF
5 ACCOUNTANCY.] The State Board of Accountancy shall refer to the
6 commissioner complaints it receives about tax preparers who are
7 not subject to the jurisdiction of the State Board of
8 Accountancy and who are alleged to have violated the provisions
9 of subdivisions 3 to 5.

10 Sec. .. Minnesota Statutes 2004, section 270.30, is
11 amended by adding a subdivision to read:

12 Subd. 6b. [EXCHANGE OF DATA; LAWYERS BOARD OF PROFESSIONAL
13 RESPONSIBILITY.] The Lawyers Board of Professional
14 Responsibility may refer to the commissioner complaints it
15 receives about tax preparers who are not subject to its
16 jurisdiction and who are alleged to have violated the provisions
17 of subdivisions 3 to 5.

18 Sec. .. Minnesota Statutes 2004, section 270.30, is
19 amended by adding a subdivision to read:

20 Subd. 6c. [EXCHANGE OF DATA; COMMISSIONER.] The
21 commissioner shall refer complaints about tax preparers who are
22 alleged to have violated the provisions of subdivisions 3 to 5
23 to:

24 (1) the State Board of Accountancy, if the tax preparer is
25 under its jurisdiction; and

26 (2) the Lawyers Board of Professional Responsibility, if
27 the tax preparer is under its jurisdiction.

28 Sec. .. Minnesota Statutes 2004, section 270.30, is
29 amended by adding a subdivision to read:

30 Subd. 6d. [DATA PRIVATE.] Information exchanged on
31 individuals under subdivisions 6a to 6c are private data under
32 section 13.02, subdivision 12, until such time as a penalty is
33 imposed as provided in section 326A.08 or by the Lawyers Board
34 of Professional Responsibility.

35 Sec. .. Minnesota Statutes 2004, section 270.30,
36 subdivision 8, is amended to read:

1 Subd. 8. [EXEMPTIONS; ENFORCEMENT PROVISIONS.] (a) The
 2 provisions of ~~subdivisions 6 and 7~~ this section, except for
 3 subdivision 4, do not apply to:

4 (1) an attorney admitted to practice under section 481.01;

5 (2) a certified public accountant ~~holding a certificate~~
 6 ~~under section 326A.04 or a person issued a permit to practice~~
 7 ~~under section 326A.05~~ or other person who is subject to the
 8 jurisdiction of the State Board of Accountancy; and

9 (3) ~~a person designated as a registered accounting~~
 10 ~~practitioner under Minnesota Rules, part 1105.6600, or a~~
 11 ~~registered accounting practitioner firm issued a permit under~~
 12 ~~Minnesota Rules, part 1105.7100;~~

13 ~~(4) an enrolled agent who has passed the special enrollment~~
 14 ~~examination administered by the Internal Revenue Service; and.~~

15 (b) The provisions of this section do not apply to:

16 ~~(5) (1) any fiduciary, or the regular employees of a~~
 17 ~~fiduciary, while acting on behalf of the fiduciary estate, the~~
 18 ~~testator, trustor, grantor, or beneficiaries of them;~~

19 (2) a tax preparer who provides tax preparation services
 20 for fewer than six clients in a calendar year;

21 (3) tax preparation services to a spouse, parent,
 22 grandparent, child, or sibling of the tax preparer; and

23 (4) the preparation by an employee of the tax return of the
 24 employee's employer.

25 Sec. .. [270.301] [PUBLICATION OF NAMES OF TAX PREPARERS
 26 SUBJECT TO PENALTIES.]

27 Subdivision 1. [PUBLICATION OF LIST.] Notwithstanding any
 28 other law, the commissioner must publish as provided in this
 29 section a list or lists of tax preparers subject to penalties.

30 Subd. 2. [REQUIRED AND EXCLUDED TAX PREPARERS.] (a)
 31 Subject to the limitations of paragraphs (b) and (c), the
 32 commissioner must publish lists of the tax preparers described
 33 in subdivision 1. The list must include:

34 (1) the tax preparers who have been assessed penalties
 35 under section 289A.60, subdivision 13, or who have been
 36 convicted under section 289A.63;

1 (2) tax preparers against whom cumulative penalties of
2 \$1,000 or more have been assessed under section 270.30,
3 subdivision 6; and

4 (3) tax preparers whose authority to transmit returns
5 electronically has been terminated under section 270.30,
6 subdivision 6, or under section 289A.60, subdivision 13.

7 The list may include tax preparers against whom cumulative
8 penalties of less than \$1,000 have been assessed.

9 (b) For the purposes of this section, a penalty was not
10 assessed if:

11 (1) an administrative or court action contesting the
12 penalty has been filed or served and is unresolved at the time
13 when notice would be given under subdivision 3; or

14 (2) an appeal period to contest the penalty has not expired.

15 (c) Penalties are not subject to publication if:

16 (1) the commissioner is in the process of reviewing or
17 adjusting the penalty; or

18 (2) the commissioner has been notified that the tax
19 preparer is deceased.

20 Subd. 3. [NOTICE TO TAX PREPARER.] (a) At least 30 days
21 before publishing the name of a tax preparer subject to penalty,
22 the commissioner shall mail a written notice to the tax
23 preparer, detailing the amount and nature of each penalty and
24 the intended publication of the information listed in
25 subdivision 4 related to the penalty. The notice must be mailed
26 by first class and certified mail addressed to the last known
27 address of the tax preparer. The notice must include
28 information regarding the exceptions listed in subdivision 2 and
29 must state that the tax preparer's information will not be
30 published if the tax preparer provides information establishing
31 that subdivision 2 prohibits publication of the tax preparer's
32 name.

33 (b) After at least 30 days has elapsed since the notice was
34 mailed and the tax preparer has not proved to the commissioner
35 that subdivision 2 prohibits publication, the commissioner may
36 publish in a list of tax preparers subject to penalty the

1 information about the tax preparer that is listed in subdivision
2 4.

3 Subd. 4. [FORM OF LIST.] The list may be published by any
4 medium or method. The list must contain the name, associated
5 business name or names, address or addresses, and violation or
6 violations for which a penalty was imposed of each tax preparer
7 subject to administrative penalty.

8 Subd. 5. [REMOVAL FROM LIST.] The commissioner shall
9 remove the name of a tax preparer from the list of tax preparers
10 published under this section when:

11 (1) the commissioner determines that the name was included
12 on the list in error;

13 (2) 90 days have elapsed since the preparer has fully paid
14 all fines imposed, served any suspension and demonstrated to the
15 satisfaction of the commissioner that the preparer has
16 successfully completed any remedial actions required by the
17 commissioner, the State Board of Accountancy, or the Lawyers
18 Board of Professional Responsibility; or

19 (3) the commissioner has been notified that the tax
20 preparer is deceased.

21 Subd. 6. [NAMES PUBLISHED IN ERROR.] If the commissioner
22 publishes a name under subdivision 1 in error, the tax preparer
23 whose name was erroneously published has a right to request a
24 retraction and apology. If the tax preparer so requests, the
25 commissioner shall publish a retraction and apology
26 acknowledging that the tax preparer's name was published in
27 error. The retraction and apology must appear in the same
28 medium and the same format as the original list that contained
29 the name listed in error.

30 Subd. 7. [PAYMENT OF DAMAGES.] Actions against the
31 commissioner of revenue or the state of Minnesota arising out of
32 the implementation of this program must be brought under section
33 270.276.

34 [EFFECTIVE DATE.] The requirement of subdivision 1,
35 paragraph (a), clause (2) is effective for crimes committed on
36 or after August 1, 2005. The remainder of subdivision 1 is

1 effective for tax preparers engaging in conduct described in
2 paragraph (a), clause (1) or (3), on or after August 1, 2005.

3 Sec. .. Minnesota Statutes 2004, section 289A.08,
4 subdivision 16, is amended to read:

5 Subd. 16. [TAX REFUND OR RETURN PREPARERS; ELECTRONIC
6 FILING; PAPER FILING FEE IMPOSED.] (a) A "tax refund or return
7 preparer," as defined in section 289A.60, subdivision 13,
8 paragraph ~~(g)~~ (h), who prepared more than 500 100 Minnesota
9 individual income tax returns for the prior calendar year must
10 file all Minnesota individual income tax returns prepared for
11 the current calendar year by electronic means.

12 ~~(b) For tax returns prepared for the tax year beginning in~~
13 ~~2001, the "500" in paragraph (a) is reduced to 250.~~

14 ~~(c) For tax returns prepared for tax years beginning after~~
15 ~~December 31, 2001, the "500" in paragraph (a) is reduced to 100.~~

16 ~~(d)~~ Paragraph (a) does not apply to a return if the
17 taxpayer has indicated on the return that the taxpayer did not
18 want the return filed by electronic means.

19 ~~(e)~~ (c) For each return that is not filed electronically by
20 a tax refund or return preparer under this subdivision,
21 including returns filed under paragraph (d), a paper filing fee
22 of \$5 is imposed upon the preparer. The fee is collected from
23 the preparer in the same manner as income tax. The fee does not
24 apply to returns that the commissioner requires to be filed in
25 paper form.

26 Sec. .. Minnesota Statutes 2004, section 289A.60,
27 subdivision 13, is amended to read:

28 Subd. 13. [PENALTIES FOR TAX RETURN PREPARERS.] (a) If an
29 understatement of liability with respect to a return or claim
30 for refund is due to a willful attempt in any manner to
31 understate the liability for a tax by a person who is a tax
32 return preparer with respect to the return or claim, the person
33 shall pay to the commissioner a penalty of \$500. If a part of a
34 property tax refund claim is excessive due to a willful attempt
35 in any manner to overstate the claim for relief allowed under
36 chapter 290A by a person who is a tax refund or return preparer,

1 the person shall pay to the commissioner a penalty of \$500 with
2 respect to the claim. These penalties may not be assessed
3 against the employer of a tax return preparer unless the
4 employer was actively involved in the willful attempt to
5 understate the liability for a tax or to overstate the claim for
6 refund. These penalties are income tax liabilities and may be
7 assessed at any time as provided in section 289A.38, subdivision
8 5.

9 (b) A civil action in the name of the state of Minnesota
10 may be commenced to enjoin any person who is a tax return
11 preparer doing business in this state from further engaging in
12 any conduct described in paragraph (c). An action under this
13 paragraph must be brought by the attorney general in the
14 district court for the judicial district of the tax return
15 preparer's residence or principal place of business, or in which
16 the taxpayer with respect to whose tax return the action is
17 brought resides. The court may exercise its jurisdiction over
18 the action separate and apart from any other action brought by
19 the state of Minnesota against the tax return preparer or any
20 taxpayer.

21 (c) In an action under paragraph (b), if the court finds
22 that a tax return preparer has:

23 (1) engaged in any conduct subject to a civil penalty under
24 section 289A.60 or a criminal penalty under section 289A.63;

25 (2) misrepresented the preparer's eligibility to practice
26 before the Department of Revenue, or otherwise misrepresented
27 the preparer's experience or education as a tax return preparer;

28 (3) guaranteed the payment of any tax refund or the
29 allowance of any tax credit; or

30 (4) engaged in any other fraudulent or deceptive conduct
31 that substantially interferes with the proper administration of
32 state tax law, and injunctive relief is appropriate to prevent
33 the recurrence of that conduct,

34 the court may enjoin the person from further engaging in that
35 conduct.

36 (d) If the court finds that a tax return preparer has

1 continually or repeatedly engaged in conduct described in
2 paragraph (c), and that an injunction prohibiting that conduct
3 would not be sufficient to prevent the person's interference
4 with the proper administration of state tax laws, the court may
5 enjoin the person from acting as a tax return preparer. The
6 court may not enjoin the employer of a tax return preparer for
7 conduct described in paragraph (c) engaged in by one or more of
8 the employer's employees unless the employer was also actively
9 involved in that conduct.

10 (e) The commissioner may terminate or suspend a tax
11 preparer's authority to transmit returns electronically to the
12 state, if the commissioner determines that the tax preparer has
13 engaged in a pattern and practice of conduct in violation of
14 this subdivision or of section 289A.63.

15 (f) For purposes of this subdivision, the term
16 "understatement of liability" means an understatement of the net
17 amount payable with respect to a tax imposed by state tax law,
18 or an overstatement of the net amount creditable or refundable
19 with respect to a tax. The determination of whether or not
20 there is an understatement of liability must be made without
21 regard to any administrative or judicial action involving the
22 taxpayer. For purposes of this subdivision, the amount
23 determined for underpayment of estimated tax under either
24 section 289A.25 or 289A.26 is not considered an understatement
25 of liability.

26 ~~(f)~~ (g) For purposes of this subdivision, the term
27 "overstatement of claim" means an overstatement of the net
28 amount refundable with respect to a claim for property tax
29 relief provided by chapter 290A. The determination of whether
30 or not there is an overstatement of a claim must be made without
31 regard to administrative or judicial action involving the
32 claimant.

33 ~~(g)~~ (h) For purposes of this section, the term "tax refund
34 or return preparer" means an individual who prepares for
35 compensation, or who employs one or more individuals to prepare
36 for compensation, a return of tax, or a claim for refund of

1 tax. The preparation of a substantial part of a return or claim
2 for refund is treated as if it were the preparation of the
3 entire return or claim for refund. An individual is not
4 considered a tax return preparer merely because the individual:

5 (1) gives typing, reproducing, or other mechanical
6 assistance;

7 (2) prepares a return or claim for refund of the employer,
8 or an officer or employee of the employer, by whom the
9 individual is regularly and continuously employed;

10 (3) prepares a return or claim for refund of any person as
11 a fiduciary for that person; or

12 (4) prepares a claim for refund for a taxpayer in response
13 to a tax order issued to the taxpayer."

14 Renumber the sections in sequence and correct the internal
15 references

16 Amend the title accordingly