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Senate

State of Minnesota

S.F. No. 1084 - Relating to Pay Equity Reporting

Author: Senator Jane Ranum

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

Date: March 30, 2005

The proposed legislation provides for a required pay equity report from a political subdivision to the Department of Employee Relations at least once every three years instead of the current requirement of at least once every five years. In 2003, the Legislature suspended reporting requirements for 2003 and 2004 and further that the report would only be required once every five years beginning in 2005. Previously, the Department of Employee Relations by rule had required a report at least once every three years.

DPM:vs

Senators Ranum, Dibble, Higgins, Vickerman and Lourey introduced--
S.F. No. 1084: Referred to the Committee on State and Local Government Operations.

A bill for an act

relating to public employment; modifying pay equity reporting requirements for political subdivisions; amending Minnesota Statutes 2004, section 471.999.

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

Section 1. Minnesota Statutes 2004, section 471.999, is amended to read:

471.999 [REPORT TO LEGISLATURE.]

The commissioner of employee relations shall report to the legislature by January 1 of each year on the status of compliance with section 471.992, subdivision 1, by governmental subdivisions.

The report must include a list of the political subdivisions in compliance with section 471.992, subdivision 1, and the estimated cost of compliance. The report must also include a list of political subdivisions found by the commissioner to be not in compliance, the basis for that finding, recommended changes to achieve compliance, estimated cost of compliance, and recommended penalties, if any. The commissioner's report must include a list of subdivisions that did not comply with the reporting requirements of this section. The commissioner may request, and a subdivision shall provide, any additional information needed for the preparation of a report under this subdivision.

Notwithstanding any rule to the contrary, beginning in

2005, a political subdivision must report on its compliance with the requirements of sections 471.991 to 471.999 no more frequently than once every ~~five~~ three years. No report from a political subdivision is required for 2003 and 2004.

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

S.F. No. 1084: A bill for an act relating to public employment; modifying pay equity reporting requirements for political subdivisions; amending Minnesota Statutes 2004, section 471.999.

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

.....
(Committee Chair)

March 30, 2005.....
(Date of Committee recommendation)

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S.F. No. 1551 - Voting Rights

Author: Senator John C. Hottinger

Prepared by: Peter S. Wattson, Senate Counsel (651/296-3812)

Date: March 21, 2005

S.F. No. 1551 includes a number of provisions to make it easier to register to vote and to vote.

Section 1 extends from ten to 15 days the time for filing a voter registration application after it has been signed and dated by the voter and imposes the obligation to file by the deadline on everyone who handles the application from the time it is signed by the voter until it has been filed with the county auditor or Secretary of State.

Section 2 adds to the section on election day registration a description of the many documents used to prove a voter's identity and place of reference now listed in the rules of the Secretary of State. It adds a wireless telephone bill to the list of documents that may be used to prove residency. It also permits vouching to be done by a person who is not registered to vote in the precinct but who is working in a residential facility in the precinct. It strikes language that limits the use of an Indian tribal identification card to Indians living on a reservation and requires the county auditor to keep a record of the number of election day registrations accomplished by means of an Indian tribal ID. The current law was declared unconstitutional in violation of the Equal Protection Clause by an order of federal district Judge James M. Rosenbaum last October in the case of *ACLU v. Kiffmeyer*, No. 04-CV-4653 (D. Minn. Oct. 29, 2004), because it does not also authorize the use of an Indian tribal ID by tribal members living off a reservation.

Section 3 defines "residential facility" for purposes of **section 2** as meaning a variety of group residences licensed or regulated by the State. It also requires the operator of a residential facility to prepare a list of the names of its employees currently working there and its address. The operator must certify the list and provide it to the appropriate county auditor no less than 20 days before each election for use in election day registration.

Section 4 rewords the certification on a voter registration application that a person who has been convicted of a felony must swear to. It also requires the application to include the 15-day deadline for returning it after it has been signed and requires the text to be printed in black ink. It strikes the requirement added last year that the Secretary of State approve the form of every voter registration application.

Section 5 allows any voter, not just a voter under protection of a court order, to demand that their name be withheld from the public list of registered voters.

Section 6 requires the Secretary of State and county auditors to notify each month the felons whose civil rights have been restored that month that they may resume voting and requires the county auditor to provide them with a voter registration application.

Section 7 requires each official on duty in a polling place to wear an identification badge that shows their role in the election process, but not their party affiliation.

Section 8 prohibits an election judge from serving as a challenger of voters who appear and attempt to vote.

Section 9 requires the Secretary of State to train polling place challengers, with the cost of the training borne by the political party appointing the challengers.

Section 10 amends the Voter's Bill of Rights by changing the phrase about felons whose "civil rights have been restored" to felons who "have completed your probation or parole."

Section 11 requires that a challenge at the polling place to a voter's eligibility to vote be stated in writing, under oath, and based on the challenger's personal knowledge.

Section 12 permits an individual who is challenged because of a prior conviction of a felony to vote after leaving the polling place and returning.

PSW:ph

cc: Kelly Wolfe

A bill for an act

relating to elections; facilitating registering to vote and voting; facilitating voter registration by college students; clarifying voting rights of persons under guardianship; extending the deadline for submitting voter registration applications; clarifying documents acceptable to prove residence; specifying form of voter registration application; authorizing registered voters to withhold their name from the public information list; requiring polling place officials to wear identification badges; requiring translation of voting materials; regulating conduct and requiring training of polling place challengers; adding to the Voter's Bill of Rights; allowing ex-felons to leave a polling place and return; requiring notice to ex-felons that their civil rights have been restored; providing voting assistance to prisoners; amending Minnesota Statutes 2004, sections 135A.17, subdivision 2; 201.014, subdivision 2; 201.061, subdivisions 1, 3, by adding a subdivision; 201.071, subdivision 1; 201.091, subdivision 4; 201.15; 203B.16, by adding a subdivision; 204B.10, subdivision 6; 204B.24; 204B.27, subdivision 11; 204C.06, subdivision 2; 204C.07, subdivision 4, by adding a subdivision; 204C.08, subdivision 1a; 204C.10; 204C.12, subdivisions 2, 4; 243.05, subdivision 3; 524.5-310; proposing coding for new law in Minnesota Statutes, chapters 244; 641; 642.

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

Section 1. Minnesota Statutes 2004, section 135A.17, subdivision 2, is amended to read:

Subd. 2. [RESIDENTIAL HOUSING LIST.] All postsecondary institutions that enroll students accepting state or federal financial aid ~~may~~ shall prepare a current list of ~~students~~ the name and address of each student enrolled in the institution and residing in the institution's housing or in other housing within ~~ten miles of~~ the county, or a county contiguous to the county,

where the institution's campus is located. Institutions that do not consider student addresses to be public information under applicable federal and state privacy laws shall make release forms available to all students authorizing the institution to provide the addresses to the county auditor. The list shall ~~include each student's current~~ be based on the most recent residence address the student has provided to the institution. If the student gives the institution, before the list is sent to the county auditor or auditors, a written request that the student's name and residence address be omitted from the list, the institution must honor the request. The list shall be certified and sent to the appropriate county auditor or auditors for use in election day registration as provided under section 201.061, subdivision 3.

Sec. 2. Minnesota Statutes 2004, section 201.014, subdivision 2, is amended to read:

Subd. 2. [NOT ELIGIBLE.] The following individuals are not eligible to vote. Any individual:

(a) Convicted of treason or any felony whose civil rights have not been restored;

(b) Under a guardianship ~~of the person~~ in which the court order ~~provides that the ward does not retain~~ revokes the ward's right to vote; or

(c) Found by a court of law to be legally incompetent.

Sec. 3. Minnesota Statutes 2004, section 201.061, subdivision 1, is amended to read:

Subdivision 1. [PRIOR TO ELECTION DAY.] At any time except during the 20 days immediately preceding any election, an eligible voter or any individual who will be an eligible voter at the time of the next election may register to vote in the precinct in which the voter maintains residence by completing a voter registration application as described in section 201.071, subdivision 1, and submitting it in person or by mail to the county auditor of that county or to the Secretary of State's Office. A registration that is received no later than 5:00 p.m. on the 21st day preceding any election shall be accepted. An

improperly addressed or delivered registration application shall be forwarded within two working days after receipt to the county auditor of the county where the voter maintains residence. A state or local agency or an individual that accepts from anyone a completed voter registration ~~applications from~~ application signed and dated by a voter must submit the completed ~~applications~~ application to the secretary of state or the appropriate county auditor within ~~ten~~ 15 business days after the ~~applications are~~ application was dated by the voter.

For purposes of this section, mail registration is defined as a voter registration application delivered to the secretary of state, county auditor, or municipal clerk by the United States Postal Service or a commercial carrier.

Sec. 4. Minnesota Statutes 2004, section 201.061, subdivision 3, is amended to read:

Subd. 3. [ELECTION DAY REGISTRATION.] (a) An individual who is eligible to vote may register on election day by appearing in person at the polling place for the precinct in which the individual maintains residence, by completing a registration application, making an oath in the form prescribed by the secretary of state and providing proof of residence. An individual may prove residence for purposes of registering by:

(1) presenting a driver's license or Minnesota identification card issued pursuant to section 171.07;

(2) presenting a current and valid photo identification that shows the name and valid residential address of the voter;

(3) presenting a copy of a current utility bill, signed residential lease, bank statement, government check, paycheck, or other government document that shows the name and valid residential address of the voter;

(4) presenting any document approved by the secretary of state as proper identification;

~~(3)~~ (5) presenting one of the following:

(i) a current valid student identification card from a postsecondary educational institution in Minnesota, if a list of students from that institution has been prepared under section

135A.17 and certified to the county auditor in the manner provided in rules of the secretary of state; ~~or~~

(ii) a current student fee statement that contains the student's valid residential address in the precinct ~~together with a picture identification card~~;

(iii) a copy of a current student registration card that contains the student's valid residential address in the precinct; or

(iv) a current student monthly rental statement that contains the student's valid residential address in the precinct; or

~~(4)~~ (6) having a voter who is registered to vote in the precinct, or who is an employee employed by and working in a residential facility in the precinct, sign an oath in the presence of the election judge vouching that the voter or employee personally knows that the individual is a resident of the precinct. A voter who has been vouched for on election day may not sign a proof of residence oath vouching for any other individual on that election day.

(b) The operator of a residential facility shall prepare a list of the names of its employees currently working in the residential facility and the address of the residential facility. The operator shall certify the list and provide it to the appropriate county auditor no less than 20 days before each election for use in election day registration.

(c) For tribal band members ~~living on an Indian reservation~~, an individual may prove residence for purposes of registering by presenting an identification card issued by the tribal government of a tribe recognized by the Bureau of Indian Affairs, United States Department of the Interior, that contains the name, ~~street~~ address, signature, and picture of the individual. ~~The county auditor of each county having territory within the reservation shall maintain a record of the number of election day registrations accepted under this section.~~

(d) A county, school district, or municipality may require that an election judge responsible for election day registration

initial each completed registration application.

Sec. 5. Minnesota Statutes 2004, section 201.061, is amended by adding a subdivision to read:

Subd. 3a. [DEFINITIONS.] (a) The definitions in this subdivision apply to subdivision 3.

(b) "Bank statement" includes a bank statement, investment account statement, brokerage statement, pension fund statement, dividend check, or any other notice or letter from a financial institution relating to an account or investment held by the voter at the financial institution.

(c) "Government check" includes a Social Security Administration check statement or a check stub or electronic deposit receipt from a public assistance payment or tax refund or credit.

(d) "Other government document" includes military identification; a document issued by a governmental entity that qualifies for use as identification for purposes of acquiring a driver's license in this state; a Metro Mobility card; a property tax statement; a public housing lease or rent statement or agreement, or a rent statement or agreement provided under a subsidized housing program; a document or statement provided to a voter as evidence of income or eligibility for a tax deduction or tax credit; a periodic notice from a federal, state, or local agency for a public assistance program, such as the Minnesota family investment program, food stamps, general assistance, medical assistance, general assistance medical care, MinnesotaCare, unemployment benefits, or Social Security; an insurance card for a government administered or subsidized health insurance program; or a discharge certificate, pardon, or other official document issued to the voter in connection with the resolution of a criminal case, indictment, sentence, or other matter, in accordance with state law.

(e) "Paycheck" includes a check stub or electronic deposit receipt.

(f) "Residential facility" means transitional housing as defined in section 119A.43, subdivision 1; a supervised living

facility licensed by the commissioner of health under section 144.50, subdivision 6; a nursing home as defined in section 144A.01, subdivision 5; a residence registered with the commissioner of health as a housing with services establishment as defined in section 144D.01, subdivision 4; a veterans home operated by the board of directors of the Minnesota Veterans Homes under chapter 198; a residence licensed by the commissioner of human services to provide a residential program as defined in section 245A.02, subdivision 14; a residential facility for persons with a developmental disability licensed by the commissioner of human services under section 252.28; group residential housing as defined in section 256I.03, subdivision 3; a shelter for battered women as defined in section 611A.37, subdivision 4; or a supervised publicly or privately operated shelter or dwelling designed to provide temporary living accommodations for the homeless.

(g) "Utility bill" includes a bill for gas, electricity, telephone, wireless telephone, cable television, solid waste, water, or sewer services.

Sec. 6. Minnesota Statutes 2004, section 201.071, subdivision 1, is amended to read:

Subdivision 1. [FORM.] A voter registration application must be of suitable size and weight for mailing and contain spaces for the following required information: voter's first name, middle name, and last name; voter's previous name, if any; voter's current address; voter's previous address, if any; voter's date of birth; voter's municipality and county of residence; voter's telephone number, if provided by the voter; date of registration; current and valid Minnesota driver's license number or Minnesota state identification number, or if the voter has no current and valid Minnesota driver's license or Minnesota state identification, the last four digits of the voter's Social Security number; and voter's signature. The registration application may include the voter's e-mail address, if provided by the voter, and the voter's interest in serving as an election judge, if indicated by the voter. The application

must also contain the following certification of voter eligibility:

"I certify that I:

(1) will be at least 18 years old on election day;

(2) am a citizen of the United States;

(3) will have resided in Minnesota for 20 days immediately preceding election day;

(4) maintain residence at the address given on the registration form;

(5) am not under court-ordered guardianship ~~of the person where I have not retained the~~ in which the court order revokes my right to vote;

(6) have not been found by a court to be legally incompetent to vote;

(7) have ~~not~~ the right to vote because, if I have been convicted of a felony ~~without having my civil rights restored~~, I have completed my probation or parole; and

(8) have read and understand the following statement: that giving false information is a felony punishable by not more than five years imprisonment or a fine of not more than $10,000, or both."

The certification must include boxes for the voter to respond to the following questions:

"(1) Are you a citizen of the United States?" and

"(2) Will you be 18 years old on or before election day?"

And the instruction:

"If you checked 'no' to either of these questions, do not complete this form."

The voter registration application must set forth the deadline under section 201.061, subdivision 1, for returning a voter registration application after it is dated by the voter.

Text on the voter registration application must be printed in black ink.

The form of the voter registration application and the certification of voter eligibility must be as provided in this subdivision ~~and approved by the secretary of state~~. Voter

registration forms authorized by the National Voter Registration Act may also be accepted as valid.

An individual may use a voter registration application to apply to register to vote in Minnesota or to change information on an existing registration.

Sec. 7. Minnesota Statutes 2004, section 201.091, subdivision 4, is amended to read:

Subd. 4. [PUBLIC INFORMATION LISTS.] The county auditor shall make available for inspection a public information list which must contain the name, address, year of birth, and voting history of each registered voter in the county. The telephone number must be included on the list if provided by the voter. The public information list may also include information on voting districts. The county auditor may adopt reasonable rules governing access to the list. No individual inspecting the public information list shall tamper with or alter it in any manner. No individual who inspects the public information list or who acquires a list of registered voters prepared from the public information list may use any information contained in the list for purposes unrelated to elections, political activities, or law enforcement. The secretary of state may provide copies of the public information lists and other information from the statewide registration system for uses related to elections, political activities, or in response to a law enforcement inquiry from a public official concerning a failure to comply with any criminal statute or any state or local tax statute.

Before inspecting the public information list or obtaining a list of voters or other information from the list, the individual shall provide identification to the public official having custody of the public information list and shall state in writing that any information obtained from the list will not be used for purposes unrelated to elections, political activities, or law enforcement. Requests to examine or obtain information from the public information lists or the statewide registration system must be made and processed in the manner provided in the rules of the secretary of state.

Upon receipt of a ~~written-request-and-a-copy-of-the-court order~~ statement signed by the voter that withholding the voter's name from the public information list is required for the safety of the voter or the voter's family, the secretary of state and county auditor must withhold from the public information list the name of ~~any~~ a registered voter ~~placed-under-court-ordered protection~~.

Sec. 8. Minnesota Statutes 2004, section 201.15, is amended to read:

201.15 [DISTRICT JUDGE, REPORT GUARDIANSHIPS AND COMMITMENTS.]

Subdivision 1. [GUARDIANSHIPS AND INCOMPETENTS.] Pursuant to the Help America Vote Act of 2002, Public Law 107-252, the state court administrator shall report monthly by electronic means to the secretary of state the name, address, and date of birth of each individual 18 years of age or over, who during the month preceding the date of the report:

(a) was placed under a guardianship ~~of-the-person~~ in which the court order ~~provides-that-the-ward-does-not-retain~~ revokes the ward's right to vote; or

(b) was adjudged legally incompetent.

The court administrator shall also report the same information for each individual transferred to the jurisdiction of the court who meets a condition specified in clause (a) or (b). The secretary of state shall determine if any of the persons in the report is registered to vote and shall prepare a list of those registrants for the county auditor. The county auditor shall change the status on the record in the statewide registration system of any individual named in the report to indicate that the individual is not eligible to reregister or vote.

Subd. 2. [~~RESTORATION-TO-CAPACITY~~ GUARDIANSHIP TERMINATION OR MODIFICATION.] Pursuant to the Help America Vote Act of 2002, Public Law 107-252, the state court administrator shall report monthly by electronic means to the secretary of state the name, address, and date of birth of each individual ~~transferred-from~~

whose guardianship ~~to conservatorship or who is restored to capacity by the court~~ was modified to restore the ward's right to vote or whose guardianship was terminated by order of the court under section 524.5-317 after being ineligible to vote for any of the reasons specified in subdivision 1. The secretary of state shall determine if any of the persons in the report is registered to vote and shall prepare a list of those registrants for the county auditor. The county auditor shall change the status on the voter's record in the statewide registration system to "active."

Sec. 9. Minnesota Statutes 2004, section 203B.16, is amended by adding a subdivision to read:

Subd. 5. [DUTIES OF COUNTY AUDITOR.] Each county auditor shall mail absentee ballot applications to the study-abroad office of each college or university whose principal administrative offices are located within the county.

Sec. 10. Minnesota Statutes 2004, section 204B.10, subdivision 6, is amended to read:

Subd. 6. [INELIGIBLE VOTER.] Upon receipt of a certified copy of a final judgment or order of a court of competent jurisdiction that a person who has filed an affidavit of candidacy or who has been nominated by petition:

(1) has been convicted of treason or a felony and the person's civil rights have not been restored;

(2) is under guardianship ~~of the person~~ in which the court order revokes the ward's right to vote; or

(3) has been found by a court of law to be legally incompetent;

the filing officer shall notify the person by certified mail at the address shown on the affidavit or petition, and shall not certify the person's name to be placed on the ballot. The actions of a filing officer under this subdivision are subject to judicial review under section 204B.44.

Sec. 11. Minnesota Statutes 2004, section 204B.24, is amended to read:

204B.24 [ELECTION JUDGES; OATH.]

Each election judge shall sign the following oath before assuming the duties of the office:

"I ..... solemnly swear that I will perform the duties of election judge according to law and the best of my ability and will diligently endeavor to prevent fraud, deceit and abuse in conducting this election. I will perform my duties in a fair and impartial manner and not attempt to create an advantage for my party or for any candidate."

The oath shall be attached to the summary statement of the election returns of that precinct. If there is no individual present who is authorized to administer oaths, the election judges may administer the oath to each other.

Sec. 12. Minnesota Statutes 2004, section 204B.27, subdivision 11, is amended to read:

Subd. 11. [TRANSLATION OF VOTING ~~INSTRUCTIONS~~ MATERIALS.] The secretary of state ~~may~~ shall develop voter registration applications, absentee ballot applications, ballots, absentee ballots, and voting instructions in languages other than English~~, to be posted and made available in polling places during elections~~. The state demographer shall determine and report to the secretary of state the languages that are so common in this state that there is a need for translated voting ~~instructions~~ materials. The secretary of state shall develop the materials for those languages recommended by the state demographer. The secretary of state shall publish the materials and provide paper copies on request of any voter at no charge to the voter. The voting instructions must be posted and made available in polling places during elections. The posted voting instructions must include a pictorial representation of a voter completing the voting process. In those precincts where the state demographer has determined it is likely that at least five percent of the eligible voters speak one of the languages other than English for which translated voting materials have been published by the secretary of state, the translated materials for that language must be posted or otherwise made available in the polling place.

Sec. 13. Minnesota Statutes 2004, section 204C.06, subdivision 2, is amended to read:

Subd. 2. [INDIVIDUALS ALLOWED IN POLLING PLACE; IDENTIFICATION.] (a) Representatives of the secretary of state's office, the county auditor's office, and the municipal or school district clerk's office may be present at the polling place to observe election procedures. Except for these representatives, election judges, sergeants-at-arms, and challengers, an individual may remain inside the polling place during voting hours only while voting or registering to vote, providing proof of residence for an individual who is registering to vote, or assisting a handicapped voter or a voter who is unable to read English. During voting hours no one except individuals receiving, marking, or depositing ballots shall approach within six feet of a voting booth, unless lawfully authorized to do so by an election judge.

(b) Teachers and elementary or secondary school students participating in an educational activity authorized by section 204B.27, subdivision 7, may be present at the polling place during voting hours.

(c) Each official on duty in the polling place must wear an identification badge that shows their role in the election process. The badge must not show their party affiliation.

Sec. 14. Minnesota Statutes 2004, section 204C.07, subdivision 4, is amended to read:

Subd. 4. [RESTRICTIONS ON CONDUCT.] An election judge may not be appointed as a challenger. The election judges shall permit challengers appointed pursuant to this section to be present in the polling place during the hours of voting and to remain there until the votes are counted and the results declared. No challenger shall handle or inspect registration cards, files, or lists. Challengers shall not prepare in any manner any list of individuals who have or have not voted. They shall not attempt to influence voting in any manner. They shall not converse with a voter except to determine, in the presence of an election judge, whether the voter is eligible to vote in

the precinct.

Sec. 15. Minnesota Statutes 2004, section 204C.07, is amended by adding a subdivision to read:

Subd. 5. [CHALLENGER TRAINING.] (a) The secretary of state shall adopt rules for training challengers as required by this subdivision.

(b) At least once every two years, the secretary of state shall provide training in accordance with the rules of the secretary of state for all challengers who are appointed to serve at any election to be held in this state. The secretary of state shall also provide a procedure for emergency training of challengers appointed to fill vacancies. The secretary of state may delegate to a county or municipal election official the duty to provide training of challengers in that county, municipality, or school district.

(c) No individual may serve as a challenger who is not a registered voter in this state and who has not received at least two hours of training within the last two years as required by this subdivision.

(d) Each major political party must reimburse the secretary of state, county auditor, or municipal clerk for the cost of training challengers appointed by that major political party.

Sec. 16. Minnesota Statutes 2004, section 204C.08, subdivision 1a, is amended to read:

Subd. 1a. [VOTER'S BILL OF RIGHTS.] The county auditor shall prepare and provide to each polling place sufficient copies of a poster setting forth the Voter's Bill of Rights as set forth in this section. Before the hours of voting are scheduled to begin, the election judges shall post it in a conspicuous location or locations in the polling place. The Voter's Bill of Rights is as follows:

"VOTER'S BILL OF RIGHTS

For all persons residing in this state who meet federal voting eligibility requirements:

(1) You have the right to be absent from work for the purpose of voting during the morning of election day.

(2) If you are in line at your polling place any time between 7:00 a.m. and 8:00 p.m., you have the right to vote.

(3) If you can provide the required proof of residence, you have the right to register to vote and to vote on election day.

(4) If you are unable to sign your name, you have the right to orally confirm your identity with an election judge and to direct another person to sign your name for you.

(5) You have the right to request special assistance when voting.

(6) If you need assistance, you may be accompanied into the voting booth by a person of your choice, except by an agent of your employer or union or a candidate.

(7) You have the right to bring your minor children into the polling place and into the voting booth with you.

(8) If you have been convicted of a felony but ~~your civil rights have been restored~~ have completed your probation or parole, you have the right to vote.

(9) If you are under a guardianship, you have the right to vote, unless the court order revokes your right to vote.

(10) You have the right to vote without anyone in the polling place trying to influence your vote.

~~(10)~~ (11) If you make a mistake or spoil your ballot before it is submitted, you have the right to receive a replacement ballot and vote.

~~(11)~~ (12) You have the right to file a written complaint at your polling place if you are dissatisfied with the way an election is being run.

~~(12)~~ (13) You have the right to take a sample ballot into the voting booth with you.

~~(13)~~ (14) You have the right to take a copy of this Voter's Bill of Rights into the voting booth with you."

Sec. 17. Minnesota Statutes 2004, section 204C.10, is amended to read:

204C.10 [PERMANENT REGISTRATION; VERIFICATION OF REGISTRATION.]

(a) An individual seeking to vote shall sign a polling

place roster which states that the individual is at least 18 years of age, a citizen of the United States, has resided in Minnesota for 20 days immediately preceding the election, maintains residence at the address shown, is not under a guardianship in which the ~~individual has not retained~~ court order revokes the individual's right to vote, has not been found by a court of law to be legally incompetent to vote or convicted of a felony without having civil rights restored, is registered and has not already voted in the election. The roster must also state: "I understand that deliberately providing false information is a felony punishable by not more than five years imprisonment and a fine of not more than $10,000, or both."

(b) A judge may, before the applicant signs the roster, confirm the applicant's name, address, and date of birth.

(c) After the applicant signs the roster, the judge shall give the applicant a voter's receipt. The voter shall deliver the voter's receipt to the judge in charge of ballots as proof of the voter's right to vote, and thereupon the judge shall hand to the voter the ballot. The voters' receipts must be maintained during the time for notice of filing an election contest.

Sec. 18. Minnesota Statutes 2004, section 204C.12, subdivision 2, is amended to read:

Subd. 2. [STATEMENT OF GROUNDS; OATH.] The challenger shall state the ground for the challenge~~, and~~ in writing, under oath, and based on the challenger's personal knowledge. An election judge shall administer to the challenged individual the following oath:

"Do you solemnly swear that you will fully and truly answer all questions put to you concerning your eligibility to vote at this election?"

The election judge shall then ask the challenged individual sufficient questions to test that individual's residence and right to vote.

Sec. 19. Minnesota Statutes 2004, section 204C.12, subdivision 4, is amended to read:

Subd. 4. [REFUSAL TO ANSWER QUESTIONS OR SIGN A POLLING PLACE ROSTER.] A challenged individual who refuses to answer questions or sign a polling place roster as required by this section must not be allowed to vote. A challenged individual who leaves the polling place and returns later willing to answer questions or sign a polling place roster must not be allowed to vote, except an individual challenged because of a prior conviction of a felony.

Sec. 20. Minnesota Statutes 2004, section 243.05, subdivision 3, is amended to read:

Subd. 3. [DUTY OF COMMISSIONER; FINAL DISCHARGE.] It is the duty of the commissioner of corrections to keep in communication, as far as possible, with all persons who are on parole and with their employers. The commissioner may grant a person on parole a final discharge from any sentence when:

(a) the person on parole has complied with the conditions of parole for a period of time sufficient to satisfy the commissioner that the parolee is reliable and trustworthy;

(b) the commissioner is satisfied the person on parole will remain at liberty without violating the law; and

(c) final discharge is not incompatible with the welfare of society.

Upon the granting of a final discharge, the commissioner shall issue a certificate of final discharge to the person discharged and also cause a record of the acts of the inmate to be made. The record shall show the date of the inmate's confinement, the inmate's record while in prison, the date of parole, the inmate's record while on parole, reasons underlying the decision for final discharge, and other facts which the commissioner regards as appropriate. Nothing in this section or section 244.05 shall be construed as impairing the power of the board of pardons to grant a pardon or commutation in any case.

The commissioner shall inform the person finally discharged that their civil rights have been restored and give them a voter registration application and a letter to be sent with the voter registration application informing the county auditor that the

ex-felon's civil rights have been restored.

Sec. 21. [244.30] [NOTICE OF RESTORATION OF CIVIL RIGHTS.]

Upon final discharge from probation, the court shall inform the person finally discharged that their civil rights have been restored and give them a voter registration application and a letter to be sent with the voter registration application informing the county auditor that the ex-felon's civil rights have been restored.

Sec. 22. Minnesota Statutes 2004, section 524.5-310, is amended to read:

524.5-310 [FINDINGS; ORDER OF APPOINTMENT.]

(a) The court may appoint a limited or unlimited guardian for a respondent only if it finds by clear and convincing evidence that:

(1) the respondent is an incapacitated person; and

(2) the respondent's identified needs cannot be met by less restrictive means, including use of appropriate technological assistance.

(b) Alternatively, the court, with appropriate findings, may treat the petition as one for a protective order under section 524.5-401, enter any other appropriate order, or dismiss the proceeding.

(c) The court shall grant to a guardian only those powers necessitated by the ward's limitations and demonstrated needs and, whenever feasible, make appointive and other orders that will encourage the development of the ward's maximum self-reliance and independence. Any power not specifically granted to the guardian, following a written finding by the court of a demonstrated need for that power, is retained by the ward.

(d) Within 14 days after an appointment, a guardian shall send or deliver to the ward, and counsel if represented at the hearing, a copy of the order of appointment accompanied by a notice which advises the ward of the right to appeal the guardianship appointment in the time and manner provided by the Rules of Appellate Procedure.

(e) Each year, within 30 days after the anniversary date of an appointment, a guardian shall send or deliver to the ward a notice of the right to request termination or modification of the guardianship and notice of the status of the ward's right to vote.

Sec. 23. [641.45] [VOTING ASSISTANCE TO PRISONERS.]

The county sheriff or jailer in each county in consultation with the county auditor shall determine the number of prisoners incarcerated in the county jail, workhouse, or other correctional facility under the control of the county who are eligible to vote and who desire to vote at a municipal, county, state, or federal election but will be unable to vote in the precinct where the prisoner maintains residence because of their incarceration. The county sheriff or jailer shall obtain from the appropriate county auditor the corresponding number of absentee ballot applications and provide them to the prisoners requesting them.

Sec. 24. [642.15] [VOTING ASSISTANCE TO PRISONERS.]

The chief of police or marshal in each city in consultation with the county auditor shall determine the number of prisoners incarcerated in the city lockup, jail, workhouse, or other correctional facility under the control of the city who are eligible to vote and who desire to vote at a municipal, county, state, or federal election but will be unable to vote in the precinct where the prisoner maintains residence because of their incarceration. The chief of police or marshal shall obtain from the appropriate county auditor the corresponding number of absentee ballot applications and provide them to the prisoners requesting them.

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State of Minnesota

S.F. No. 1523 - State Employee Health Plan Pharmacy Benefits Management System

Author: Senator Linda Berglin

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

Date: March 28, 2005

This bill directs the Commissioner of Employee Relations to deliver pharmaceutical benefits provided under the state employee health plan through a pharmacy benefits management system. The commissioner is authorized to provide the benefits directly through a contract with a third party or to enter into contracts with other states. Together with the Commissioner of Human Services and the Formulary Committee, the commissioner must develop and implement a preferred drug list. Local units of government are authorized to participate in the pharmacy benefits management system, provided that exclusive representatives for their participating employees agree to participate. The Commissioner of Employee Relations is allowed to assess the local units of government the reasonable costs of administration for the system.

The bill is effective January 1, 2006.

TSB:dv

Senators Berglin, Kiscaden, Higgins, Koering and Larson introduced--

S.F. No. 1523: Referred to the Committee on State and Local Government Operations.

A bill for an act

relating to state government; requiring the state employee health insurance plan to purchase prescription drugs through one pharmacy benefits manager; authorizing local units of government to participate in the drug purchasing program; appropriating money; amending Minnesota Statutes 2004, section 43A.311.

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

Section 1. Minnesota Statutes 2004, section 43A.311, is amended to read:

43A.311 [~~DRUG-PURCHASING~~ PHARMACY BENEFITS PROGRAM.]

Subdivision 1. [PHARMACY BENEFITS MANAGEMENT.] ~~The commissioner of employee relations, in conjunction with the commissioner of human services and other state agencies, shall evaluate whether participation in a multistate or multiagency drug purchasing program can reduce costs or improve the operations of the drug benefit programs administered by the department and other state agencies. The commissioner and other state agencies may enter into a contract with a vendor or other states for purposes of participating in a multistate or multiagency drug purchasing program.~~ The commissioner shall deliver pharmaceutical benefits provided under sections 43A.22 to 43A.30 through a pharmacy benefits management system. The commissioner may provide the pharmacy benefits management services directly, may contract with a third-party pharmacy benefits manager to provide the services, or may enter into a

contract with other states for the purpose of participating in a multistate drug purchasing program. The commissioner must revise any contracts with health care benefits administrators accordingly.

Subd. 2. [PREFERRED DRUG LIST.] The pharmacy benefits manager, in consultation with the commissioner of human services and the Formulary Committee established under section 256B.0625, subdivision 13c, shall develop and implement a preferred drug list. The pharmacy benefits manager shall customize the list of drugs to incorporate tiered cost-sharing arrangements to maximize medical efficacy and cost savings.

Subd. 3. [LOCAL UNIT OF GOVERNMENT PARTICIPATION.] (a) An eligible employer, as defined in section 43A.316, subdivision 2, paragraph (c), may elect to use the pharmacy benefits management system created under subdivision 1, provided that the exclusive representatives for participating employees have agreed to participate.

(b) The commissioner may assess reasonable costs of administration for the system to a participating employer. Receipts from the assessments must be deposited in the pharmacy benefits management system fund established in the state treasury. All money and interest in the fund is appropriated to the commissioner for the costs of administration under this subdivision.

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

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

S.F. No. 1523: A bill for an act relating to state government; requiring the state employee health insurance plan to purchase prescription drugs through one pharmacy benefits manager; authorizing local units of government to participate in the drug purchasing program; appropriating money; amending Minnesota Statutes 2004, section 43A.311.

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

.....
(Committee Chair)

March 30, 2005.....
(Date of Committee recommendation)

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State of Minnesota

S.F. No. 1145 - Relating to Nobles County

Author: Senator Jim Vickerman

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

Date: March 30, 2005

The proposed legislation for Nobles County would authorize the Nobles County Board by resolution to make the offices of county recorder and county auditor-treasurer appointive. The bill provides for the discharge of the duties of the auditor-treasurer and the recorder through a department head appointed by the board for that purpose and that an administrative change or transfer by the board of the duties of the two offices does not diminish, prohibit, or avoid the discharge of any statutorily required duties. The two current office holders elected at the last general election would serve out the full term of office to which the person was elected unless a vacancy occurred in the office before the end of the term of office. The resolution making the offices appointive must be approved by a four-fifths vote of the county board and before the adoption of a resolution the county board would publish its intent to adopt the resolution. The bill contains a provision for a reverse referendum if so requested by ten percent of the registered voters of the county. The bill would be effective the day after the Nobles County Board completed the local approval process, and this bill is virtually identical to other bills enacted in the past few years granting the same authority to other individual counties.

DPM:vs

Senator Vickerman introduced--

S.F. No. 1145: Referred to the Committee on State and Local Government Operations.

A bill for an act

relating to Nobles County; providing a process for making certain offices appointive in Nobles County.

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

Section 1. [NOBLES COUNTY OFFICERS MAY BE APPOINTED.]

Subdivision 1. [AUTHORITY TO MAKE OFFICE APPOINTIVE.] Notwithstanding Minnesota Statutes, section 382.01, upon adoption of a resolution by the Nobles County Board of Commissioners, the offices of county recorder and county auditor-treasurer are not elective but must be filled by appointment by the county board as provided in the resolution.

Subd. 2. [BOARD CONTROLS; MAY CHANGE AS LONG AS DUTIES DONE.] Upon adoption of a resolution by the Nobles County Board of Commissioners and subject to subdivisions 3 and 4, the duties of an elected official required by statute whose office is made appointive as authorized by this section must be discharged by the Board of Commissioners of Nobles County acting through a department head appointed by the board for that purpose. A reorganization, reallocation, or delegation or other administrative change or transfer does not diminish, prohibit, or avoid the discharge of duties required by statute.

Subd. 3. [INCUMBENTS TO COMPLETE TERM.] The person elected at the last general election to an office made appointive under this section must serve in that capacity and perform the duties,

functions, and responsibilities required by statute until the completion of the term of office to which the person was elected or until a vacancy occurs in the office, whichever occurs earlier.

Subd. 4. [PUBLISHING RESOLUTION; PETITION, REFERENDUM.] The county board may provide for the appointment of a county office as permitted in this section if the resolution to make the office appointive is approved by at least 80 percent of the members of the county board. Before the adoption of the resolution, the county board must publish a resolution notifying the public of its intent to consider the option once each week for two consecutive weeks in the official publication of the county. Following the publication, the county board shall provide an opportunity at its next regular meeting for public comment relating to the option, prior to formally adopting the option. The resolution may be implemented without the submission of the question to the voters of the county unless, within 30 days after the second publication of the resolution, a petition requesting a referendum, signed by at least ten percent of the registered voters of the county, is filed with the county auditor. If a petition is filed, the resolution may be implemented unless disapproved by a majority of the voters of the county voting on the question at a regular or special election.

Subd. 5. [EFFECTIVE DATE; LOCAL APPROVAL.] This section is effective the day after the governing body of Nobles County and its chief clerical officer timely complete their compliance with Minnesota Statutes, section 645.021, subdivisions 2 and 3.

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

S.F. No. 1145: A bill for an act relating to Nobles County; providing a process for making certain offices appointive in Nobles County.

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

.....
(Committee Chair)

March 30, 2005.....
(Date of Committee recommendation)

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

S.F. No. 1551: A bill for an act relating to elections; facilitating registering to vote and voting; facilitating voter registration by college students; clarifying voting rights of persons under guardianship; extending the deadline for submitting voter registration applications; clarifying documents acceptable to prove residence; specifying form of voter registration application; authorizing registered voters to withhold their name from the public information list; requiring polling place officials to wear identification badges; requiring translation of voting materials; regulating conduct and requiring training of polling place challengers; adding to the Voter's Bill of Rights; allowing ex-felons to leave a polling place and return; requiring notice to ex-felons that their civil rights have been restored; providing voting assistance to prisoners; amending Minnesota Statutes 2004, sections 135A.17, subdivision 2; 201.014, subdivision 2; 201.061, subdivisions 1, 3, by adding a subdivision; 201.071, subdivision 1; 201.091, subdivision 4; 201.15; 203B.16, by adding a subdivision; 204B.10, subdivision 6; 204B.24; 204B.27, subdivision 11; 204C.06, subdivision 2; 204C.07, subdivision 4, by adding a subdivision; 204C.08, subdivision 1a; 204C.10; 204C.12, subdivisions 2, 4; 243.05, subdivision 3; 524.5-310; proposing coding for new law in Minnesota Statutes, chapters 244; 641; 642.

Reports the same back with the recommendation that the bill do pass and be re-referred to the Committee on Crime Prevention and Public Safety. Report adopted.

.....
(Committee Chair)

March 30, 2005.....
(Date of Committee recommendation)

SF1145

RESOLUTION

WHEREAS, the offices of the Nobles County Recorder and Nobles County Auditor-Treasurer are currently elected, and;

WHEREAS, the Nobles County Board of Commissioners desire to have statutory authority to make the offices of the Nobles County Recorder and Nobles County Auditor-Treasurer appointed, and;

NOW THEREFORE BE IT RESOLVED, by the Board of County Commissioners of Nobles County that said Board fully supports having the authority to appoint the office of the Nobles County Recorder and Nobles County Auditor-Treasurer.

BE IT FURTHER RESOLVED, by the Board of County Commissioners of Nobles County that Nobles County respectfully requests that Senator Vickerman, Representative Magnus and Representative Hamilton move forward a bill in both the Senate and House that supports such legislation.

CERTIFICATION

STATE OF MINNESOTA)
(SS
COUNTY OF NOBLES)

I, Melvin J. Ruppert, Administrator of said County of Nobles, do hereby certify that I have compared the foregoing copy with the original resolution adopted by the County Board on the 18th day of January, 2005, and now remaining on file and of record in my office and that the same is a correct transcript and of the whole of such original.

Witness my hand and official seal this 19th day of January, 2005.

SEAL

Melvin J. Ruppert, County Administrator
Nobles County, Minnesota

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Senate

State of Minnesota

S.F. No. 1098 - Department of Natural Resources Technical Bill

Author: Senator D. Scott Dibble

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

Date: March 30, 2005

This bill makes a variety of miscellaneous changes to the Natural Resources laws. The only provision of the bill under the jurisdiction of the State and Local Government Committee is section 3, which extends the sunset date for the Game and Fish Citizen Oversight Committee by five years from June 30, 2005, to June 30, 2010.

TSB:rer

A bill for an act

relating to natural resources; modifying commercial fishing restrictions in infested waters; providing for a water recreation account; modifying expiration of certain committees; modifying disposition of certain revenue and unrefunded tax receipts; modifying terms of certain reports; eliminating commissioner approval of county expenditures of county timber receipts; amending Minnesota Statutes 2004, sections 84D.03, subdivision 4; 97A.055, subdivision 4b; 97A.4742, subdivision 4; 103G.615, subdivision 2; 282.08; 282.38, subdivision 1; 296A.18, subdivision 2; proposing coding for new law in Minnesota Statutes, chapter 86B.

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

Section 1. Minnesota Statutes 2004, section 84D.03, subdivision 4, is amended to read:

Subd. 4. [COMMERCIAL FISHING AND TURTLE, FROG, AND CRAYFISH HARVESTING RESTRICTIONS IN INFESTED AND NONINFESTED WATERS.] (a) All nets, traps, buoys, anchors, stakes, and lines used for commercial fishing or turtle, frog, or crayfish harvesting in an infested ~~waters,~~ water that is designated because ~~the waters contain~~ it contains invasive fish or invertebrates, may not be used in ~~noninfested~~ any other waters. If a commercial licensee operates in both ~~noninfested waters and~~ an infested ~~waters~~ water designated because ~~the waters contain~~ it contains invasive fish or invertebrates and other waters, all nets, traps, buoys, anchors, stakes, and lines used for commercial fishing or turtle, frog, or crayfish harvesting in ~~noninfested~~ waters not designated as infested with invasive fish

or invertebrates must be tagged with tags provided by the commissioner, as specified in the commercial licensee's license or permit, and may not be used in infested waters designated because the waters contain invasive fish or invertebrates.

(b) ~~In infested waters designated solely because the waters contain Eurasian water milfoil,~~ All nets, traps, buoys, anchors, stakes, and lines used for commercial fishing or turtle, frog, or crayfish harvesting in an infested water that is designated solely because it contains Eurasian water milfoil must be dried for a minimum of ten days or frozen for a minimum of two days before they are used in ~~noninfested~~ any other waters, except as provided in this paragraph. Commercial ~~operators~~ licensees must notify the department's regional or area fisheries office or a conservation officer ~~when~~ before removing nets or equipment from an infested ~~waters~~ water designated solely because it contains Eurasian water milfoil and before resetting those nets or equipment in ~~noninfested~~ any other waters. ~~All aquatic macrophytes~~ Upon notification, the commissioner may authorize a commercial licensee to move nets or equipment to another water without freezing or drying, if that water is designated as infested solely because it contains Eurasian water milfoil.

(c) A commercial licensee must ~~be removed~~ remove all aquatic macrophytes from nets and other equipment when the nets and equipment are removed from ~~infested~~ waters of the state.

(d) The commissioner shall provide a commercial licensee with a current listing of designated infested waters at the time that a license or permit is issued.

Sec. 2. [86B.706] [WATER RECREATION ACCOUNT; RECEIPTS AND PURPOSE.]

Subdivision 1. [CREATION.] The water recreation account is created in the state treasury in the natural resources fund.

Subd. 2. [MONEY DEPOSITED IN ACCOUNT.] The following shall be deposited in the state treasury and credited to the water recreation account:

(1) fees and surcharges from titling and licensing of watercraft under this chapter;

(2) fines, installment payments, and forfeited bail according to section 86B.705, subdivision 2;

(3) civil penalties according to section 84D.13;

(4) mooring fees and receipts from the sale of marine gas at state-operated or state-assisted small craft harbors and mooring facilities according to section 86A.21;

(5) the unrefunded gasoline tax attributable to watercraft use under section 296A.18; and

(6) fees for permits issued to control or harvest aquatic plants other than wild rice under section 103G.615, subdivision 2.

Subd. 3. [PURPOSES.] The money in the account may be expended only as appropriated by law for the following purposes:

(1) as directed under section 296A.18, subdivision 2, for acquisition, development, maintenance, and rehabilitation of public water access and boating facilities on public waters; lake and river improvements; and boat and water safety;

(2) from the fees collected at state-operated or state-assisted small craft harbors and mooring facilities from daily and seasonal moorings and the sale of marine gas, for maintenance, operation, replacement, and expansion of these facilities and for the debt service on state bonds sold to finance these facilities;

(3) for administration and enforcement of this chapter as it pertains to titling and licensing of watercraft and use and safe operation of watercraft; grants for county-sponsored and administered boat and water safety programs; and state boat and water safety efforts;

(4) for management of aquatic invasive species and the implementation of chapter 84D as it pertains to aquatic invasive species, including control, public awareness, law enforcement, assessment and monitoring, management planning, and research; and

(5) for management of aquatic plants and the implementation of section 103G.615 as it pertains to aquatic plants, including plant removal permitting, control, public awareness, law

enforcement, assessment and monitoring, management planning, and research.

Sec. 3. Minnesota Statutes 2004, section 97A.055, subdivision 4b, is amended to read:

Subd. 4b. [CITIZEN OVERSIGHT SUBCOMMITTEES.] (a) The commissioner shall appoint subcommittees of affected persons to review the reports prepared under subdivision 4; review the proposed work plans and budgets for the coming year; propose changes in policies, activities, and revenue enhancements or reductions; review other relevant information; and make recommendations to the legislature and the commissioner for improvements in the management and use of money in the game and fish fund.

(b) The commissioner shall appoint the following subcommittees, each comprised of at least three affected persons:

(1) a Fisheries Operations Subcommittee to review fisheries funding, excluding activities related to trout and salmon stamp funding;

(2) a Wildlife Operations Subcommittee to review wildlife funding, excluding activities related to migratory waterfowl, pheasant, and turkey stamp funding and excluding review of the amounts available under section 97A.075, subdivision 1, paragraphs (b) and (c);

(3) a Big Game Subcommittee to review the report required in subdivision 4, paragraph (a), clause (2);

(4) an Ecological Services Operations Subcommittee to review ecological services funding;

(5) a subcommittee to review game and fish fund funding of enforcement, support services, and Department of Natural Resources administration;

(6) a subcommittee to review the trout and salmon stamp report and address funding issues related to trout and salmon;

(7) a subcommittee to review the report on the migratory waterfowl stamp and address funding issues related to migratory waterfowl;

(8) a subcommittee to review the report on the pheasant

stamp and address funding issues related to pheasants; and

(9) a subcommittee to review the report on the turkey stamp and address funding issues related to wild turkeys.

(c) The chairs of each of the subcommittees shall form a Budgetary Oversight Committee to coordinate the integration of the subcommittee reports into an annual report to the legislature; recommend changes on a broad level in policies, activities, and revenue enhancements or reductions; provide a forum to address issues that transcend the subcommittees; and submit a report for any subcommittee that fails to submit its report in a timely manner.

(d) The Budgetary Oversight Committee shall develop recommendations for a biennial budget plan and report for expenditures on game and fish activities. By August 15 of each even-numbered year, the committee shall submit the budget plan recommendations to the commissioner.

(e) Each subcommittee shall choose its own chair, except that the chair of the Budgetary Oversight Committee shall be appointed by the commissioner and may not be the chair of any of the subcommittees.

(f) The Budgetary Oversight Committee must make recommendations to the commissioner for outcome goals from expenditures.

(g) Notwithstanding section 15.059, subdivision 5, or other law to the contrary, the Budgetary Oversight Committee and subcommittees do not expire until June 30, ~~2005~~ 2010.

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

Sec. 4. Minnesota Statutes 2004, section 97A.4742, subdivision 4, is amended to read:

Subd. 4. [ANNUAL REPORT.] By December 15 each year, the commissioner shall submit a report to the legislative committees having jurisdiction over environment and natural resources appropriations and environment and natural resources policy. The report shall state the amount of revenue received in and expenditures made from revenue transferred from the lifetime

fish and wildlife trust fund to the game and fish fund ~~and shall describe projects funded, locations of the projects, and results and benefits from the projects~~. The report may be included in the game and fish fund report required by section 97A.055, subdivision 4. The commissioner shall make the annual report available to the public.

Sec. 5. Minnesota Statutes 2004, section 103G.615, subdivision 2, is amended to read:

Subd. 2. [FEES.] (a) The commissioner shall establish a fee schedule for permits to control or harvest aquatic plants other than wild rice. The fees must be set by rule, and section 16A.1283 does not apply. The fees may not exceed $750 per permit based upon the cost of receiving, processing, analyzing, and issuing the permit, and additional costs incurred after the application to inspect and monitor the activities authorized by the permit, and enforce aquatic plant management rules and permit requirements.

(b) The fee for a permit for the control of rooted aquatic vegetation is $35 for each contiguous parcel of shoreline owned by an owner. This fee may not be charged for permits issued in connection with purple loosestrife control or lakewide Eurasian water milfoil control programs.

(c) A fee may not be charged to the state or a federal governmental agency applying for a permit.

(d) The money received for the permits under this subdivision shall be deposited in the treasury and credited to the ~~game and fish fund~~ water recreation account.

Sec. 6. Minnesota Statutes 2004, section 282.08, is amended to read:

282.08 [APPORTIONMENT OF PROCEEDS TO TAXING DISTRICTS.]

The net proceeds from the sale or rental of any parcel of forfeited land, or from the sale of products from the forfeited land, must be apportioned by the county auditor to the taxing districts interested in the land, as follows:

(1) the amounts necessary to pay the state general tax levy against the parcel for taxes payable in the year for which the

tax judgment was entered, and for each subsequent payable year up to and including the year of forfeiture, must be apportioned to the state;

(2) the portion required to pay any amounts included in the appraised value under section 282.01, subdivision 3, as representing increased value due to any public improvement made after forfeiture of the parcel to the state, but not exceeding the amount certified by the clerk of the municipality must be apportioned to the municipal subdivision entitled to it;

(3) the portion required to pay any amount included in the appraised value under section 282.019, subdivision 5, representing increased value due to response actions taken after forfeiture of the parcel to the state, but not exceeding the amount of expenses certified by the Pollution Control Agency or the commissioner of agriculture, must be apportioned to the agency or the commissioner of agriculture and deposited in the fund from which the expenses were paid;

(4) the portion of the remainder required to discharge any special assessment chargeable against the parcel for drainage or other purpose whether due or deferred at the time of forfeiture, must be apportioned to the municipal subdivision entitled to it; and

(5) any balance must be apportioned as follows:

(i) The county board may annually by resolution set aside no more than 30 percent of the receipts remaining to be used for ~~timber~~ forest development on tax-forfeited land and dedicated memorial forests, to be expended under the supervision of the county board. It must be expended only on projects ~~approved by the commissioner of natural resources~~ improving the health and management of the forest resource.

(ii) The county board may annually by resolution set aside no more than 20 percent of the receipts remaining to be used for the acquisition and maintenance of county parks or recreational areas as defined in sections 398.31 to 398.36, to be expended under the supervision of the county board.

(iii) Any balance remaining must be apportioned as

follows: county, 40 percent; town or city, 20 percent; and school district, 40 percent, provided, however, that in unorganized territory that portion which would have accrued to the township must be administered by the county board of commissioners.

Sec. 7. Minnesota Statutes 2004, section 282.38, subdivision 1, is amended to read:

Subdivision 1. [DEVELOPMENT.] In any county where the county board by proper resolution sets aside funds for ~~timber~~ forest development pursuant to section 282.08, clause ~~(3)(a)~~ (5), item (i), or section 459.06, subdivision 2, the ~~Commission~~ commissioner of Iron Range resources and rehabilitation may upon request of the county board assist said county in carrying out any project for the long range development of its ~~timber~~ forest resources through matching of funds or otherwise~~, provided that any such project shall first be approved by the commissioner of natural resources~~.

Sec. 8. Minnesota Statutes 2004, section 296A.18, subdivision 2, is amended to read:

Subd. 2. [MOTORBOAT.] Approximately 1-1/2 percent of all gasoline received in this state and 1-1/2 percent of all gasoline produced or brought into this state, except gasoline used for aviation purposes, is being used as fuel for the operation of motorboats on the waters of this state and of the total revenue derived from the imposition of the gasoline fuel tax for uses other than for aviation purposes, 1-1/2 percent of ~~such revenues~~ the revenue is the amount of tax on fuel used in motorboats operated on the waters of this state. The amount of unrefunded tax paid on gasoline used for motor boat purposes as computed in this chapter shall be paid into the state treasury and credited to a water recreation account in the special revenue fund for acquisition, development, maintenance, and rehabilitation of sites for public access and boating facilities on public waters; lake and river improvement; ~~state park development~~; and boat and water safety.

S.F. 1098

..... moves to amend ~~H. F. No. 1081,~~ the first engrossment, as follows:

Page 8, after line 36, insert:

"Sec. 9. Minnesota Statutes 2004, section 462.357, subdivision 1e, is amended to read:

Subd. 1e. [NONCONFORMITIES.] (a) Any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an additional control under this chapter, may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion, unless:

(1) the nonconformity or occupancy is discontinued for a period of more than one year; or

(2) any nonconforming use is destroyed by fire or other peril to the extent of greater than 50 percent of its market value, and no building permit has been applied for within 180 days of when the property is damaged. In this case, a municipality may impose reasonable conditions upon a building permit in order to mitigate any newly created impact on adjacent property.

(b) Any subsequent use or occupancy of the land or premises shall be a conforming use or occupancy. A municipality may, by ordinance, permit an expansion or impose upon nonconformities reasonable regulations to prevent and abate nuisances and to

protect the public health, welfare, or safety. This subdivision does not prohibit a municipality from enforcing an ordinance that applies to adults-only bookstores, adults-only theaters, or similar adults-only businesses, as defined by ordinance.

(c) Notwithstanding paragraph (a), a municipality shall regulate the repair, replacement, maintenance, improvement, or expansion of nonconforming uses and structures in floodplain areas to the extent necessary to maintain eligibility in the National Flood Insurance Program and not increase flood damage potential or increase the degree of obstruction to flood flows in the floodway."

Renumber the sections in sequence and correct the internal references

Amend the title accordingly

Department of Natural Resources Fact Sheet

DNR TECHNICAL BILL
HF 1081/SF 1098

Summary

Section 1. Various language revisions relating to commercial fishing and invasive species.

Section 2. Adds language for the creation of the Water Recreation Account in the Natural Resources Fund.

Section 3. Adds five years before the Game and Fish Citizen Budget Oversight Committee is scheduled to sunset.

Section 4. Modifies contents of the annual report on the Lifetime Fish and Wildlife Trust Fund.

Section 5. Removes the DNR commissioner from approval process for county forest management projects.

Section 6. Similar to Section 5; removes the commissioner from approval process for county forest management projects.

Section 7. Modifies purposes for which money in the Water Recreation Account can be spent.

It is needed because:

Section 1. The changes noted will help prevent commercial fishing operations from spreading aquatic invasive species to Minnesota's lakes and rivers. The proposed changes will affect a limited number of commercial fishing operators who net in infested and non-infested waters. Operators will be able to continue commercial fishing activities, but will be required to take additional precautions to prevent spreading invasive species.

Section 2. Missing from statute is the specific language to create the Water Recreation Account in the Natural Resources Fund. The change will make statute consistent with practice: The account exists in the state treasury and has been used for many years.

Section 3. The efforts of the Game and Fish Citizen Oversight Committee have been beneficial to the department. The sunset date for the committees is extended by five years, to June 30, 2010.

Section 4. The change removes a reporting requirement on game and fish operations and outcomes to be included in the annual report on the Lifetime License Trust Fund. The information required is not generated or kept in a manner that enables the agency to meet this reporting requirement.

Sections 5 and 6. In current practice counties rarely request approval from the DNR on spending county timber receipts for county forest development projects. Eliminating the requirement will make state statute consistent with current practice.

Section 7. The DNR contends the phrase ***state park development*** is too broad a descriptor in setting the parameters for the purpose of spending from the Water Recreation Account. This change will delete that phrase from the description of account purpose.

Financial implications:

No financial impact is associated with the amendments contained in the bill's seven sections.

Background:

Section 1. Invasive species are a significant threat to the ecology of Minnesota's lakes and rivers, and the recreation and local economies that depend on healthy waters. During the 2004 legislative session, changes were made to commercial fishing regulations to help prevent the spread of invasive species. The changes required commercial fishing operators to use separate gear when operating in waters infested with invasive fish or invertebrates and in non-infested waters. The gear used in non-infested waters must be identified with tags provided by the DNR, and the gear used in waters infested with Eurasian water milfoil (EWM) must be frozen or dried before using the gear in non-infested waters.

While these changes help prevent the spread of invasive species from infested to non-infested waters, statute does not adequately address the potential spread of invasive species between infested waters. For example, the law does not require freezing or drying of commercial fishing gear when it is moved from waters infested with EWM to infested waters without EWM. Similarly, commercial gear could be moved directly from water infested with invasive fish or invertebrates to water that was infested only with EWM.

The proposed language will help prevent commercial fishing operations from transferring different invasive species between infested waters.

Section 2. The Water Recreation Account has been in existence in the Natural Resources Fund for many years. Primary sources of revenue to the account are watercraft titling, licensing surcharge and registration fees, and the gas tax receipts associated with the use of watercraft on state waters. Other sources of revenue include fines, penalties and restitutions; harbor and marina fees; license issuing fees; and police state aid (to supplement peace officer retirement costs).

The new section of statute as proposed authorizes the creation of the Water Recreation Account, lists the sources of revenue to the account, and describes the purposes for which money in the account may be spent. This will match statute with practice: The account already exists, receipts are deposited, and appropriations authorized from the account.

Section 3. The recommendations of the Game and Fish Citizens Oversight Committee have been an important source of stakeholder feedback since their inception in the mid-1990s. The commissioner names the members to nine separate subcommittees, with the subcommittee chairs making up the Budget Oversight Committee for the Game and Fish Fund. Current statute stipulates the Budget Oversight Committee will sunset on June 30, 2005. This change resets that date to June 30, 2010.

Section 4. Based on the number of lifetime license holders who annually use their lifetime license, the department transfers funds from the Lifetime License Trust Fund to the Game and Fish operations, deer/bear management, deer habitat improvement and wildlife acquisition accounts. The funds transferred into each of the four accounts listed are blended with other receipts deposited to each account, and game and fish project spending is not directly linked to a particular source of revenue.

This change removes a reporting requirement that would be impractical to implement. The detailed operational reporting in the annual Game and Fish Fund report now answers how the DNR spends resources from each of the accounts.

Sections 5 and 6. This change request will eliminate the requirement within Minn. Stat. § 282.08, (5) (i) and Minn. Stat. § 282.38, subdivision 1 that the DNR commissioner must approve the expenditure of county timber receipts on county forest development projects. Counties rarely seek this approval. Most counties with substantial forestland holdings have land departments with professional forestry staff who make well-informed decisions on forest resource management. Eliminating the requirement will make state statute consistent with current practice.

Section 7. This section is related to the change in Section 2 that references M.S. 296A.18 subdivision 2 in its description of the purposes for which money in the Water Recreation Account can be spent. Given that receipts are generated by watercraft owners, the department contends money must be spent for purposes directly related to watercraft. The phrase ***state park development*** is broader in scope and will be removed from the description of expenditure purpose.

For further information contact:
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March 4, 2005

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S.F. No. 1308 - Relating to Leaves of Absence for Elected Tribal Government Officials

Author: Senator Becky Lourey

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

Date: March 30, 2005

The proposed legislation would add to the provision in chapter 3 relating to leaves of absence for legislators and full-time elected county and city officials and include within that a full-time elected member of an Indian business committee, board of trustees, or tribal council, as a position that is authorized an unpaid leave of absence.

The effective date provision makes the bill retroactive to June 1, 2004, and applies to any tribal government officials elected on or after that date.

DPM:vs

Senators Lourey, Skoe, Murphy, Frederickson and Wergin introduced--
S.F. No. 1308: Referred to the Committee on State and Local Government Operations.

A bill for an act

relating to public officials; expanding a leave of absence provision to include elected tribal government officials; amending Minnesota Statutes 2004, section 3.088, subdivisions 1, 2, 3.

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

Section 1. Minnesota Statutes 2004, section 3.088, subdivision 1, is amended to read:

Subdivision 1. [LEAVE OF ABSENCE WITHOUT PAY.] Subject to this section, any appointed officer or employee of a political subdivision, municipal corporation, or school district of the state or an institution of learning maintained by the state who serves as: (1) a legislator ~~or is elected to~~; (2) a full-time elected city or county ~~office~~ official in Minnesota; or (3) a full-time elected member of an Indian business committee, board of trustees, or tribal council, is entitled to a leave of absence from the public office or to employment without pay when on the business of the office, with right of reinstatement as provided in this section.

Sec. 2. Minnesota Statutes 2004, section 3.088, subdivision 2, is amended to read:

Subd. 2. [REINSTATEMENT.] Except as provided in this section, upon the completion of the last legislative day in each calendar year, or, in the case of an elected city ~~or~~, county, or tribal government official, on the completion of the final day

of the term to which the official was elected, the officer or employee shall be reinstated in the public position held at the time of entry into the legislature or taking city ~~or~~, county, or tribal government office, or be placed in a public position of like seniority, status, and pay if it is available at the same salary which would have been received if the leave had not been taken, upon the following conditions:

(1) that the position has not been abolished or that its term, if limited, has not expired;

(2) that the legislator makes a written application for reinstatement to the appointing authority within 30 days after the last legislative day in a calendar year or, in the case of an elected city ~~or~~, county, or tribal government official, within 30 days after the expiration of the elected term; and

(3) that the request for reinstatement is made not later than ten years after the granting of the leave.

Upon reinstatement, the officer or employee shall have the same rights with respect to accrued and future seniority status, efficiency rating, vacation, insurance benefits, sick leave, and other benefits as if actually employed during the time of the leave. No public employer is required to compensate a reinstated employee or officer for time spent by that employee or officer away from work for the employer and on the business of the state legislature during the period between the first and last legislative day in each calendar year or on the business of an elected city ~~or~~, county, or tribal government office. No officer or employee reinstated shall be removed or discharged within one year after reinstatement except for cause and after notice and hearing, but this does not extend a term of service limited by law.

Sec. 3. Minnesota Statutes 2004, section 3.088, subdivision 3, is amended to read:

Subd. 3. [PENSION AND RETIREMENT RIGHTS.] A public officer or employee who receives leave of absence under this section or is elected as a state constitutional officer and has rights in a state, municipal, or other public pension, retirement, or relief

system shall retain all the rights accrued up to the time of taking leave. Time spent by the employee as a member of the legislature or as an elected city ~~or~~, county, or tribal government official or state constitutional officer shall be calculated in the same manner as if the employee had spent that time in the service of the public employer for the purpose of determining vesting of the employee's rights in the employer's pension, retirement, or relief system. Under no circumstances shall two governmental units pay the employee's share of pension contributions when the employee is on leave of absence to serve in the legislature or as an elected city ~~or~~, county, or tribal government official.

Sec. 4. [EFFECTIVE DATE; APPLICATION.]

Sections 1 to 3 are effective retroactively from June 1, 2004, and apply to tribal government officials elected on or after that date.

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

S.F. No. 1308: A bill for an act relating to public officials; expanding a leave of absence provision to include elected tribal government officials; amending Minnesota Statutes 2004, section 3.088, subdivisions 1, 2, 3.

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

.....
(Committee Chair)

March 30, 2005.....
(Date of Committee recommendation)

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S.F. No. 1530 - State Employment Changes

Author: Senator Betsy L. Wergin

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

Date: March 30, 2005

This Department of Employee Relations agency bill makes several miscellaneous changes to state employment procedures.

Section 1 [PROCEDURES.] under current law, permanent classified employees who are not covered by a collective bargaining agreement may appeal certain disciplinary action, including discharge, and suspension without pay or demotion to the Office of Administrative Hearings. This bill transfers the authority to hear the appeal from the Office of Administrative Hearings to the Bureau of Mediation Services. This section strikes the provision in current law that allows permanent employees who are covered by collective bargaining agreements to appeal to an administrative law judge if they elect to do so and their collective bargaining agreement provides for that option.

Section 2 [APPEALS; PUBLIC HEARINGS, FINDINGS.] conforms the appeal process for classified employees that is in existing law with the changes made in section 1 to provide jurisdiction for the Bureau of Mediation Services. Requires the Bureau of Mediation Services to provide the parties with a list of potential arbitrators to hear the appeal. Selection of the arbitrator will be determined by the plan or collective bargaining agreements.

Section 3 [CORRECTIONAL PERSONNEL EXEMPTED.] current law provides that certain state correctional personnel can elect or be required to retire when reaching age 55. This section strikes language from current law that allows the department to require a correctional employee to retire at age 55, and also strikes a process that allows an employee who wishes to remain employed

after age 55 to submit a written request to continue employment and have an annual medical exam that establishes their ability to continue in employment.

TSB:rer

Senators Wergin and Higgins introduced--

S.F. No. 1530: Referred to the Committee on State and Local Government Operations.

A bill for an act

relating to state employees; modifying grievance appeal procedures; eliminating a medical examination requirement; amending Minnesota Statutes 2004, sections 43A.33, subdivisions 3, 4; 43A.34, subdivision 3.

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

Section 1. Minnesota Statutes 2004, section 43A.33, subdivision 3, is amended to read:

Subd. 3. [PROCEDURES.] Procedures for discipline and discharge of employees covered by collective bargaining agreements shall be governed by the agreements. Procedures for employees not covered by a collective bargaining agreement shall be governed by this subdivision and by the commissioner's and managerial plans.

(a) For discharge, suspension without pay or demotion, no later than the effective date of such action, a permanent classified employee not covered by a collective bargaining agreement shall be given written notice by the appointing authority. The content of that notice as well as the employee's right to reply to the appointing authority shall be as prescribed in the grievance procedure contained in the applicable plan established pursuant to section 43A.18. The notice shall also include a statement that the employee may elect to appeal the action to the ~~Office of Administrative Hearings~~ Bureau of Mediation Services within 30 calendar days

following the effective date of the disciplinary action. A copy of the notice and the employee's reply, if any, shall be filed by the appointing authority with the commissioner no later than ten calendar days following the effective date of the disciplinary action. The commissioner shall have final authority to decide whether the appointing authority shall settle the dispute prior to the hearing provided under subdivision 4.

(b) For discharge, suspension, or demotion of an employee serving an initial probationary period, and for noncertification in any subsequent probationary period, grievance procedures shall be as provided in the plan established pursuant to section 43A.18.

~~(c) Any permanent employee who is covered by a collective bargaining agreement may elect to appeal to the chief administrative law judge within 30 days following the effective date of the discharge, suspension, or demotion if the collective bargaining agreement provides that option. In no event may an employee use both the procedure under this section and the grievance procedure available pursuant to sections 179A.01 to 179A.25.~~

Sec. 2. Minnesota Statutes 2004, section 43A.33, subdivision 4, is amended to read:

Subd. 4. [APPEALS; PUBLIC HEARINGS, FINDINGS.] Within ten days of receipt of the employee's written notice of appeal, the ~~chief administrative law judge~~ commissioner of the Bureau of Mediation Services shall ~~assign an administrative law judge~~ provide both parties with a list of potential arbitrators according to the rules of the Bureau of Mediation Services to hear the appeal. The process of selecting the arbitrator from the list shall be determined by the plan or collective bargaining agreements.

The hearing shall be conducted pursuant to the ~~contested case provisions of chapter 14 and the procedural rules adopted by the chief administrative law judge~~ rules of the Bureau of Mediation Services. If the ~~administrative law judge~~ arbitrator

finds, based on the hearing record, that the action appealed was not taken by the appointing authority for just cause, the employee shall be reinstated to the position, or an equal position in another division within the same agency, without loss of pay. If the ~~administrative-law-judge~~ arbitrator finds that there exists sufficient grounds for institution of the appointing authority's action but the hearing record establishes extenuating circumstances, the ~~administrative-law-judge~~ arbitrator may reinstate the employee, with full, partial, or no pay, or may modify the appointing authority's action. ~~The administrative-law-judge's-order-shall-be-the-final-decision, but-it-may-be-appealed-according-to-the-provisions-of-sections 14.63-to-14.68.-Settlement-of-the-entire-dispute-by-mutual agreement-is-encouraged-at-any-stage-of-the-proceedings.--Any settlement-agreement-shall-be-final-and-binding-when-signed-by all-parties-and-submitted-to-the-chief-administrative-law-judge of-the-Office-of-Administrative-Hearings.--Except-as-provided-in collective-bargaining-agreements~~ The appointing authority shall bear the costs of the ~~administrative-law-judge~~ arbitrator for hearings provided for in this section.

Sec. 3. Minnesota Statutes 2004, section 43A.34, subdivision 3, is amended to read:

Subd. 3. [CORRECTIONAL PERSONNEL EXEMPTED.] Any employee of the state of Minnesota in a covered classification as defined in section 352.91, who is a member of the special retirement program for correctional personnel established pursuant to sections 352.90 to 352.95, may elect or be required to retire from employment in the covered correctional position upon reaching the age of 55 years.

~~A-correctional-employee-occupying-a-position-covered-by provisions-of-section-352.91,-desiring-employment-beyond-the conditional-mandatory-retirement-age-shall,-at-least-30-days prior-to-the-date-of-reaching-the-conditional-mandatory retirement-age-of-55-years,-and-annually-thereafter,-request-in writing-to-the-employee's-appointing-authority-authorization-to continue-in-employment-in-the-covered-position.--Upon-receiving~~

Sec. 3 Pgs 3 & 4 delete Sec 3 and insert MS 2004 43.A.34 Subd. 3 is repealed

~~the request, the appointing authority shall have a medical examination made of the employee. If the results of the medical examination establish the mental and physical ability of the employee to continue the duties of employment, the employee shall be continued in employment for the following year. If the determination of the appointing authority based upon the results of the physical examination is adverse, the disposition of the matter shall be decided by the commissioner of corrections or, for employees of the Minnesota security hospital, the commissioner of human services. Based on the information provided, the decision of the applicable commissioner shall be made in writing and shall be final.~~

Senator Wergin moves to amend S.F. No. 1530 as follows:

Page 2, line 14, reinstate the stricken "(c)"

Page 2, line 21, after the stricken period, insert "Within ten days of receipt of the employee's written notice of appeal, the commissioner of the Bureau of Mediation Services shall provide both parties with a list of potential arbitrators according to the rules of the Bureau of Mediation Services to hear the appeal. The process of selecting the arbitrator from the list shall be determined by the plan.

The hearing shall be conducted pursuant to the rules of the Bureau of Mediation Services. If the arbitrator finds, based on the hearing record, that the action appealed was not taken by the appointing authority for just cause, the employee shall be reinstated to the position, or an equal position in another division within the same agency, without loss of pay. If the arbitrator finds that there exists sufficient grounds for institution of the appointing authority's action but the hearing record establishes extenuating circumstances, the arbitrator may reinstate the employee, with full, partial, or no pay, or may modify the appointing authority's action. The appointing authority shall bear the costs of the arbitrator for hearings provided for in this section."

Pages 2 and 3, delete section 2

pages 3 & 4 delete Section 3

Page 4, after line 12, insert:

"Sec. 3. [REPEALER.]

Subdivisions 3 & 4

Minnesota Statutes 2004, section 43A.33, ~~subdivision 4,~~ ~~is~~ are repealed."

Renumber the sections in sequence and correct the internal references

Amend the title accordingly

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S.F. No. 796 - Privatization Contract Requirements

Author: Senator D. Scott Dibble

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

Date: March 30, 2005

This bill provides additional regulation of state agency and local government contracts for services to be provided by private vendors. The requirements include additional disclosure, minimum wages based on compensation paid to public employees with the same job classification, and additional cost accounting.

Section 1 [PRIVATIZATION OF PUBLIC SERVICES.]

Subdivision 1 [DEFINITIONS.] provides definitions for use in the new laws created in this bill. "Agency" is defined to mean state agencies, including Minnesota State Colleges and Universities, Metropolitan agencies, and municipalities. "Privatization contract" is defined to mean a contract where a private contractor agrees with an agency to provide services that are substantially similar to and in place of services previously provided by public employees of the agency.

Subdivision 2 [PRIVATIZATION CONTRACTS; REQUIREMENTS.] specifies that this section applies to contacts in the amount of $25,000 or more and does not supersede existing law that regulates those contracts.

Paragraph (b) requires the agency intending to contract for services to provide a written statement describing why it determined that the services could not or should not be provided by current or additional public employees.

Paragraph (c) requires all entities responding to a solicitation of services under a proposed privatization contract to disclose: (1) the length of continuous employment of current employees; (2) minimum requirements that responder will impose on new job applicants; (3) the current annual

rate of employee turnover; (4) the number of hours proposed for each employee for duties to be performed under the proposed privatization contract; (5) any complaints issued by law enforcement agencies regarding violations of relevant laws or rules, including employee safety and health and labor relations, and court decisions and administrative findings or penalties for violations of laws or rules; (6) collective bargaining agreements or personnel policies covering employees who will perform services under the proposed privatization contract; and (7) any political contribution made by the responder or managerial employee of the responder, during four years preceding the due date of the response, to an elected official of the state, a candidate for elected state office, and, if the agency is a local unit of government, and elected official or candidate for elected office in that unit. This paragraph also imposes these disclosure requirements on the parent entity of any contractor submitting a bid.

Paragraph (d) requires that a private contractor providing service for an agency must pay their employees a minimum wage rate that is equal to the average wage rate for the agency employee classification that provides the most similar services to those performed under the contract, including the value of health and other benefits provided to public employees in that classification.

Paragraph (e) limits a privatization contract to a term of two years.

Paragraph (f) imposes affirmative action requirements on a private contractor equivalent to those applying to the contracting agency.

Paragraph (g) prevents private contractors using public money paid under a privatization contract to support or oppose the organization of its employees by an exclusive representative, or to use public money to facilitate or deter the ability of an exclusive representative of its employees to carry out their responsibilities.

Subdivision 3 [REVIEW OF CONTRACT COSTS.] requires an agency deciding whether to enter into a privatization contract to prepare a comprehensive written estimate of having the work performed by current employees. After bids have been submitted, this estimate must be published in the State Register. In considering responses received by contractors, the agency must consider the contractor's past performance and record of legal compliance. The agency must then prepare a written estimate of the cost of the proposal, which includes the cost of a transition from public to private service, including additional unemployment retirement benefits resulting from the transfer and costs involved with monitoring the contract. The Commissioner of Revenue must determine any loss of sales and income tax to the state if work under the contract will be performed outside the state.

Paragraph (c) requires that an agency awarding a privatization contract must determine that: (1) this section has been complied with; (2) the quality of services received under the new contract will be equal to or exceed the quality that could be provided by agency employees; (3) the cost of the privatization contract will be at least 15 percent lower than the cost of the work being performed by public employees; and (4) the proposed privatization contract is in the public interest.

Subdivision 4 [DATA PRACTICES.] makes data under privatization contracts subject to requirements in existing law for work performed for the government by a private person.

TSB:rer

Senators Dibble, Higgins, Kubly, Anderson and Bakk introduced--

S.F. No. 796: Referred to the Committee on State and Local Government Operations.

A bill for an act

relating to public employment; establishing procedures and standards for contracting with private entities for the provision of services that have been, or otherwise would be, provided by public employees; providing for public accountability; proposing coding for new law in Minnesota Statutes, chapter 471.

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

Section 1. [471.706] [PRIVATIZATION OF PUBLIC SERVICES.]

Subdivision 1. [DEFINITIONS.] For purposes of this section:

(1) "agency" means a state agency as defined in section 13.02, subdivision 17, including the Minnesota state colleges and universities, but not the University of Minnesota, as well as a metropolitan agency as defined in section 473.121, subdivision 5a, and a municipality as defined in section 471.345, subdivision 1;

(2) "employee of a private contractor" means an employee of a private contractor as defined by this subdivision or an employee of a subcontractor or independent contractor that provides supplies or services to a private contractor, as well as a former employee of a private contractor or subcontractor and a former independent contractor;

(3) "private contractor" means an entity that enters into a privatization contract with an agency;

(4) "privatization contract" means an enforceable agreement or combination or series of agreements by which a private

contractor agrees with an agency to provide services that are substantially similar to and in place of services previously provided by public employees of the agency or, in the case of new services, services that could be provided by public employees of the agency;

(5) "public employee" has the meaning as defined in section 179A.03, subdivision 14, except that for purposes of this section public employer means an agency as defined in clause (1);

(6) "services" means all aspects of services provided by a private contractor to an agency or by a subcontractor to a private contractor to implement a privatization contract; and

(7) "subcontractor" means a subcontractor of a private contractor for work under a privatization contract or an amendment to a privatization contract.

Subd. 2. [PRIVATIZATION CONTRACTS; REQUIREMENTS.] (a) This section applies to privatization contracts in an amount of $25,000 or more. The requirements imposed by this section are in addition to, and do not supersede, those imposed by sections 16C.08 and 179A.23.

(b) An agency shall prepare a specific written statement of the services to be provided under a proposed privatization contract. The statement must indicate whether the same or substantially similar services are being provided by public employees. In the case of proposed new services, the statement must include the agency's reasons why it determined that those services could or should not be provided by current or additional public employees. The agency's solicitation of services under a proposed privatization contract must be based on the statement. The agency shall notify any exclusive representative or representatives of employees that would be affected by a proposed privatization contract of its intention to enter into such a contract, and shall provide the exclusive representative or representatives with a copy of the statement prepared under this paragraph.

(c) A formal or informal solicitation of services under a

proposed privatization contract must require a responder to disclose:

(1) the length of continuous employment of the responder's current employees by job classification without identifying employees by name and, at the responder's option, any relevant prior experience of those employees;

(2) if the proposed services are to be performed by new employees, the minimum requirements the responder will impose on job applicants;

(3) the responder's current annual rate of employee turnover;

(4) the number of hours, if any, planned for each employee relating to duties to be performed by the employee in providing services under the proposed privatization contract;

(5) any complaints issued by a federal, state, or local enforcement agency relating to alleged violations of relevant laws or rules, including those relating to employee safety and health and labor relations, along with any court decisions, administrative findings, or penalties for violations of those laws and rules, listing the date, the court or agency, and the law or rule found to be violated;

(6) any collective bargaining agreements or personnel policies covering the employees to perform services under the proposed privatization contract; and

(7) any political contribution made by the responder or managerial employee of the responder, during the four years immediately preceding the due date of the response, to an elected official of the state, a candidate for elected state office, and, if the soliciting agency is a local unit of government, an elected official or candidate for elected office of that unit.

If the responder is a subsidiary of a parent entity, the disclosures made in response to clauses (5), (6), and (7), must cover the parent entity as well as the responder itself.

(d) The minimum wage rate for employees of a private contractor providing service for an agency is the average wage

rate for the classification of agency employees whose duties are most similar, plus the value of health and other benefits provided to the public employees in that classification.

(e) The term of a privatization contract, including any extensions resulting from amendments or change orders, may not exceed two years. No amendment or change order is valid if it has the purpose or effect of avoiding any requirement of this section.

(f) A privatization contract must impose affirmative action standards on the private contractor and any subcontractors that are at least as stringent as those applying to the contracting agency. No privatization contract may cause the agency to fail to meet its affirmative action standards or cause the displacement of agency employees. For purposes of this paragraph, "displacement" means a layoff, demotion, involuntary transfer to a new classification or title, involuntary transfer or reassignment to a new location requiring a change in residence, or reduction in hours of work, wages, or benefits.

(g) A private contractor may not use public money paid to it under a privatization contract to:

(1) support or oppose the organization of its employees by an exclusive representative;

(2) assist a subcontractor to support or oppose the organization of its employees;

(3) facilitate or deter the ability of an exclusive representative of its employees to carry out the exclusive representative's responsibilities; or

(4) assist a subcontractor to facilitate or deter the lawful activities of an exclusive representative of its employees.

Subd. 3. [REVIEW OF CONTRACT COSTS.] (a) An agency considering whether to enter into a privatization contract for a service shall prepare a comprehensive written estimate of having the same service provided in the most cost-effective manner by agency employees. The estimate must include all direct costs of having agency employees provide the service, including the cost

of pension, insurance, and other employee benefits. The estimate is nonpublic data, as defined in section 13.02, subdivision 9, until the day after the deadline for receipt of responses under paragraph (b), when it becomes public data and must be published in the State Register. For the purpose of the estimate, an exclusive representative of agency employees, any time before the final day for the receipt of responses under paragraph (b), may propose amendments to any relevant collective bargaining agreement to which it is a party. Any amendments take effect if they are subsequently approved by both parties to the collective bargaining agreement and if they are necessary to reduce the cost estimate determined under this paragraph below the cost of providing the service under a privatization contract.

(b) After soliciting and receiving responses, the agency shall publicly designate the responder to which it proposes to award the privatization contract. In making its selection, the agency shall consider the responder's past performance and record of compliance with federal and state laws and local ordinances. The agency shall prepare a comprehensive written estimate of the cost of the proposal based on the responder's bid, including the cost of a transition from public to private provision of the service, any additional unemployment and retirement benefits resulting from the transfer, and costs associated with monitoring the proposed contract. If the designated responder proposes to perform any or all of the desired services outside the state, the commissioner of revenue shall determine, as nearly as possible, any loss of sales and income tax revenue to the state. The agency shall include that amount in the cost estimate prepared under this paragraph.

(c) Before awarding a privatization contract, an agency head or a governing body of a metropolitan agency or municipality shall certify in writing that:

(1) the agency head or governing body has complied with this section and other applicable law;

(2) the quality of the services to be provided by the designated responder is likely to equal or exceed the quality of

services that could be provided by agency employees;

(3) the cost of the proposed contract, including all costs identified under paragraph (b), will be at least ~~15~~ 10 percent lower than the cost determined under paragraph (a), taking into account any amendments to a collective bargaining agreement proposed by an exclusive representative; and

(4) that the proposed privatization contract is in the public interest.

Subd. 4. [DATA PRACTICES.] A privatization contract must comply with section 13.05, subdivision 11. All data relating to a privatization contract are public data. If the contracting agency is a state or metropolitan agency, it shall submit copies of all public data associated with the privatization contract to the legislative auditor. If the contracting agency is a municipality, it shall submit copies of all public data associated with the privatization contract to the state auditor.

Senator ..... moves to amend S.F. No. 796 as follows:

Page 1, line 12, delete "including" and insert "excluding"

Page 1, line 13, delete "but not" and insert "and"

Page 2, line 1, after "services" insert ", except services provided by persons licensed under sections 326.02 to 326.15,"

Page 2, line 3, delete everything after "agency"

Page 2, delete line 4

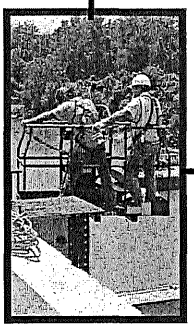
Page 2, line 5, delete everything before the semicolon

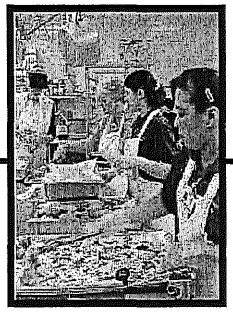
Page 2, line 20, after "16C.08" insert ", 16C.09, 43A.047,"

SF 796

Elliott Sclar, Ph.D.

May 18, 2004





Privatization in Massachusetts: An Evaluation of the 1993 Privatization Law ("The Pacheco Law")

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Table of Contents

About the Author

Elliott Sclar, an economist and urban planner, is the Director of graduate programs in Urban Planning at Columbia. He has published widely on the subject of privatization of public services. Professor Sclar's book on privatization, "*You Don't Always Get What You Pay For: The Economics of Privatization*," was published by Cornell University Press and won the Louis Brownlow Award for the Best Book of 2002 from the National Academy of Public Administration and the 2001 Charles Levine Prize from the International Political Science Association.

Introduction

In 1993 Massachusetts passed a law requiring state agencies (excepting some specifically exempted organizations) to concretely establish a cost savings to taxpayers prior to contracting out any service previously provided through in-house labor. This law, the first of its kind, essentially mandated that good management practices had to accompany privatization. The law required subject agencies to submit contracting plans to an independent audit, conducted by the Office of the State Auditor (OSA). Furthermore, the Privatization Law (Chapter 296 of the Acts of 1993, sometimes also called the Pacheco Law or the Pacheco-Menard Law) required that a cost comparison, that would accurately establish the savings taxpayers could expect to derive from any such contracting out action, accompany any proposal to outsource work currently done by state employees. The privatization solution to which this law was responding was born of a time when state budgets were being squeezed by simultaneous economic downturn and Federal reductions in fund transfers. A similar economic climate today may account for the renewed focus on privatization and points to the need for the Privatization Law to continue to bring rational order to privatization efforts.

> *The privatization law has created an atmosphere where state agencies are forced to think like private firms as opposed to assuming that a private provider working under contract will automatically solve any problem at a lower cost. It compels state agencies to think through the pitfalls that lie ahead and prods them to be sure they are making the highest and best use of scarce resources in difficult fiscal times.*

Privatization, as it emerged in the early 1980s, held out the promise that taxpayers could have their cake and eat it. That is to say that by substituting private service providers for public employees, it would be possible to have high quality public services and lower costs and presumably lower taxes. This view, rooted in a libertarian ideology that distrusts government in general and views public employees in particular as inefficient, turns to a simplified model of a competitive market to justify the approach. But government is neither simply "good" nor "bad" and public employees do not go to work everyday to do a bad job. The vast majority of them are hardworking citizens dedicated to promoting the common good through their public service. Moreover the contracting out that would substitute for public service is itself not free from inefficiency and corruption. However in the 1980s and early 1990s the attraction of this simple solution was very powerful. Since then as difficult and costly experiences with privatization have accumulated both domestically and internationally a more balanced view has emerged. It holds that privatization is sometimes a good thing and sometimes not. But regardless of which

way a service is delivered its effectiveness depends upon good public management. Even the World Bank, an early and ardent proponent of privatization has begun to change its stance. It now argues that more important than the way the service is delivered is the managerial quality of the public agency responsible for its delivery.[1] The Massachusetts Privatization Law was an early exemplar of how to achieve this balance in public contracting.

In an era when public managers are looking with a more critical eye at privatization, the Massachusetts Privatization Law stands as a first-in-the-nation attempt to legislate sensible contract decision making for public agencies. The law has effectively helped the state save over $1.2 million per year and, more importantly, to avoid at least $73 million in bad contracts.[2] The process set up by the law effectively provides state agencies with assistance in measuring the likely impact of contracting decisions and helps them to ground privatization in reality.

This report clearly demonstrates that the Massachusetts Privatization Law is effective. The Law enables agencies that have a compelling, cost-saving way to effectively contract out a public service without sacrificing quality to do so.

Since 1993, various subject agencies and organizations have attempted to contract out 8 separate services.[3] Of these, the OSA approved six applications and two were rejected based on either a failing to adequately comply with the Privatization Law, or a failure to adequately establish true cost savings to the taxpayers. A review of the cases demonstrates that winning approval for contracting out a service is not a matter of institutional size, ability to hire consultants, or contracting experience. Rather the Privatization Law process simply rewards good management and good management processes. Operations as large as the Massachusetts Highway Department and as small as Holyoke Community College have successfully negotiated the required process and have contracted out services with a subsequent financial benefit to state taxpayers. A review of the various proposals submitted to the OSA demonstrates that the process works; it creates an atmosphere that encourages good management. The process does not discourage good contracting decisions, but avoids bad ones. It compels public managers to enter into a dialogue with an independent and competent public auditor to justify change in the name of either cost savings and/or improved services.

This report reviews the Privatization Law and its consequences. Four of the cases reviewed by the OSA are examined in-depth (two approved and two denied cases). These case studies and the general review of the impacts of the law are used to determine the efficacy of the law as it stands, and to derive recommendations for improvements to the current review system.

This report clearly demonstrates that the Massachusetts Privatization Law is effective. The Law enables agencies that have a compelling, cost-saving way to effectively contract out a public service without sacrificing quality to do so. The Law avoids being too cumbersome for smaller agencies to handle. Agencies can successfully complete the review process without outside legal or accounting assistance. The Privatization Law is effective because it forces state agencies to carefully consider the fiscal and service impacts of contracting decisions, just as any private firm would do. Taxpayers are spared the cost and service burden of privatization experiments, and agencies that have not carefully examined the impacts of a potential contracting solution are discouraged from doing so without first examining the finer detail.

It is easy to understand why managers in the public and private sectors can become excited over new ideas. Often the fight to implement change then pushes managers to oversell the value or cost savings associated with these ideas. The Privatization Law provides a needed counter balance. It gives subject agencies a workable process through which to ground their concepts and ideas in fact, and to ensure that a simple basic, "back of the envelope" calculation is not substituted for a careful managerial and financial analysis. The privatization law has created an atmosphere where state agencies are forced to think like private firms as opposed to assuming that a private provider working under contract will automatically solve any problem at a lower cost. It compels state agencies to think through the pitfalls that lie ahead and prods them to be sure they are making the highest and best use of scarce resources in difficult fiscal times. It avoids the squandering of public funds on untested ideas that has plagued privatization efforts in so many other places. Massachusetts voters and legislators should be proud of their ground-breaking law.

Issues Shaping the Current Debate

The term privatization has several different and highly case specific meanings. One of the most common meanings refers to an expanded reliance on outside contractors to supply all or part of public services. Contracting, regardless of whether it is public or private involves creating complex ongoing relationships between two parties that often have very different goals and missions. In the case of the multiyear contracts, which typify much of public sector contracting, the process is further complicated because there are a large number of factors that only reveal themselves in the fullness of time. Many times these factors, which can transform what initially seemed like a good idea into a nightmare, can be anticipated and avoided by a more through evaluation and questioning from a neutral third party.

The long-term nature of public contracts means that these contracts sit in the realm of what economists call "incomplete contracting."[4] It is a realm in which the information that the two parties (agency and contractor) have is typically unequal and in which the interests of contractors and the interests of the agency can greatly diverge. In these instances it is important that decision makers have analytic tools that allow them to go beyond price and look at the larger transactions costs of the new relationship. Transactions costs economics suggests that in contracting situations in which the parties have different knowledge bases and understandings about the product in question and there is future uncertainty because of the length of time of the relationship, the best decisions that either can make are problematic. Moreover contractors acting (properly) on their self interest in situations in which the instructions are not clear cut often make decisions that favor their interests over those of the state. These problems are especially prominent in cases where service outcomes are ambiguous such as care for the mentally ill or developmentally disabled. In these cases the transactions costs of supervising and maintaining an ongoing relationship with an outside contractor become significant.[5] That, by itself, is not a reason to not consider a contract, but it is reason to engage in a rigorous analysis that factors in the transactions as well as the direct contract costs before any decision is made. It is that analysis that the Privatization Law requires.

Whether services are contracted or directly supplied the only way to ensure that taxpayers get value for the money spent is to ensure that public mangers are required to engage in a process that sets out all the pertinent knowable facts at the outset. That is the larger lesson the entire world is now learning from the many failed attempts at privatization and deregulation that have been underway over the past two decades. The harsh and costly lessons that the citizens of nations like Argentina[6] are learning the hard way from their total embrace of privatization and deregulation should teach us that while there is a place for privatization and deregulation in the public sector there is also an equally, if not more important place for rigorous public oversight and sound regulation.

The Massachusetts Privatization Law was enacted in a political climate that encouraged frequent and poorly-considered privatizations.

The Massachusetts Privatization Law was enacted in a political climate that encouraged frequent and poorly-considered privatizations. These privatizations were enacted quickly and, "without legislative approval or oversight by the newly elected Weld administration."[7] Though it was often claimed that extensive savings were achieved through these almost random forays into privatization, cost data was never adequately tracked prior to privatization to do a credible job of comparing the public and private costs. Furthermore, significant questions regarding service quality were raised. Concerns that the state was privatizing away core services,

losing competencies in its core service provision areas, and possibly wasting taxpayer money led to the 1993 passage of the Privatization Law.

Independent outside auditors taking a more measured look at the MassHighway privatization judged it a money-losing venture. According to the Massachusetts House Post Audit and Oversight Bureau the first year's report showed that although the contractor complied with its contractual obligations, its administration of highway maintenance was of low quality and cost about $1.1 million more than the pre-privatization work. A review by the OSA also concluded that the state lost money. The OSA put the loss at $1.4 million.

The type pf problem that arose before the passage of that law can be illustrated by recalling one of Governor Weld's first hasty privatizations in the Massachusetts Highway Department (MassHighway). The pro-privatization atmosphere of the early Weld period was such that it was assumed, as opposed to determined, that the private sector could do it better. Governor Weld began the push to privatize MassHighway in 1992. Because some of the types of services that MassHighway performed (such as pothole filling and grass cutting) were widely available through small private contractors, this seemed at first glance to be a case where a competitive market of small suppliers did in fact exist. The problem was that highway maintenance is not simply a matter of stringing a bunch of simple tasks together. Rather it is a complex problem in managing these tasks and timing them. So when MassHighway let the project for bid, it was not the small landscape firms and paving contractors who came forward. Instead it was the very large and very well connected state highway construction firms who customarily divvy up all the state contract construction work who bid on the contract. Moreover, because they were being asked to do something they never did before, manage a regional highway maintenance operation, their bids ranged widely from a low of $3.7 million to a high of $8.1 million. The Weld Administration took the lowest bid and declared the project a success.

However independent outside auditors taking a more measured look at it, judged it a money-losing venture. According to the Massachusetts House Post Audit and Oversight Bureau the first year's report showed that although the contractor complied with its contractual obligations, its administration of highway maintenance was of low quality and cost about $1.1 million more than the pre-privatization work.[8] A review by the OSA also concluded that the state lost money. The OSA put the loss at $1.4 million.[9] To counter this bad publicity, the Weld Administration asked their privatization consultants Coopers & Lybrand to prepare another evaluation. The C&L "assessment," unsurprisingly concluded that, not only did the state not lose money but that it actually saved $2.5 million. [10] Although it is impossible to know the exact truth after the fact, my own assessment of the various analyses is that the state probably did lose money. The word "probably" is the

operative problem. It is impossible to know what happened because there was no careful cost analysis done by the Commonwealth before the fact. Moreover the contract did not adequately specify performance expectations. While the contract called for collecting litter and mowing the medians, it did not specify the order. Thus when the House auditors went to inspect the completed work they found mowed litter. Despite the protestations of the Weld Administration the best that can be said for the effort is that it was not a clear success. However at worst, it may have been a costly failure.[11] It was because of experiences such as these that the Legislature enacted the Privatization Law. The new law required measured and deliberative reason in an environment in which public money was being rapidly thrown at a series of untested privatization schemes.

The law continues to be relevant because it encourages careful consideration of privatization. The framework established under the law creates a process for agencies to follow and a dialogue with the OSA that grounds management decisions in the facts of costs and benefits. The Law does not prohibit contracting out. The law is not too onerous for small agencies to successfully privatize services. At its essence the law requires an agency to fully research and consider the cost and service impacts of contracting out services currently performed in-house prior to making a contracting decision. This is good for Massachusetts, its citizens, taxpayers, and state employees. It ensures that services are not contracted out at a loss. It ensures that service standards are at least maintained, if not improved. The law requires that agencies develop a credible case and a solid management plan for contracting out services. This is the type of behavior one would expect to see in the private sector. Firms carefully consider the impact of contracting out decisions. It is their fiduciary responsibility to their stockholders. Sometimes firms contract-out, sometimes they continue to perform work in-house. But successful firms always consider the relative costs and benefits of doing so prior to making such a decision. Massachusetts' Privatization Law provides an important avenue for state agencies to perform due diligence prior to making a contracting decision.

The Massachusetts State Privatization Law

The law itself lays out a process for evaluating the cost impact of proposed privatizations and provides a framework that ensures this evaluation is fair and accurate. The law ensures good governance by declaring allowable only those privatizations that will clearly save taxpayer money while continuing to provide comparable service The law excludes several types of contracts from review, including those valued under $100,000, those previously approved through the Privatization Law process (rebids), and those consisting solely of legal, management consulting, planning, engineering or design services. Furthermore, the law only

applies to cases where an agency proposes to use "private contractors to provide public services formerly provided by state employees."[12]

Following these exceptions, the Privatization Law lays out seven requirements that subject agencies must meet in order to legally privatize a function that falls within the purview of the law. First, (1) the agency must prepare a statement describing the service or function to be privatized. This statement must include the specific quantity of work required and quality standards to be met. The agency then issues a request for proposals from contractors to meet these requirements.

The law then requires (2) that bidding contractors (respondents to the RFP) pay employee wages at least equal to the entry level of those paid to current state employees, including at least a portion of health insurance costs for coverage similar to that which the state offers employees that work more than 20 hours per week. Third (3), the law requires contractors to offer available positions to qualified employees being displaced by the privatization who "satisfy the hiring criteria of the contractor."

Fourth (4), the privatizing agency must prepare a written estimate detailing the costs the agency would face if the service in question were performed in the most cost-efficient manner. Fifth (5), current employees must be allowed to submit their own bid for providing the service in question. Sixth (6), the privatizing agency must analyze the winning bid (lowest cost bidder) and provide to the OSA data detailing the bid price, and costs associated with the transition to contract provision. Decreases in income tax revenue must also be included, if the contracting agency plans to use out-of-state employees.

Since 1993 the OSA has reviewed proposals for the privatization of eight separate state services. Of these, six were approved and two denied.

Finally (7), The Agency must certify that the quality of the services to be received through a contract will both meet the agency's needs and will at least meet the level of in-house provision.

Once these requirements are met, the OSA has 30 days to conduct a review and to determine whether the requirements have been adequately met, and whether the privatization in question will indeed save taxpayer money. If the agency has met their obligations under the law, and the privatization is a cost saving measure, the winning bid is allowed.

Privatization Cases Under the Privatization Law

Since 1993 the OSA has reviewed proposals for the privatization of eight separate state services. Of these, six were approved and two denied. The majority of these cases were reviewed in 1996. Since that time two applications have been reviewed. One was denied and one approved. The table below lists all eight cases, their dates of review and whether they were approved or denied.

Cases Review by the OSA 1993-2002

	Date	Case	Approved /Rejected
1	1/96	Department of Employment and Training – Storage and Retrieval of Records	Approved
2	6/96	MBTA - Real Estate and Property Management	Approved
3	8/96	Massachusetts Highway Department – Highway Maintenance in Central and Western Massachusetts	Approved
4	9/96	Holyoke Community College - Food Services	Approved
5	12/96	MBTA – Bus Shelter Maintenance	Rejected
6	12/96	Massachusetts Highway Department – Highway Maintenance in Worcester County	Approved
7	6/97	MBTA – Operation and Maintenance of Bus Routes Originating in Quincy and Charlestown	Rejected
8	6/00	U. Mass – University Store	Approved

This record demonstrates a 75% success rate for applying agencies, though it should be noted that some cases were initially denied for failing to adequately meet the requirements spelled out in the law, and were subsequently approved upon resubmission.

As each case reviewed and approved by the OSA must include cost comparisons, it is possible to generate an estimate of the cost savings generated through the application of the Privatization Law. The table below lists the estimated savings associated with each approved privatization.

OSA Determined Savings Generated by Approved Cases Under the Privatization Law

Case	Savings per Year
Department of Employment and Training – Storage and Retrieval of Records	$ 88,000
MBTA - Real Estate and Property Management	$ 41,000
Holyoke Community College - Food Services	$ 55,000
Massachusetts Highway Department – Highway Maintenance in Worcester County	$ 830,000
U. Mass – University Store	$ 260,000
Total	**$ 1, 274,000**

As the table above demonstrates, the Privatization Law has enabled over $1.2 million in annual savings. This figure represents the value of good contracting to the taxpayers of Massachusetts. However, it does not highlight the value of bad contracts avoided. The requirements of the Privatization Law have also not prohibited smaller institutions, like Holyoke Community College from complying. However, it is extremely likely, given the pace of privatization prior to the enactment of the law, that it has prohibited many poorly thought through privatizations from occurring. The net effect of the Privatization law is that it provides subject agencies with an avenue through which to perform a solid assessment of the value of contracting prior to entering into an agreement, and it establishes a dialogue between the OSA and those agencies, which can be used to proactively manage those costs.

Assessment of the Impacts of the Current Law and Case Studies

Overview

In this section I review four of the eight proposals evaluated by the OSA under the Privatization Law. The purpose of this review is to understand exactly how the law works in practice. These reviews also highlight how the law has provided a general guideline to state agencies, discouraging bad privatizations in general.

The four proposals considered here are the approved Holyoke Community College Food Services privatization, the approved MBTA Real Estate and Property Management privatization, the denied MBTA Bus Shelter Maintenance privatization and the denied MBTA Bus Route Operation and Maintenance privatization. In each case both the proposal and the OSA's determination are reviewed. If applicable, cost

savings associated with each privatization are listed. The two denied cases are examined to determine why they were unsuccessful, and to examine how each case might have been improved. The two denied cases were chosen because they are the only cases reviewed by the OSA to have been denied. The Holyoke and MBTA Real Estate and Property Management cases were selected because they represent two agencies of different sizes and resource levels.

The Privatization Law has enabled over $1.2 million in annual savings.

Each case study highlights the exactness of the process used by the OSA to reach a determination of cost savings. It is clear that the successful subject agencies did their homework in terms of both present costs and contracting alternatives. Agencies that found genuine cost savings to be derived through privatization while maintaining consistent service were allowed to privatize. The two cases where the privatization was disallowed provide insight into the more complex operations of the review process.

The most important finding from all four cases is that they highlight the dynamic dialogue that took place between the subject agencies and the OSA. The greatest strength of the Privatization Law is the way in which it compels outside review of the subject agency's management. It is clear, for example, in the MBTA Route Privatization case reviewed below, that the management of the MBTA fell in love with an interesting idea based on "back-of-the-envelope" calculations. The dialogue between the MBTA and the OSA set up by the law grounded that idea in the facts and ultimately avoided enormous unnecessary costs to the taxpayers of the Commonwealth.

Case Study 1: Holyoke Community College Food Services

Introduction

In 1996, Holyoke Community College released a request for proposals to privatize its food services operation. The college is a two-year public community college located in Holyoke, Massachusetts. In 1996, the college had approximately 3,500 students attending day classes and 2,000 attending evening and Saturday classes. Approximately, 1,000 students were enrolled during the summer. At the time the RFP was released, the school employed 360 full-time faculty and staff, supplemented with part-time employees. The college is a commuter school, and does not have dormitories. Dining services were staffed with state employees, and the service was run in conjunction with the School's Hospitality Management

Program. Students would work in the school's cafeteria as part of their curriculum, and costs were assigned to the program when appropriate. Food services at the college consisted of a dining area in the Campus Center and a separate café on-campus open during class hours. The service also provided catering services on demand for different special events.[13]

This case indicates that small governmental entities such as Holyoke Community College are able to comply with the Privatization Law in privatizing operations for cost savings.

Holyoke College made the decision to privatize food services because the service was consistently losing money. In fiscal year 1994, the service lost $56,333. In 1995, the service lost $178,311 and in 1996 the last fiscal year before the RFP was released, the service lost $119,661.[14]

The RFP asked potential contractors to maintain the current year round operation, hours, and the quality of the program. In addition, it was stated that preference would be given to bidders who would be willing to work cooperatively with the Hospitality Management Program but there was no requirement that the program be integrated with the department as in the past.[15] The RFP was released without notifying the OSA but prospective bidders were asked to consider that the privatization law could apply. The College's Dining Services Proposal Review Committee reviewed three bids. Two of the bids were from private firms, and the third was an in-house bid submitted by the director of dining services. Fame School and College, Inc. (FAME) was chosen over both Grace Food Service Associates, Inc (GRACE) and the in-house proposal. In the recommendation section of the committee's memorandum to the College's Vice President for Administration and Finance it was stated that FAME was chosen, "based on the guaranteed financial return to the College in their proposal." It was then written that this recommendation was, "based on the underlying assumption that the Pacheco Bill will apply; should Pacheco be judged not to apply, the committee's preference would then be Grace Food Service Associates, Inc."[16] The memo indicates that the committee was more comfortable with the Grace proposal because of their "extensive community college experience."[17] The memo also included an evaluation matrix that indicated the level of financial return estimated or promised to the college. The Fame proposal guaranteed an 8% commission or $35,000, and the GRACE proposal guaranteed a 2% commission or $9,000. The in-house proposal did not offer a guarantee to the college but projected a $30,898 return to the college.[18]

Privatization Proposal

As was noted, the college released the RFP without notifying the OSA, contending that the proposed outsourcing was not subject to the privatization law.[19] AFSCME Council 93 objected to the release of the RFP on the grounds that it violated the privatization law, and requested an inquiry from the OSA.[20] On July 11th, Holyoke College officials submitted a proposal for privatization of campus food services to the OSA but it was deemed incomplete on the grounds that it did not indicate the designated bidder's compliance with certain state and federal statutes and because the proposal was not signed by the College President or the State Secretary of Administration and Finance.[21] A subsequent August 23rd proposal was judged complete by the OSA and review of the proposal began on August 26, 1996.[22]

In its proposal to the OSA, the college estimated that the winning bid by FAME School and College Inc. would yield net revenues of $37,650 while efficient operation by the school would yield a net loss to the school of $32,944.

Auditor's Determination

On September 26, 1996 the OSA determined that Holyoke Community College had complied with the privatization law in awarding a contract for management of food services activities.[23] The determination letter outlines the college's compliance with the statutory provisions of the law including wage rates, health insurance requirements, food service quality, and the hiring of qualified agency employees. In terms of cost impact, the OSA determined that the estimated cost of the work performed under contract would be less than the estimated cost of the work performed with state employees. Specifically, privatization of food services was found to yield net revenues of $29,880 while continued operation by the college would result in the loss of $25,314.[24] The total savings generated by the privatization was then estimated as $55,194, the sum of the estimated revenue from privatization and the loss avoided from continued in-house operation of dining services. This figure differed from the total savings figure of $70,594 submitted by the college as part of the proposal because the OSA made five cost adjustments. Two adjustments were made to the in-house cost estimate and three were made to the privatization contract. The cost comparison table below shows the cost and revenue figures submitted by the college and the adjustments made by the OSA. Total costs for the in-house operation include direct and indirect costs while total costs for the private operation equal Holyoke College's costs for contracting food services, including contract administration, transition costs, and unemployment insurance. Total revenue for the in-house operation includes all sales while revenue for the contract operation is the projected contract price to the school (8% of sales or $35,000).

Cost Comparison	**In-House Operation**	**Privatized Operation/Performance Costs**
Total Costs	$568, 944	$2,350
Total Revenue	$536,000	$40,000
Net Profit	$(32,944)	$37,650
Audit Adjustments	$(7,630)	$7,770
Adjusted Cost Net Profit	$(25,314)	$29,880
Total Savings		**$55,194**

Conclusion

Initially, Holyoke Community College attempted to contract out the operation of food services to an outside vendor without a review by the OSA. It is unclear exactly why the college wanted to avoid the process but it does not appear that there was a protracted fight over the issue. Holyoke College submitted its proposal to the OSA a little over two months after the OSA began its inquiry into Holyoke's RFP. In internal memos included with the college's proposal, it is revealed that the Grace Food bid would have been chosen if the Privatization Law did not apply, even though the bid guaranteed $26,000 less than the winning Grace proposal and a 2% commission on revenues compared with 8% in the FAME proposal. In this case, it is clear that the privatization law had an effect throughout the entire RFP process, requiring the college to ensure compliance with the law in its bidding process and influencing the selection of the FAME proposal because the bid guaranteed the most cost savings over in-house operation.

In approving the college's choice of FAME, the OSA verified compliance with all aspects of the privatization law. The OSA evaluated financial figures submitted ensuring that only avoided costs were included in evaluating the loss expected from continued in-house operation of food services, and that all of the costs of contracting were included in estimating net revenues from the college's privatization proposal. Accordingly, the OSA made five adjustments to the financial figures submitted by the college in calculating a total estimated savings of $55,194 in privatizing food services compared with continued in-house operation of the function.

This case indicates that small governmental entities such as Holyoke Community College are able to comply with the Privatization Law in privatizing operations for cost savings. Additionally, there is no evidence that the college relied on outside expertise to navigate the OSA's process in complying with all aspects of the law. In this case, the law did not create a barrier, but rather guided the choice of a contractor that would maintain quality standards and employee benefits while saving the

greatest amount of money as compared with continued in-house operation of food service provision. Holyoke CC was able to use the guidance provided by the OSA to comply with the law and make a good management decision.

Case Study 2: Massachusetts Bay Transit Authority Real Estate Department

Introduction

On December 18, 1995, the Massachusetts Bay Transit Authority (MBTA) issued a request for proposals to privatize their property management and real estate development functions. At that time the MBTA sent notification, and a copy of the RFP to the OSA, signaling the intent of the agency to outsource its Real Estate Department's major functions.[25]

> *In this case, the OSA determined there could be savings of $206,257 as a result of the privatization and the proposal was approved. In the absence of the OSA's review, though, an inappropriate accounting methodology could translate into a privatization that costs additional money compared with continued government provision.*

The MBTA operates the fourth largest mass transportation system in the country with operations concentrated in the Boston Metropolitan Area. The agency's service area has a population of approximately 2.6 million in an area of 1,038 square miles, spread among 175 municipalities in two states. The agency operates 155 bus routes, 3 rapid transit lines, 5 streetcar routes, 4 trackless trolley lines, a commuter boat, paratransit services, and 13 commuter rail routes.[26]

The primary mission of the MBTA is the provision of mass transportation, but the Authority has considerable real estate holdings related to its transit services. For example, it owns right-of-ways maintained for its commuter rail operations, and space within transit stations. At the time of submission to the OSA, the Authority was the fourth largest landholder in Massachusetts, with total holdings estimated at 4,000 parcels.[27] The Authority's Real Estate Department (RED) managed real estate holdings with responsibilities including the leasing of concessions, sale of surplus property, and initiation of joint development projects proximate to major transit stations.[28] These functions and responsibilities were undertaken with 27 staff divided into four groups: development, disposition, facilities management, and acquisition. Additionally, the department received substantial support from the legal department with five full-time attorneys assigned to real estate issues, and the Revenue Collection Department with one employee dedicated to real estate accounts receivable and collections.[29]

The Decision to Privatize

As previously stated, the MBTA is one of the largest landowners in the commonwealth but the primary mission of the Authority is transit provision. Concern that real estate assets were not being maximized to support this core mission precipitated the hiring of Kenneth Leventhal & Company to undertake a management study in 1993. The report recommended strategies to reassert the importance of the Real Estate Department within the Authority's mission through organizational, operational, and systems improvements. For example, the report recommended setting increased annual revenue goals for the department and the creation of a separate data management system for leases as opposed to using 20-year old tenant ledger information technology.[30] As a follow-up in November 1995, the Audit Department of the MBTA hired E&Y Kenneth Leventhal Real Estate Group to audit the 20 year-old tenant ledger managed by the MBTA's Department of Revenue. This ledger is composed of 862 entries cataloging the Authority's leases. The study found that the tenant ledger was not being managed to maximize lease revenues.[31] Eighty-three percent of the leases were found to be under performing, 580 tenants were found to be operating without a lease, and rents were not adjusted after 1980 on over 300 leases.[32]

According to the Authority's submission to the OSA, the findings of these two reports confirmed suspicions that the Real Estate Department was not performing well, and also served as a basis to justify the outsourcing of real estate management. In a management study included as part of the MBTA's official submission to the OSA it is stated with reference to the tenant ledger review, "in light of these findings, and others detailed in the appendices, the perception that the property management and development functions would be handled much more efficiently and effectively by an outside contractor was confirmed". Further, it stated that, "the results clearly show that the department has been performing at unacceptable levels at some considerable cost to the Authority."[33]

The RFP and Selection Process

The RFP asked prospective bidders to provide services in two main areas: real estate asset management and formulation of strategies to plan, finance, and construct 5,000 parking spaces over the subsequent five years. The latter aspect of the RFP was to help fulfill the MBTA's commitment to construct 20,000 parking spaces by 1999 as part of mitigation for Boston's Central Artery roadway project. The designated contractor would essentially perform the functions of the Real Estate Department, with the exception of new property acquisition, which would continue to be performed in-house by the Authority.[34] Accordingly, the RFP implies that the six

employees and legal support currently working in the acquisition division of the department would be retained. Other legal support dedicated to other divisions of the department, and support from the revenue department would be outsourced as part of the contract.[35] The department would also maintain management and oversight functions to act as liaison to the Authority's Board of Directors and operating divisions.[36] The initial contract would be bid out for five years, with plans to subsequently re-bid every three years.[37]

The RFP noted that in fiscal year 1995, the Authority collected $4.0 million in lease income, and $1.6 million in property sales for a total of $5.6 million in net revenues. For FY 1996, it was estimated that the authority would collect a total of about $6.5 million in net revenue.[38] Total personnel costs in fiscal year 1995 totaled $1,203,121.[39] Clearly, though it was implicit in this offering that the authority believed revenues were not being maximized.

There were four responses to the RFP, with three submitted by private consortiums and one union response. All four were numerically ranked using bid criteria developed by the MBTA. There were however two evaluation forms: one for the private firms, and one for the unions. In its submission to the OSA, the MBTA stated that a separate evaluation form was made for the union response because, "the union response was, at their discretion, not required to address the disadvantaged business enterprise requirements or the design, financing, management of construction, and operation of the parking garage." It is further stated that the points allocated in these categories were spread over the other evaluation categories.[40]

The MBTA selected a consortium of companies called Transit Realty Associates LLC. This consortium consisted of two teams of companies to provide both real estate services functions and parking garage design, construction, and management functions respectively. The team scored 82.3 points out of 100 and offered a fixed fee price of $6.730 million that was reduced to $6.178 million during contract negotiations.[41] In addition, it was agreed that there would be additional money paid on a performance basis dependent on property sales. The second place team, Codman Corporate Services Inc, had the lowest fixed fee price, $6.702 million and scored 74.1 out of 100 points. The third place team, EDTAM, Co., LLC. Scored 69 out of 100 points and bid the highest price for the contract, $8.286 million dollars. The Union bid finished fourth among the bids with a score of 31.1 out of 100 points. The Union submitted a bid of $2.483 million for salaries only. In the submission to the OSA, the MBTA claims that the union made this bid based on eliminating staff from the department but did not anticipate laying off employees from the Authority. Therefore it is stated that since there would be no layoffs, "there are no anticipated cost savings to the Authority," and total cost was re-calculated to be $10.154 million.[42]

There was no detailed rationale in the submittal to the OSA regarding the selection of Transit Realty over the other bidders. Transit Realty did submit a higher initial bid than the second place finisher, but this initial figure was lowered below the Codman bid in contract negotiations. The winning team also initially included commissions on the sale of properties in the bid, but this was changed to performance bonuses in contract negotiations.[43] Performance bonuses and commissions were included within the MBTA RFP[44]. There is a detailed rationale on why the union bid was not chosen. In the executive summary of the submission to the OSA it is stated of the union bid: "The proposal is so lacking in detail that it could almost be deemed non-responsive.[45] In general, the MBTA did not accept that the union bid would help avoid costs and the bid excluded a response to the parking space development aspect of the RFP.[46]

Privatization Proposal

On April 24th, 1996, the MBTA submitted its privatization proposal to the OSA. On April 29th, 1996, the OSA conditionally began is 30 business day review of the proposal as the initial proposal was deficient in several areas.[47] The MBTA disputed the time taken in the review period, and attempted but then held off of awarding the contract before the OSA had rendered an opinion.[48]

The proposal itself included nine parts including the proposed contract, cost forms, summary of bids received, and a management study. The RFP included privatizing existing functions of the Real Estate Department and new functions as recommended in its management study such as changes to lease management and property inventory procedures. Therefore, the MBTA presented in its cost forms existing in-house costs and costs of additional services to document the avoidable costs of additional functions and changes recommended in the management study. There were, however, no costs related to the parking garage program included because the program was to be funded from Authority revenues or from project-specific funding.[49]

Throughout the OSA's review period, Local 453 of the Office & Professional Employees International Union corresponded with both OSA and the MBTA regarding alleged deficiencies in the submission. These alleged deficiencies included using un-adjusted 1992 wage rates and claiming savings for the elimination of positions that were vacant.[50] Both these issues were addressed in the OSA's adjustment of the MBTA's cost forms in reviewing the privatization proposal.

Auditor's Determination

On June 10th, 1996, the OSA issued a determination concluding that the MBTA complied with Massachusetts' privatization law, Chapter 296 of the Acts of 1993 in awarding a privatization contract for the management of its real estate activities. The determination details the MBTA's compliance with statutory requirements of the law including wage rates, health insurance requirements, service quality, and the hiring of qualified agency employees. By approving the MBTA's proposal, the OSA determined that the estimated cost of work performed under contract by Transit Realty would be less than the estimated cost of work performed with state employees. Privatization of most real estate functions of the MBTA was determined to cost $8,526,886 in performance costs representing a cost savings of $206,257 compared with the estimated cost of continuing to perform the work in-house with state employees.[51] This cost savings breaks down to an estimated annual savings of $41,251 over the five-year life of the contract. This total savings figure is significantly less than the figure provided by the MBTA because of ten adjustments made by the OSA. The MBTA, in its proposal, claimed saving and gain to the authority of $7,583,460. This figure includes a $5,184,000 revenue enhancement for expected lease revenue.[52] The OSA, however, subtracted this projected revenue enhancement, from the performance costs of the privatization contract. With regard to this adjustment, the OSA stated, "there is no acceptable or demonstrated reason why MBTA management cannot increase revenues by holding itself to the same standard of performance expected from the contractor and by using the same updated tenant that will be used by the contractor."[53]

Cost Comparison	**In-House Operation**	**Privatized Operation/Performance Costs**
Total Costs	$10,154,208	$7,754,740
Total Revenue	Not identified	$5,184,000[54]
Net Profit	N/A	N/A
Audit Adjustments	($1,421,065)	$5,956,146
Adjusted Cost	$8,733,143	$8,526,886
Total Savings		**$206,257/$41,251 per year**

Accounting Methodology

The OSA's cost savings figure represents a difference of over $7 million dollars compared with the MBTA estimate, indicating differences in accounting methodology, and possibly managerial philosophy. The largest audit adjustment concerned a projection by the MBTA that revenue collections would increase by over $5 million if the contract was awarded to Transit Realty and recommendations from the two management studies were implemented. In assigning increased revenues to the privatized operation with the improvements recommended in the management study and not assigning increased revenues to the in-house operation, the MBTA is essentially arguing that recommendations cannot be implemented by state employees. In contrast, by subtracting increased revenues from the proposed privatized operation of real estate services, the OSA is arguing that there is no demonstrated reason why the MBTA cannot improve in-house revenue enhancing performance as recommended by its own management studies. This significant audit adjustment could simply represent a difference in philosophy about the effectiveness of public employees between the MBTA and OSA. Regardless, it indicates different accounting methodologies were employed, with the MBTA projecting that private operation would allow for improved performance and the OSA strictly calculating avoidable and performance costs. The end result, an approved privatization proposal, is the same but the approved cost figures follow the OSA's methodology and the savings projected are much more modest. The significant cost difference is indicative of how different accounting methodology can significantly change calculations of cost savings with respect to privatizations. In this case, the OSA determined there could be savings of $206,257 as a result of the privatization and the proposal was approved. In the absence of the OSA's review, though, an inappropriate accounting methodology could translate into a privatization that costs additional money compared with continued government provision.

Conclusion

In December 1995, the Massachusetts Bay Transportation Authority issued an RFP for operation of its real estate functions, as well as planning and construction of 5,000 parking spaces in central Boston. The MBTA sought this privatization to improve the management and financial return of its extensive real estate assets. The release of the RFP followed two independent management studies of the Authority's management of its real estate assets in 1993 and 1995. The 1993 study concluded that real estate assets were not being maximized for many reasons including lack of appropriate management systems. The follow-up 1995 study focused on

management of the Authority's tenant ledger and the results indicated that the Authority was unable to implement recommendations made in the 1993 study.

The MBTA's submission to the OSA included detail on the reasons for privatization and a management study, summary of bids received, bid evaluation criteria, and cost forms. The selected team, Transit Realty, did not have the lowest initial bid but was deemed to have the best qualifications to fulfill the scope of services in the RFP. The union bid scored the fewest points of the four bidders. On this subject, MBTA stated that it was difficult to compare the union and private bidders because the union bid, at its request, was evaluated with different criteria. The union bid was judged to lack detail, and avoidable costs to the department. For example, the union proposed to eliminate staff from the department, but not from the agency as no layoffs were included in the proposal.

Unlike the approved Holyoke College food services privatization case, the MBTA notified the OSA of its intent to outsource functions when the RFP was released. There was not, in this case, any apparent disagreement over the OSA's jurisdiction to review the proposed contract for privatization. The only friction concerned the timing of the OSA's review, with the MBTA arguing in letters to the OSA that the time of the review period was excessive. Still, the review took just over a month from initial submission, and under six months from release of the RFP. The OSA approved the MBTA's proposed contract with Transit Realty on July 10th, 1996. In its cost forms, the Authority claimed that outsourcing real estate functions to Transit Realty would save $2.4 million and enhance revenues by $5.18 million for a total savings of $7.58 million. Ten audit adjustments were made in evaluating these cost forms. Notably, the OSA would not allow the MBTA to count estimated increased lease revenue of over 5 million dollars through more efficient management of the tenant ledger by Transit Realty. The OSA did accept the Authority's assertion that the parking garage development program not be evaluated for compliance with the privatization law because it would be funded from other sources. After the ten audit adjustments, the OSA determined that the proposed contract could be expected to save $206,257 over the life of the 5-year contract and this privatization proposal was approved.

Case Study 3: MBTA Bus Shelter Maintenance

Introduction

The Weld Administration viewed this as an ideal case with which to undermine a law that was bothersome to them.

In 1995, the Massachusetts Bay Transportation Authority (MBTA) began exploring possibilities for increasing revenue by including advertising on bus shelters. Accordingly, the marketing department carried out research on bus shelter advertising programs in New York, Toronto, and San Francisco and determined that these cities had success with contracting out the service to specialized advertising and marketing companies. Additionally, it was determined early on by the MBTA that it is frequent industry practice for the advertising contractor to also undertake cleaning, repairing, and replacement of shelters hosting advertising. This is because the advertising company has a vested interest in ensuring that it can secure an attractive environment for advertisers.[55]

Initially, the MBTA either did not realize that contracting out for bus shelter advertising and maintenance would be subject to the Privatization Law, or hoped to avoid the process, but after being notified by the OSA, the RFP process was delayed. Before releasing an RFP in January 1996, the MBTA had 198 bus shelters located throughout 68 of the 78 municipalities served by the MBTA. Twenty-seven of the shelters were glass and sheet metal while the remaining were constructed with lexan and sheet metal. These shelters were maintained by 2 full-time employees with support from one sheet metal worker. On average, these workers cleaned six shelters per day, thus each shelter was normally cleaned once every two months. Included in the cleaning regimen was washing and disinfecting of shelters as well as graffiti removal.[56]

RFP and Selection Proposal

The January 1996 RFP had two-phases: pre-qualification and the actual proposal submission. As previously stated, the RFP was not initially crafted to allow for compliance and review with respect to the privatization law. After agreement with the OSA that the contract would be subject to the privatization law, an addendum to the RFP was added that required compliance with the requirements of the law. The union was then notified, and the deadline for submission was extended from

February 14 to March 1, 1996 for private bidders, and to March 8 for a union response.[57]

In addition to requiring compliance with all provisions of the privatization law, the RFP was comprised of three parts: the advertising function, the cleaning, maintenance, and installation of bus shelter function, and other performance indicators. The advertising function consisted of all steps necessary to upgrade or replace existing shelters to include advertising. This function also included obtaining all local permits necessary for the upgraded or replaced shelters. Additionally, the contractor was asked to draft an advertising strategy to maximize revenues. The cleaning, maintenance, and installation function included daily, twice monthly, and as needed maintenance services that exceeded the current level of service. Finally, the other performance indicators section included performance benchmarks related to two objectives of the contract; increasing revenue and improving cleanliness of bus shelters.[58] Performance indicators were required to allow the MBTA the ability to sever the contract if benchmarks were not met.

As previously stated, the bid process had two phases. Three private vendors, TDI, Inc., Park Transit Displays, Inc., and Outdoor Systems submitted pre-qualification bids. All were accepted but only Outdoor System and a union group called the Union Consortium submitted actual bids for advertising and bus shelter maintenance services.

The Outdoor Systems Advertising Group bid proposed to clean and maintain shelters at a rate of 18 shelters per day, exceeding specifications in the RFP scope of work. At this rate, shelters would be cleaned once every two weeks as opposed to once every two months as was the standard in house at the time the RFP was released. The cost of maintenance over 5 years totaled $665,000, however, there would be no cost to the MBTA for these services as the centerpiece of the contract would be for Outdoor Systems to pay the Authority a minimum of $2.1 million per year for advertising rights to bus shelters. Additionally, Outdoor Systems would replace about half of the 198 existing bus shelters and provide several hundred new shelters without any cost to the transit authority. Outdoor Systems proposed to pay extra in advertising revenue for each replaced and new shelter installed.[59]

The Union Consortium Bid addressed the cleaning and maintenance functions of the RFP but did not offer to provide advertising revenue to the Authority. The union bid a price of $1,232,065.63 covering labor costs for maintaining and repairing the bus shelters over the five-year contract term. According to the Authority's proposal submitted to the OSA, this price did not include other costs such as materials and supplies, depreciation, maintenance, and insurance. After including these costs, the union's bid was adjusted by the MBTA to $1,633,314. The union also recommended that certain changes be made to the bus shelter program in order to facilitate more

efficient maintenance but after review by the Authority it was determined that these recommendations, which included replacing glass with lexan material, were inconsistent with the ability to provide advertising services.[60]

Unsurprisingly, the Authority chose to select Outdoor Systems for maintenance of its bus shelters stating, "the cost of contracting with Outdoor Systems, without consideration of the lack of inclusion of materials and supplies or other direct costs by the unions, is $597,220 less than the Unions' bid."[61] Further, the Authority also believed that the union's bid exceeded current in-house costs. This, however, was most likely not a determining fact in the ultimate decision to select Outdoor Systems. Although unstated in the Authority's evaluation of bids, the union consortium did not address the real purpose of the RFP - increasing revenue through advertising on bus shelters.

Privatization Proposal

In July 1996, the MBTA submitted its first proposal to privatize bus shelter advertising and maintenance. This proposal was rejected on August 15th, 1996 because, "The Office of the State Auditor determined that the MBTA had not met the requirements of the Privatization Statute in that the contractor's maintenance cost estimate was incomplete, unauditable, and could not be documented."[62] Additionally, Outdoor System's compliance with certain regulatory statutes could not be documented.

On November 12, 1996, the MBTA formally submitted its second privatization proposal to the OSA and two days later on November 14, 1996 the OSA began a formal review of the proposal.[63] The MBTA immediately disputed the OSA's review period in a letter to the OSA, arguing that the review should take 30 calendar days, not 30 business days as stipulated by the OSA.[64] This second proposal's ten parts included the written statement of services, proposed contract, cost forms, supporting documentation, and a management study. It also attempted to respond to the shortcomings of the first proposal by including more detailed cost comparisons between present in-house maintenance, and future maintenance costs under the proposed privatization.

The cost forms indicated that in-house costs for the cleaning and maintaining of bus shelters would total $1,177,867 over the proposed five-year life of the contract, while Outdoor System's cost would be $634,846 but would in fact cost nothing to the Authority. In the Summary of Bids received section, it is explained that Outdoor Systems is able to maintain shelters at a lower cost than the Authority because they would use a more efficient method of cleaning and utilize staff that are proficient in

all needed tasks so that fewer employees are necessary to undertake cleaning and maintenance.[65] The in-house cost comparisons did not account for the number of shelters increasing as planned by the chosen contractor, Outdoor Systems. The MBTA estimated that contract performance costs would result in net revenues of $2,063,557, leading to a total cost savings of $3,241,424.[66]

The major argument of the proposal submitted to the OSA was that the plan would allow the MBTA to realize significant guaranteed revenue, and the possibility for additional revenue through the planned installation of additional advertising space on new or replaced shelters to be installed by the contractor. It presented the cleaning and maintenance of bus shelters as an additional benefit of contracting out advertising that would improve performance over in-house provision of the service at no cost to the Authority.

Auditor's Determination

On December 11, 1996, the Office of the Auditor issued a determination objecting to the awarding of a contract to Outdoor Systems that would involve maintenance of bus shelters. The determination denied the MBTA's request on the grounds that it had not met two of the requirements of the Privatization Law. In rejecting on the grounds that basic requirements were not met, the OSA did not provide cost comparisons between continued in-house provision of cleaning and maintenance, and privatization of the function in conjunction with contracting out advertising on bus shelters. The determination indicated the OSA's readiness to accept a contract without shelter maintenance.

Specifically, the OSA determined that the MBTA had not met the requirements of Section 54(7) (iii) and Section 54(7)(iv) of the privatization law. Section 54(7)(iii) requires that "the agency must certify and demonstrate that the proposed contract cost will be less than the estimated cost of keeping the service in-house, taking into account all comparable types of costs." In rejecting the proposal partly on this basis, The OSA was essentially saying that the MBTA had provided a proposal for maintenance that could not be compared to present operations in that the chosen contractor planned to increase the number of shelters. The OSA wrote; "based on the presentation of costs estimated by both the MBTA and the proposed outside contractor, it is clear that both costs may be based on a significant variance in the number of shelters that are the subject of this proposal." Further, "because this substantial variance remains unreconciled it cannot be demonstrated or determined that the contracting out of the service will result in any cost savings." Section 54(7)(iii) concerns certification that a designated bidder has complied with all relevant federal or state statutes. On this section the OSA wrote that; "the MBTA has

not provided sufficient, competent evidence of the proposed contractor's compliance with certain significant relevant regulatory statutes, namely certification of good standing from the state and federal tax collection agencies."[67]

It should be noted that in disapproving this privatization, the OSA reversed a draft approval determination that was circulated to the MBTA. This draft approval outlined the MBTA's compliance with all sections of the privatization law. With respect to cost comparison, the OSA adjusted the amount to be paid to the MBTA for advertising out of the performance costs, claiming that the MBTA did not demonstrate why only the private contractor, and not the MBTA could realize revenue from bus shelter advertising. After subtracting this revenue source from the package along with other audit adjustments, the OSA determined that the contract would save $23,967 per year or $119,833 over the five-year life of the contract.[68] The draft approval was reversed once the OSA determined that the MBTA had been using conflicting estimates of the number of bus shelters to be maintained when evaluating Outdoor Systems' and the union's proposals.

Court Challenge

There is no administrative process through which to appeal the OSA's decision. However there was and is nothing in the law to prevent the MBTA from re-submitting its proposal to conform to the OSA's implementation of the law's requirements. Rather than preparing a third proposal, the MBTA instead elected to challenge the constitutionality of the privatization law, and decisions made under that law in court. The court challenge that ensued in this case must be viewed in the context of the politically charged atmosphere within the Weld Administration. The Executive Office of Transportation and Construction, the super agency that oversees the MBTA as well as MassHighways, was a particular administration focal point for the creation of privatization initiatives. The uncritical acceptance of the notion that public contracting could cure virtually all the problems of government was strong among the senior management of that high level agency at that time. Thus the MBTA's executive staff was working under the notion that with sufficient contracting it could eventually transform into what they termed a "virtual" agency or a department that did nothing but manage contractors. At the same time that the bus shelter privatization proposal was preceding a more ambitious proposal to begin the eventual privatization of the entire MBTA bus system was also just getting underway. That more ambitious project was to begin with the proposal to privatize bus routes in Quincy and Charleston, reviewed below. In June 1997 the OSA rejected that bus privatization proposal on the straightforward grounds that it would cost more than present operations. In the context of these rejections, and the larger ideological mission that the Weld Administration set for itself, the OSA was, as far

as they were concerned, not a public watchdog but an obstacle to a political agenda. The agenda was to massively transform public service in the Commonwealth by putting as much of the public work as it could out to bid.

On February 16, 2000, the Massachusetts Supreme Judicial Court ruled against the MBTA, and in favor of the OSA in two areas. The court ruled with respect to the constitutionality of the law, that the MBTA did not have standing to challenge the law because it is a state statute. Although the court did not grant the MBTA standing, it also made a specific determination on the bus shelter proposal concluding that, "there was ample evidence that the MBTA did not clearly establish that its "in-house" and "contract" cost estimates were based on the same number of bus shelters". In conclusion the court stated, "the Auditor's objections, therefore, were reasonable and followed the statutory mandate that he independently review the contract."[69]

Conclusion

This case was more complex than the others in that issues of revenue enhancement became conflated with issues of service cost to the detriment of both. The problem here was that, for the MBTA, politics came to trump good public management. Despite the claims of potential savings and more importantly revenue enhancement, the OSA rejected the MBTA's second proposal. They did so because the legal mandate under which they operated required them to compare direct service cost issues for the task that was to be privatized apart from revenue issues which as we saw in the real estate case they regarded as separate. Indeed the 2000 decision of the Supreme Judicial Court upheld this interpretation of the law. They rejected the proposal for privatization of bus shelter maintenance and repair because they found that the proposal did not accurately compare the cost of in-house operations with the contract proposal costs because the proposer intended to increase the number of shelters to be maintained and because of conflicting estimates of the actual number of shelters to be maintained. Additionally, the OSA found that insufficient evidence was provided on Outdoor System's compliance with federal and state statutes related to tax payment.

The heart of the MBTA's disagreement with the decision was that from their point of view contractor maintenance costs were irrelevant to the substantive issue here. The substantive issue for the MBTA was that it was not a matter of privatizing the maintenance function as much as it was a chance to enter into a new profitable relationship and bring in needed revenue. Outdoor System's essentially proposed to "throw in" shelter maintenance along with substantial payments to the MBTA in

exchange for the right to sell advertising on existing shelters and expand the number of shelters to expand the number of salable advertising venues.

The problem here was neither the law nor the OSA's application of the law. The problem was that, because the MBTA made a determination to use this case to undermine the law, all fruitful communication to resolve the problem broke down. To a large extent that was intentional because the Weld Administration viewed this as an ideal case with which to undermine a law that was bothersome to them. The tragic part of this from a public point of view is that the proposal had the potential to bring in substantial new revenue and involved outsourcing advertising on bus shelters. The MBTA could have separated the issue. It could have retained its own cleaners and collected more revenue from its contractor. But it never chose to even explore the option for two reasons. First it never seriously entertained the possibility that its employees might want to work with management to make this work. Secondly it cared more about the principal of executive privilege to contract at will than it did about the specific situation at hand.

Case Study 4: Bus Service Delivery Privatization

Introduction

This case shows how the Privatization Law protects the interests of the public and forces public sector managers to clearly think through contracting decisions prior to committing the public to risk and liability.

Possibly the most well known Privatization Law review case is that of the twice-litigated Massachusetts Bay Transit Authority's (MBTA) proposal to privatize the operation and maintenance of Charlestown/Fellsway and Quincy bus fixed bus routes. In a case that was widely reported on in the press, the OSA twice turned down the MBTA's request to authorize the contracting out of these services, because the MBTA failed to adequately demonstrate a positive cost savings associated with this proposal. This case is instructive in that, despite reliance on both legal counsel and outside consultants, the MBTA was unable to comply with the Privatization Law requirements, and demonstrate a fiscal benefit to the plan. Furthermore, the case, and the legal proceedings that followed from it, showed that the MBTA had not done an adequate job pricing its anticipated cost savings in terms of avoidable costs. This is important, because, had the privatization been allowed, the public would have been left holding a significant liability. For these reasons, the MBTA route privatization case demonstrates the ultimate efficacy of the law - it forces agencies to fairly forecast the ultimate impact of contracting decisions on the public,

which is the ultimate owner of state assets and systems. This case shows how the Privatization Law protects the interests of the public and forces public sector managers to clearly think through contracting decisions prior to committing the public to risk and liability.

The MBTA's plan would have incurred an extra $73 million if the privatization had been allowed.

Following an audit and operational review in mid 1993, a consulting firm[70] recommended that the MBTA move quickly (by Spring 1994) to privatize or contract out a significant portion of the fixed bus routes then operated by the authority.[71] According to the COMSIS report, such action was the only way to stabilize what was then viewed as the MBTA's increasingly perilous financial situation.[72] The consultant highlighted two significant cost issues that seemed to make a strong case for such a contracting decision. First, the consultant observed that in FY 1991, the MBTA had an overall bus operating cost of about $95 per revenue hour, a cost level second at that time only to Seattle's.[73] Second, the consultant noted that the MBTA was then paying private contractors to operate marginal routes at about $46 per revenue hour.[74] The consultant's report used these two accurate facts to imply that by contracting out, the MBTA could save as much as fifty to sixty percent on routes it chose to privatize.[75] This suggested a savings of close to $30 million per year on the Charlestown/Fellsway and Quincy routes, though the report itself did not place a dollar figure on the savings, promising only that "the MBTA can achieve significant savings"[76] through such a privatization.

Clearly the suggestion of an opportunity to significantly reduce costs deserves careful consideration. MBTA was clearly correct in pursuing these savings and further examining the likely impact of such a privatization. However, it is also clear that the COMSIS cost assessment was, at best, lacking in finer detail. A review of the COMSIS proposal demonstrates that the net cost impact of such a privatization would not be a $30 million savings. In fact, the net impact of the COMSIS proposal was likely to be a cost increase – exactly the kind of poor privatization decision that the Privatization Law was designed to guard against.

This case study will review the COMSIS cost assessment. It will demonstrate how that assessment failed to recognize ongoing cost liabilities. The MBTA privatization application will be reviewed, as well as the OSA's objections. This case study will conclude with the likely cost impact of the privatization, had it been allowed, along with a summary discussing the value of the case as a demonstration of the efficacy of the Privatization law.

Privatization Proposal

In May of 1997 the MBTA submitted a revised application for the contracting out of two "bundles" of fixed route bus service operation and maintenance that had previously been operated by MBTA employees. The MBTA's August 15,1996 RFP had solicited bids for any of the five bundles, based on the existing facilities in Albany/Cabot, Bartlett, Charlestown/Fellsway, Lynn, and Quincy.[77] Though the document record does not clarify the reasons why, MBTA selected ATC/Vancom as vendor to operate and maintain the Charlestown/Quincy routes and ATE/Ryder for the Quincy bundle. No privatization of the other bundles was applied for at that time.[78] In the RFP, the MBTA explicitly recognized the applicability of the Privatization Law, and attached the state privatization guidelines, highlighting the re-employment provisions, the data requirements, and the performance measurement requirements.[79] The OSA's final determination declined the privatization due to a failure to establish cost savings.

Prior to the OSA's negative determination of June 1997, the MBTA had previously submitted a rejected application.[80] In the MBTA's submission, it was estimated that the privatization of the Charlestown/Fellsway routes and maintenance associated with those routes would save $17,542,608 and that the privatization of the Quincy bundle would save $9,165,347.[81]

MBTA Submission	Charlestown	Quincy
In House Costs	$261,217,706	$71,275,253
Contract Costs	$243,675,098	$62,109,906
Savings	$17,542,608	$9,165,347

Once rejected by the OSA for deficiencies, the MBTA reworked its application and resubmitted on May 23, 1997.[82] In the second submission, the MBTA acknowledged some of the OSA's objections to the first submission, clarified some of the facts as requested by the OSA, and reduced its savings estimates by over $2.7 million for the Charlestown/Fellsway bundle and by almost $1 million for the Quincy bundle. The MBTA's submission estimated a savings of over $23 million through the privatization of both bundles. However, the OSA's analysis indicated that between deficiencies in the MBTA's second submission and the understatement of the value of concessions by the primary union, the privatization would actually end up costing money. The OSA's determination is reviewed below.

Auditor's Determination

The OSA determined that the liability cost, "by itself, would more than exhaust the total savings claimed for the two proposals, without even considering other significant findings. The OSA's estimation of the cost of this liability was that it was greater than $47 million.

The OSA rejected the MBTA's second submission because it failed to adequately establish a cost savings through contracting out. Furthermore, the OSA determined that the MBTA would actually lose money on the contracts between the contract price and the unavoidable costs associated with the privatization.[83] First, the OSA determined that the MBTA's proposals were dependent upon "unreasonable cost savings." The MBTA's proposed contracts included a requirement that the contractors would use a heavy maintenance facility owned by the MBTA in Everett for the first two years of the contract in exchange for a fee. The MBTA labeled this the 'vehicle maintenance plan.' However, the MBTA included the revenue from this agreement over the five year life of the contract. The MBTA did not demonstrate how it would reduce the costs then associated with the to-be-privatized bundles at the Everett facility after two years.[84] The MBTA's second submission did not address this issue.

In addition to the questionable savings related to the vehicle maintenance plan, the OSA questioned a cost savings of over $1 million in non-revenue vehicle repair associated with the contracts. However, the MBTA presented no plan for the reduction of non-revenue vehicles or their repair. The issue at stake is whether the costs of supporting those vehicles would truly be avoided by the MBTA, or merely shifted to another accounting unit. The statute clear demands that the subject agency truly reduce costs and not just shift them around.

Similarly, the MBTA's submissions failed to address the issues of "nonscheduled service" and performance payments, both of which were included in the proposed contracts.[85] The MBTA submissions included non-scheduled and emergency service costs that could potentially exceed $29.2 million for the two bundles, however the cost of in-house provision of these services was never factored in. More seriously, the MBTA failed to include incentive payments, detailed in the contracts into the cost of contracting out. These payments could have potentially cost the MBTA $4.3 million, "in the event contractors [met] some of the performance standards that are currently achieved by MBTA employees."[86]

The MBTA also included an estimated savings on pension costs of about $20.4 million should the 729 "nonvested" employees affected by the privatization be displaced. Likewise, the MBTA included savings related to vacation accrual that they would save should the affected employees be let go. The OSA took issue with both of these. The MBTA presented no plan for avoiding the costs of the pensions, as it was not legally clear that the employees in questions would be deemed to have left of their own volition. The vacation savings cited by the MBTA included accrual already earned by the affected employees.[87]

Of greatest cost concern, however, is the issue of "13(c)" liability. It was not clear, at time of submission, the extent to which the MBTA would have been liable for displaced worker severance pay as required by federal statute. The MBTA did not include these potentially substantial costs in its estimates despite a lack of resolution on the issue. At the time of the second submission, the MBTA and the affected union were attempting to seek arbitrated resolution to the issue. The OSA determined that the liability cost, "by itself, would more than exhaust the total savings claimed for the two proposals, without even considering other significant findings [by the OSA]."[88] The OSA's estimation of the cost of this liability was that it was greater than $47 million.

In addition to problems with the cost comparisons in the MBTA's two submissions, there was also concern that the two contractors would not be able to meet quality of service levels as this went unaddressed in the MBTA's submission. That is, it was unclear that the contractors could provide service that was as good as the MBTA was capable of providing in-house. In response to OSA concerns, the MBTA did develop a short set of performance targets, however these were not included in the proposed contracts.[89] In addition, the MBTA made no effort to determine the level of performance achievable in-house, instead it relied on existing performance levels. This violated both the spirit and letter of the statute which was intended to cause the subject agency to carefully consider operational performance, improvement opportunities, and costs prior to contracting.

During the process of making its applications, the labor unions volunteered concessions and other cost savings opportunities worth $21 million, but the MBTA failed to include these in its estimates.[90] The MBTA failed to adequately establish the cost savings that would derive from contracting out, and failed to consider in-house improvements achievable. The OSA's two reviews both correctly denied the application of the MBTA to privatize the two service bundles in question.

Conclusion

Given the OSA's objections and the labor concessions, it is clear that had the proposed privatization been allowed (if, for example, there were no Privatization Law), the MBTA's contracting decision would have resulted in a loss to the taxpayers of Massachusetts. As the table below demonstrates, the Labor concessions alone would have negated any cost savings associated with privatization

Cost Comparison	**In-House Operation**	**Private Operation**
Total Costs	$332,492,959	$305,785,004
Net Savings (Loss)	($26,707,955)	$26,707,955
Adjusted Costs with Concessions	$304,578,665	$305,785,004
Adjusted Cost Net Savings (Loss)	**$1,206,339**	**($1,206,339)**

Furthermore, the OSA identified several cost factors missing from the MBTA's assessment. Excluding those costs identified, but not specified by the OSA (vehicle maintenance plan, non-revenue vehicle maintenance, emergency service, vacation time, and fuel costs), the MBTA's plan would have incurred an extra $73 million if the privatization had been allowed. As a result of the labor concessions and the additional non-avoidable costs, the privatization would have cost taxpayers $73,206,339, as described in the table below.

Cost Comparison	**In-House Operation**	**Private Operation**
Total Costs	$332,492,959	$305,785,004
Net Savings (Loss)	($26,707,955)	$26,707,955
Adjusted Costs with Concessions	$304,578,665	$305,785,004
Non Avoidable Costs		
Performance Payments		$4,300,000
Pension Costs		$20,400,000
13 (c) Liability		$47,300,000
Subtotal	$304,578,665	$377,785,004
Adjusted Cost Net Savings (Loss)	**$73,206,339**	**($73,206,339)**

It is clear, then, that this particular privatization was not adequately thought through. It is equally clear that without the Privatization Law, it would have been carried out nonetheless.

Following this case through from COMSIS report to the final MBTA submission and OSA determination, it is clear that several of the flaws related to the initial concept were carried through to the contracting decision. Costs, and particularly savings were not considered carefully enough. Furthermore, issues of cost avoidance and of adequate service were insufficiently examined. The Privatization Law exists to ensure that that subject agencies make good management decisions related to privatization, and in this case the law was successful.

Conclusion to the Case Studies

The review of the cases assessed by the OSA under the Privatization Law and particularly those cases reviewed in-depth here highlight the efficacy of the statute. The Privatization Law has helped Massachusetts effectively avoid poorly thought through privatizations. Privatizations performed under the assumption that the private sector can deliver higher quality at a lower price are not allowed. Only carefully considered contracting decisions, including a thorough cost analysis and clear establishment of service and quality standards, are permitted. The process used by the OSA is clear, and while it requires specific measures, it is not so complicated that smaller agencies are unable to comply with it. Furthermore, the law's lower limit of $100,000 avoids superfluous applications and tedious assessment for smaller contracting decisions. The Privatization Law therefore effectively protects Massachusetts' taxpayers from bad privatization decisions, while allowing them to enjoy the benefits of good contracting.

Previous Studies of the Privatization Law

Despite the highlighted efficacy of the statute, the Privatization Law has not been without its critics. The predominant critic has been the pro-privatization think tank, the Pioneer Institute.[91] At the same time, the law has received significant positive review.[92] The aim of this section is to briefly review the major criticisms of the Privatization Law with reference to the case study findings covered above.

The Pioneer report mixes its criticisms of the Privatization Law together with its complaints about the process that the OSA employs to review applications. However, several major themes emerge:

1. Privatization is generally good and should not be discouraged.
2. Avoidable cost accounting is generally bad, and full cost accounting should be used to determine cost savings associated with privatization.
3. Transitional costs (costs of moving to contracted provision) should not be considered as they over-emphasis short term costs at the expense of long term gains.
4. Contract monitoring costs are over emphasized as they de-emphasize the benefit of performance monitoring to service quality.
5. Allowing employee bids or concessions is unfair.

The Pioneer report spends the bulk of its time arguing the first, and then the second point. As long time privatization advocates, Pioneer presumes that privatization is a good thing and should not be discouraged. In their study the law is held to, "present both statutory and political roadblocks to efficient government operations," and has provisions that "essentially slam the door on many opportunities that have been shown to improve services and save money in other places."[93] The law is held to disregard all potential privatization benefits, other than reduced costs. The institute claims that, "well-designed contracts allow agencies to improve quality, accommodate peak demand, speed project delivery and meet deadlines, gain access to expertise, improve efficiency, spur innovation, and manage risk more effectively."[94]

Privatization is Generally Good?

We have no way of knowing how many agencies have contemplated privatizations, researched them, and rejected them because they could not meet cost or service level requirements. Is this a bad result of the law?

Both the review of the impact of the law (above) and the case studies (also above), paint a different picture of the Privatization Law. The Law does not 'block efficient government operations,' rather it provides clear guidance to agencies to help them make successful contracts. The law certainly does not prohibit privatizations; 75% of applications have been successful. Rather the law forces agencies to consider the impact of contracting out before making a decision. This is not a bad thing. It can only be through careful consideration of costs and service levels that an agency can expect to achieve all the positive benefits that Pioneer suggests can be the fruit of 'well-designed contracts'. The 'privatization is a generally good idea' argument is

somewhat superfluous here. The authors of the Pioneer report bitterly complain that the Privatization Law focuses on cost, making it the only point of contention in OSA reviews, and ignoring issues of improved performance achievable through contracting.[95] It is true that the law focuses on costs - an agency may not privatize unless it can save money by doing so - but it also places a significant emphasis on performance.

Pioneer does not advance any argument to explain why it is that contractors can improve service when subject agencies cannot. In the end, this is the fundamental problem with the 'privatization is a generally good idea' argument. Proponents cannot explain how it is that private firms can bring such great improvements in cost effectiveness and service levels, but fail to meet the Privatization Law's standards. The standards are clear, the cost of a five year contract, including the cost of implementing, monitoring, and maintaining that contract must be less than the in-house costs to provide the same service. Service levels to be provided by the contractor must be at least to the level that the subject agency can provide in-house. Finally, the privatization must be in the public interest, a clause that has never been used by the OSA as grounds for rejecting an application. If the private sector is able to do the job that Pioneer suggests - if it is better, faster, smarter - meeting these goals should not be difficult. And indeed, most agencies that submit applications for privatization are successful.

Pioneer sees the fact that eight services privatizations have been attempted since the law went into effect as a negative consequence of the Privatization Law. This would make sense if the OSA routinely rejected applications. The pass rate, however, belies this assumption. What would be a more logical conclusion, is that the requirements of the law, being what they are, have demonstrated to managers that they must carefully consider privatization opportunities. We have no way of knowing how many agencies have contemplated privatizations, researched them, and rejected them because they could not meet cost or service level requirements. Is this a bad result of the law? Of course not. This is how we want our public service managers to behave. We want them to research major contracting decisions prior to radically altering service delivery mechanisms. We want them to make complete assessments of the likely cost impacts of those decisions. What Pioneer labels as a failure of the current law is actually a success - subject agencies are not pursuing losing propositions and are only seeking to privatize where it makes sense.

Avoidable Cost Accounting

That the Reason Foundation, a pro-privatization, libertarian think tank accepts the logic of using avoidable cost accounting for making contracting decisions serves to highlight the tenuousness of Pioneer's position.

The second major complaint of the Pioneer Institute is that the Privatization Law requires subject agencies to consider cost avoidance when addressing the benefits of a potential contract. That is, how much will the agency actually save if a service is privatized?

Avoidable cost accounting is a widely accepted methodology for understanding savings to be derived from a contracting decision. Quite simply, when a firm, or agency, contracts out a service, not all of the costs associated with in-house production necessarily disappear. Buildings or capital equipment may continue to be owned and depreciated, contractor performance needs to be watched and evaluated, and pensions and benefits for displaced workers may need to be paid. Avoidable cost accounting methodology helps decision makers understand the net effect of contracting out – what will actually be saved.

Accordingly, the Privatization Law requires that each privatization proposal prove a projected cost savings compared with continued provision of the service by the public sector. It is, however, much easier to define the goal of cost savings than it is to calculate, as assumptions always need to be made in order to create a realistic comparative cost model.[96] The realities of government service provision mean that savings from a privatization are not simply a matter of subtracting costs of the service to be privatized, and then adding any fee to be paid by the private sector operator. There is a continued governmental responsibility that varies with the particular service being privatized. This continued responsibility typically includes contract management, and other required areas of support to the contractor such as providing emergency back up, and administrative support. In short, it can be expected that the government would continue to bear overhead costs after a particular service is privatized. If lay-offs and productive transfer of workers are not possible, then labor costs often cannot be saved. If cost savings from a privatization is the goal, than a nuanced, individually tailored approach is appropriate.

Pioneer's complaint that avoidable cost accounting misrepresents potential cost savings is poorly argued, unsupported, and illogical. First, Pioneer argues that the value of privatization is that agency personnel can be redeployed elsewhere. Pioneer writes, "If [staff] are redeployed to other priorities, then there is a benefit from the privatization. This is true even if none of the support or overhead staff are removed . . ."[97] Pioneer's argument then, is that agencies should no longer include the cost of

staff that continue to work at the agency in question after a privatization if they do other work that was neither performed or paid for by the agency previously. How is this a cost savings? The agency in question is still paying for the staff and for the new contract. This is not good fiscal management. The example used by Pioneer to highlight this issue is that of the 1994 Department of Revenue proposal to privatize mail opening during the tax season. This proposal was approved.[98] Pioneer presents no evidence to indicate that this issue has actually interfered with a privatization. Second, the Pioneer report discusses "avoidance" of capital construction costs on future projects. The report implies that the Privatization law does not adequately account for these savings. However, Pioneer presents no evidence to demonstrate that this issue has prevented an otherwise good privatization.

Pioneer's argument about avoidable cost accounting is also poorly supported. Pioneer suggests that total cost accounting is a superior method for understanding savings to be derived from privatization. That is, agencies should examine what their costs are currently, what the contract cost will be, and subtract one from the other. This certainly holds the appeal of simplicity. Unfortunately this is also bad fiscal management. Clearly, any private sector firm, when making a contracting decision, would consider what their costs are now, *what their costs will be after contracting out*, and what the contract price will be. These ongoing costs include non-avoidable costs like continued staffing, capital equipment, rent, utilities, etc. and new contract monitoring costs. To support their assertion that agencies considering privatization should not be required to include these on-going and new costs in their decision, Pioneer cites a US EPA report.[99] However, these EPA reports are concerned not with accounting for the benefits of contracting decisions, but of understanding the environmental and other external costs of waste management systems. Full cost accounting definitely has a roll to play in fiscal management, just not in making privatization decisions. This is even recognized by the Reason Foundation, a sibling research institute to Pioneer.[100] That the Reason Foundation, a pro-privatization, libertarian think tank accepts the logic of using avoidable cost accounting for making contracting decisions serves to highlight the tenuousness of Pioneer's position. Pioneer's argument to the contrary goes unsupported.

Ultimately, Pioneer's argument that it is unfair or inaccurate for agencies that are considering privatization to calculate the total cost impact of that decision (current costs, contract costs, unavoided costs, and other new costs) is ultimately illogical, contrary to common practice and to good government recommendations. The taxpayers of Massachusetts deserve good fiscal management and the Privatization Law delivers this by mandating avoidable cost accounting.

Transition and Contract Administration Costs

Similarly, the Pioneer report makes nonsensical arguments about transitional costs and contract administration costs. Pioneer briefly suggests that the costs associated with moving into a privatization not be included in an agency's estimation of the value of a privatization. Likewise, the Pioneer report criticizes the inclusion of contract monitoring costs into the calculation. The first issue is not fleshed out in the Pioneer report, making it difficult to address. Pioneer does write that costs associated with displacing employees - retirement costs, accrued vacation payout, and other post-employment benefits - should not be counted as costs of privatization. As was seen in the case of the MBTA's route privatization proposal, these can be serious liabilities, and will cause costs out of the normal timing and scale the agency could otherwise anticipate. To ignore these would be a significant dereliction of good fiscal management.

Clearly, management of employees is good and necessary, but third party, or additional contract oversight is unnecessary. These costs are included in the privatization value calculation because they are necessary when contracting out. The "benefit" of monitoring contracts is factored in – in the price the contractor is charging for meeting service requirements.

More serious are Pioneer's criticisms of contract monitoring and administration costs. Pioneer makes two worrisome arguments with regard to these costs. First, they suggest that the benefit of contract administration should be factored into the cost analysis of the benefit of privatization. The benefit of contract monitoring is that agencies receive the services they pay for, at the service levels promised, and are not over billed. This is not necessary for in-house work because of the internal management systems already in place. Primarily, in-house service provision gains no profit through under provision. Clearly, management of employees is good and necessary, but third party, or additional contract oversight is unnecessary. These costs are included in the privatization value calculation because they are necessary when contracting out. The "benefit" of monitoring contracts is factored in – in the price the contractor is charging for meeting service requirements.

Pioneer goes on to argue that the system used to evaluate contract monitoring costs is unfair because some service areas interact with the public to a greater degree than others. Pioneer writes, "When customers immediately notice service problems and are motivated to complain, monitoring is fairly simple and less costly - the customers do most of the monitoring themselves."[101] It is Pioneer's contention then that services with a high degree of public interaction – bus service or food service, for example - require less monitoring then back office contracts like IT or support

services. This argument does not hold up under scrutiny. First, as Pioneer argues, contract monitoring is beneficial and important for good contracting and all services need to be monitored if they are contracted out. Second, monitoring involves both service levels and costs. The public cannot be asked to ensure that a service provider's billing is in order, not can they know if a bus operator is doing an adequate job of maintaining capital equipment. Service provision and effective delivery involves too many levels and areas of performance to ask the public to do the monitoring. This is not good fiscal management.

Employee Concessions

Finally, the Pioneer report takes issue with the fact that, as in the case of the MBTA Route Privatization proposal, the existing labor union may offer concessions, and that these must be factored into the privatization cost estimates. Good fiscal management, however, demands that agencies find the least costly method of delivering the required level of service. If a private firm that was considering contracting a service out determined part way through the process that it would be possible to reduce in-house costs and make in-house service delivery cheaper, that private firm would not refuse to consider the value of those costs reductions. Public agencies should be held to the same standard. This is the type of good management practice that the Privatization Law effectively delivers.

Summary

A review of the major criticisms of the Privatization Law suggests that critics continue to assume that privatization is a panacea for all public service delivery issues. These critics would like the Privatization Law to be overturned and to see no barriers to privatization. However, a review of their arguments demonstrates that they are illogical and unsupported. The Privatization Law does not prevent privatization, but it does require agencies considering contracting out to do a thorough review of the costs and benefits of doing so. The Law does not "slam the door" on privatization. The law does mandate good fiscal management helping Massachusetts to achieve affordable government.

Conclusions

The law has allowed over $1.2 million in annual savings and prevented at least $73 million in bad privatization decisions. More importantly, the Privatization Law has provided a framework with which agencies can accurately judge the likely cost impact of contracting concepts. The law has effectively delivered good management practice as relates to privatization to Massachusetts.

This study has aimed to examine the efficacy of the Massachusetts Privatization Law. A review of the law and its requirements, of the costing mechanisms used within the law, of the OSA's review procedures, and of the privatization cases heard by the OSA have demonstrated that the law creates an environment in which good management practice can flourish. Where contracting out services makes sense, the mechanisms used to enforce the law allow this to happen while making sure that the subject agencies clearly understand what they are getting into. Where agencies are under prepared for contracting out, or where the costs and benefits are unclear, the law forces them to carefully consider the outcomes of alternative service provision methods. The law has allowed over $1.2 million in annual savings and prevented at least $73 million in bad privatization decisions. More importantly, the Privatization Law has provided a framework with which agencies can accurately judge the likely cost impact of contracting concepts. The law has effectively delivered good management practice as relates to privatization to Massachusetts.

All this is not to say that the law is perfect or that it cannot be augmented or improved. The largest potential strength of the law has not always functioned perfectly, or even well. The Privatization law sets up a dialogue between the subject agency and the OSA. It is a great strength of the law that it inserts a third party that has the interests of the taxpayers of Massachusetts into the decision making process. The OSA's role, empowered by the statute has provided an external consultant with which subject agencies can think through the benefits of privatizations. Where this has functioned well, agencies have successfully put together valid justifications for privatizing, have clearly understood the impacts of their decision, and have saved money and maintained or improved service. Given the success of the Privatization Law, and its demonstrated ability to protect scarce public resources in tight fiscal environments, privatization law-like OSA review should be extended to rebids of existing contracts and possibly even to wholly new services. Such an extension of OSA oversight would allow the management and good contracting benefits of the law to further accrue in contracted service areas.

Massachusetts is well served by the Privatization Law. An innovative, first-in-the-nation law, it sets up a process by which reasoned decision making flourishes,

where costly mistakes can be avoided, and where contracting concepts are grounded in reality. The law works well. It is not unduly prohibitive. It allows a healthy dialogue between the contracting agency and a third party that represents the interests of the taxpayers. The law is not perfect. Expanded powers for the auditing agency could help improve the process. A depoliticized environment would also help, but this is likely outside the power of the law. In the final analysis, this is a law that not only benefits the taxpayers of Massachusetts, but that could benefit taxpayers across the country. Good government advocates should be studying the innovate work being done in Massachusetts and exporting it to other states.

Notes

[1] See World Development Report 2004: Making Services Work for Poor People (World Bank: Washington DC)
[2] These are the quantifiable savings based on those proposals that actually made it to the final stage of review – it is impossible know just how much taxpayer money has been saved by forcing decision makers to go through the process as some, or even many, may have determined on their own that the privatization was not justifiable.
[3] The OSA's records show that eleven different audits/determinations have been made under the law on these eight services, due to re-submittals by subject agencies.
[4] That is, it can be difficult for the contracting agency to know the quality of service provided. Also, there are temptations for the contracting firm to take advantage of the knowledge they gain by being close to work to the detriment of the contracting agency. Generally it is possible and even likely that contracting firms work to their self interest which may be exclusive from the interests of the contracting agency. The longer the term of contracts, the more likely these problems develop.
[5] See Williamson, Oliver E, "Transaction Cost Economics Meets Posnerian Law and Economics," Journal of Institutional and Theoretical Economics, 1993, 149(1), pgs. 99-118.
[6] Krauss, Clifford, "Economy's Dive Dazes Once Giddy Argentina," *New York Times*, International, Page A3, Sunday, September 30, 2001.
[7] The New England Institute for Public Policy, Privatization in Massachusetts 1991-2003: Is It Working?, April, 2003
[8] Commonwealth of Massachusetts, House Post Audit and Oversight Bureau. 1994. *Interim Report: Review of Essex County Privatization.* Boston, Massachusetts.
[9] Commonwealth of Massachusetts, Office of the State Auditor. 1995. Privatization of the Maintenance of Roads in Essex County, October 7, 1992 to October 6, 1993. Document no. 93-5015-3. Boston, Massachusetts.
[10] Coopers and Lybrand. 1996. *Independent Assessment of Massachusetts Highway Maintenance Privatization Program.* Prepared for the Executive Office of Transportation and Construction.
[11] See Sclar, Elliott D., You Don't Always Get What You Pay For: The Economics of Privatization, Cornell, University Press, Ithaca, NY, 2000, Page 29 for further detail.
[12] Massachusetts General Law Annotated, Part I, Title II, Chapter 7, (Privatization Law) §52 and 53
[13] Holyoke Community College, Submission to the Auditor, Proposal to Privatize Food Services Operations, Holyoke, MA, 1996, Page A-7.
[14] Holyoke Community College , Submission to the Auditor, Proposal to Privatize Food Services Operations , Holyoke, MA, Section D-7.
[15] Holyoke Community College, Submission to the Auditor, Proposal to Privatize Food Services Operations , Holyoke, MA, Section D-4, Page 1.
[16] Holyoke Community College, "Memo from Nancy B. Eddy to Hugh Robert: Final Report, Dining Services Proposal", Holyoke, MA, June 18, 1996, Page 3.
[17] ibid.
[18] Holyoke Community College "Memo from Nancy B. Eddy to Hugh Robert: Final Report, Dining Services Proposal", June 18, 1996.

[19] Holyoke Community College, " Letter from Nancy B. Eddy, to A. Joseph DeNucci, Auditor of the Commonwealth,", Hoyoke, MA, May 13, 1996.
[20] AFSCME Council 93, "Letter from George Masten and Peter P. Wright to A. Joseph DeNucci, Auditor of the Commonwealth,",Boston, MA, May 6, 1996.
[21] Auditor of the Commonwealth, "Letter from John W. Parsons to Curt C. Foster, Holyoke Community College", Boston, MA, July 15, 1996.
[22] Auditor of the Commonwealth, "Letter from John W. Parsons to Curt C. Foster, Holyoke Community College", Boston, MA, August 27, 1996.
[23] Auditor of the Commonwealth, State Auditor's Determination of Holyoke Community College's Proposal to Privatize Food Service Operations, Boston, MA, September 26, 1996.
[24]ibid, Page 4.
[25] MBTA, Submission to the Office of the State Auditor, Outsourcing of the Property Management and Real Estate Development, Boston, MA, April 9, 1996, Page 2-1.
[26] MBTA, www.mbta.com.
[27] MBTA, Submission to the Office of the State Auditor, Outsourcing of the Property Management and Real Estate Development, Page 10.
[28] MBTA, Submission to the Office of the State Auditor, Outsourcing of the Property Management and Real Estate Development, Page 8.
[29] ibid
[30] Kenneth Leventhal & Company, "Massachusetts Bay Transportation Authority Real Estate Function Organizational and Operations Diagnostic Review" Boston, MA, August 27, 1993, Page v.
[31] E& Y Kenneth Leventhal Real Estate Group, "MBTA Lease Verification", Boston, MA, January 1996.
[32] MBTA, Submission to the Office of the State Auditor, Outsourcing of the Property Management and Real Estate Development, 1996, Page 8-5.
[33] MBTA, Submission to the Office of the State Auditor, Outsourcing of the Property Management and Real Estate Development, Pages 8-5 and 8-6.
[34] MBTA, Request for Proposals: Property Management and Real Estate Development Functions, Boston, MA, 1996, Page 8.
[35] ibid, Page 22.
[36] ibid, Page 13.
[37] ibid, page 25.
[38] ibid, Page 14.
[39] MBTA, Submission to the Office of the State Auditor, Outsourcing of the Property Management and Real Estate Development, Exhibit 4-2A.
[40] MBTA, Submission to the Office of the State Auditor, Outsourcing of the Property Management and Real Estate Development, Page 7-1.
[41] The Privatization Law requires the contracting agency to solicit bids and then compare those bids to in house estimates which are then submitted to the OSA.
[42] MBTA, Submission to the Office of the State Auditor, Outsourcing of the Property Management and Real Estate Development, Page 6-2.
[43] MBTA, Submission to the Office of the State Auditor, Outsourcing of the Property Management and Real Estate Development, Page 6-1.
[44] MBTA, "Request for Proposals", page 29.
[45] MBTA, Submission to the Office of the State Auditor, Outsourcing of the Property Management and Real Estate Development, 1996.
[46] MBTA, Submission to the Office of the State Auditor, Outsourcing of the Property Management and Real Estate Development, Page 6-2.
[47] Auditor of the Commonwealth, "Letter to Patrick J. Moynihan, General Manager MBTA", Boston, MA, May 31, 1996.
[48] MBTA, "Letter to A. Joseph DeNucci: Real Estate Privatization", Boston, MA, May 30, 1996.
[49] MBTA, Submission to the Office of the State Auditor, Outsourcing of the Property Management and Real Estate Development, Page 4-1.
[50] Local 453 Office & Professional Employees International Union, "Memo to John Parsons: Real Estate Proposal", Boston, MA, May 7, 1996 and Local 453 Office & Professional Employees International Union, "Memo to John Parsons: Real Estate Proposal", Boston, MA, May 16, 1996

[51] Auditor of the Commonwealth, State Auditor's Determination of the Massachusetts Bay Transportation Authority's Proposal to Privatize Property Management and Real Estate Development Activities, Boston, MA, June 10, 1996, Page 4.
[52] MBTA, Submission to the Office of the State Auditor, Outsourcing of the Property Management and Real Estate Development, Page 4-3.
[53] Auditor of the Commonwealth, State Auditor's Determination of the Massachusetts Bay Transportation Authority's Proposal to Privatize Property Management and Real Estate Development Activities, Page 10.
[54] This figure represents estimated increased lease revenue compared with continued in house operation of real estate management.
[55] MBTA, Submission to the Office of the State Auditor, Contracting for Cleaning Maintenance and Installation Services of Bus Shelters Supported Entirely By the Sale of Advertising Rights, Boston, MA, November 12, 1996, Page i.
[56] MBTA, Submission to the Office of the State Auditor, Contracting for Cleaning Maintenance and Installation Services of Bus Shelters Supported Entirely By the Sale of Advertising Rights, Page 8-4.
[57] MBTA, "Letter from Dave Reynolds, Senior Buyer MBTA to Douglas Watts, Gannett Outdoor", Boston, MA, February 7, 1996.
[58] MBTA, Submission to the Office of the State Auditor, Contracting for Cleaning Maintenance and Installation Services of Bus Shelters Supported Entirely By the Sale of Advertising Rights, Page 2-2.
[59] MBTA, Submission to the Office of the State Auditor, Contracting for Cleaning Maintenance and Installation Services of Bus Shelters Supported Entirely By the Sale of Advertising Rights, Page 6-1.
[60] MBTA, Submission to the Office of the Auditor, Contracting for Cleaning Maintenance and Installation Services of Bus Shelters Supported Entirely By the Sale of Advertising Rights, Section 6.0 Summary of Bids Received, November 12, 1996, page 6-2.
[61] MBTA, Submission to the Office of the State Auditor, Contracting for Cleaning Maintenance and Installation Services of Bus Shelters Supported Entirely By the Sale of Advertising Rights, Section 6.0 Summary of Bids Received, page 6-2.
[62] Auditor of the Commonwealth, Privatization Reports, www.state.ma.us/sao/privpage.htm, Boston, MA.
[63] Auditor of the Commonwealth, "Letter from John W. Parsons, General Counsel to Lisa McCallum, MBTA Deputy Chief of Staff", Boston, MA, November 15, 1996.
[64] MBTA, "Letter from Lisa A. McCallum, Deputy Chief of Staff to John W. Parsons, Office of the State Auditor", Boston, MA, November 18, 1996.
[65] MBTA, Submission to the Office of the Auditor, Contracting for Cleaning Maintenance and Installation Services of Bus Shelters Supported Entirely by the Sale of Advertising Rights, Page 6-1.
[66] MBTA, Submission to the Office of the Auditor, Contracting for Cleaning Maintenance and Installation Services of Bus Shelters Supported Entirely By the Sale of Advertising Rights, Page 4-2.
[67] Office of the State Auditor, "Letter from A. Joseph DeNucci, Auditor of the Commonwealth to Patrick J. Moynihan, MBTA General Manager", Boston, MA, December 11, 1996.
[68] Auditor of the Commonwealth, DRAFT State Auditor's Determination of the Massachusetts Bay Transportation Authority's Proposal to Privatize Cleaning and Maintenance of Bus Shelters, Boston, MA, Date Unknown.
[69] Massachusetts Supreme Judicial Court Decision (SJC-08014), Feb. 2000.
[70] COMSIS Corporation in association with Howard/Stein-Hudson, Inc. and John T. Doolittle Associates, Inc., Henceforth "COMSIS".
[71] COMSIS, "Bus Service Delivery System, Final Report," July 1993
[72] COMSIS pg. ii
[73] COMSIS, based upon the U.S. Department of Transportation data labeled the "Section 15 Report". IN FY 1991, Seattle's system operated at a system-wide average of $111 per revenue hour.
[74] COMSIS pg iii
[75] COMSIS, pgs ii and II-7
[76] COMSIS pg VIII-1
[77] MBTA, "Request for Proposals for Operation and Maintenance of Fixed-Route Bus Service," August 15, 1996.
[78] See for example, "Letter from Winfield Homer and Thomas Roth to Jonathan Barnes, Esq., Director, Office of Labor Relations, MBTA," April 23, 1997
[79] MBTA, "RFP" Attachment 3

[80] Office of the State Auditor, "Letter from Joseph DeNucci to Patrick J. Moynihan, MBTA General Manager", Boston, MA, May 16,1997. Office of the State Auditor, "Letter from Joseph DeNucci to Patrick J. Moynihan, MBTA General Manager", Boston, MA, June 20, 1997
[81] MBTA, Submission to the Office of the Auditor, Contracting for Operation and Maintenance of Bus Routes from the Charlestown and Quincy Garages, April 18, 1997 (MBTA Submission I)
[82] MBTA, Submission to the Office of the Auditor, Contracting for Operation and Maintenance of Bus Routes from the Charlestown and Quincy Garages, May 23, 1997 (MBTA Submission II)
[83] Office of the State Auditor, "Letter from Joseph DeNucci to Patrick J. Moynihan, MBTA General Manager", Boston, MA, June 20, 1997, pg. 2
[84] Office of the State Auditor, "Letter from Joseph DeNucci to Patrick J. Moynihan, MBTA General Manager", Boston, MA, June 20, 1997, pg. 4
[85]Office of the State Auditor, "Letter from Joseph DeNucci to Patrick J. Moynihan, MBTA General Manager", Boston, MA, May 16, 1997, pg. 5 and Office of the State Auditor, "Letter from Joseph DeNucci to Patrick J. Moynihan, MBTA General Manager", Boston, MA, June 20, 1997, pg.7
[86] Office of the State Auditor, "Letter from Joseph DeNucci to Patrick J. Moynihan, MBTA General Manager", Boston, MA, June 20, 1997, pg. 7 *emphasis by OSA*
[87] Office of the State Auditor, "Letter from Joseph DeNucci to Patrick J. Moynihan, MBTA General Manager", Boston, MA, June 20, 1997
[88] Office of the State Auditor, "Letter from Joseph DeNucci to Patrick J. Moynihan, MBTA General Manager", Boston, MA, June 20, 1997, pg. 13
[89] The proposed contracts did include a single performance target – customer complaint levels.
[90] The Labor Bureau, Inc., "Initial Critical Analysis of the MBTA's Submission to the State Auditor Concerning the RFP for Operation and Maintenance of Fixed-Route Bus Service," April 1997
[91] Segal, *et al*
[92] In addition to academic discussion, (see for example New England Institute for Public Policy and Sclar, Elliott, You Don't Always Get What You Pay For: The Economics of Privatization.) several states have adopted laws that are similar to portions of MA's Privatization Law – California, Maryland, Michigan, and Vermont.
[93] Segal, *et al*, pg. ii
[94] ibid
[95] Segal, *et al*
[96]See discussion in Sclar, Elliott, You Don't Always Get What You Pay For: The Economics of Privatization, pg. 29.
[97] Segal, *et al*, pgs 15-16
[98] Note, this proposal was approved after the privatization had taken place. The estimated savings was $205,000 per year
[99] Pioneer cites US Environmental Protection Agency (EPA), "Questions and Answers About Full Cost Accounting (530-F-98-003)," 1998, pg. 1 and EPA, "Full Cost Accounting for Municipal Solid Waste Management: A Handbook (530-R-95-041)," 1997, pgs 28-29.
[100] Martin, Lawrence, How to Compare Costs Between In-House and Contracted Services, How to Guide #4.
[101] Segal, *et al*, pgs. 16-17

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

S.F. No. 796: A bill for an act relating to public employment; establishing procedures and standards for contracting with private entities for the provision of services that have been, or otherwise would be, provided by public employees; providing for public accountability; proposing coding for new law in Minnesota Statutes, chapter 471.

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

Page 1, line 12, delete "including" and insert "excluding"

Page 1, line 13, delete "but not" and insert "and"

Page 2, line 1, after "services" insert ", except services provided by persons licensed under sections 326.02 to 326.15,"

Page 2, line 3, delete everything after "agency"

Page 2, delete line 4

Page 2, line 5, delete everything before the semicolon

Page 2, line 20, after "16C.08" insert ", 16C.09, 43A.047,"

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

.....
(Committee Chair)

March 30, 2005.....
(Date of Committee recommendation)

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State of Minnesota

S.F. No. 1796 - Health Care Purchasing Authority

Author: Senator Sheila M. Kiscaden

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

Date: March 30, 2005

This bill directs the formation of the Minnesota Health Care Purchasing Authority through interagency agreements. The purchasing authority will serve as the agency of state government responsible for all state purchasing of health care. In addition, the purchasing authority must provide a variety of reports and proposed legislation as required in the bill.

Subdivision 1 [PURCHASING AUTHORITY CREATED.] directs the Commissioner of Employee Relations to form the Minnesota Health Care Purchasing Authority through the use of interagency agreements among the Commissioners of Health, Human Services, Labor and Industry, Corrections, Commerce, and Administration. By December 15, 2006, the commissioners must submit a report and proposed legislation for creation of the purchasing authority.

Subdivision 2 [PRINCIPLES OF STATE PURCHASING.] requires the submission of an annual report at an unspecified date from the purchasing authority to the legislature and governor regarding the unified purchasing of health care services. Provides guidelines and standards for the report and plan.

Subdivision 3 [PURCHASING AND COVERAGE GUIDELINES.] directs the purchasing authority to convene a panel of health care policy experts to establish a process for creating guidelines for state government health care purchasing decisions.

Subdivision 4 [PUBLIC AND PRIVATE PURCHASERS.] requires the purchasing authority to submit a plan by December 15, 2005, that will allow a variety of public employers, and private employers with 49 or fewer employees, to purchase a secure benefits set through the state purchasing authority.

Subdivision 5 [COMMON STANDARDS FOR STATE PURCHASING AND REGULATION.] requires the state purchasing authority to submit a report and proposed legislation by December 15, 2006 that will require state purchasing and regulatory requirements to use common standards for quality and performance measurements.

Subdivision 6 [SECURE BENEFIT SET DEVELOPMENT.] requires the purchasing authority to define a secure benefit set, including preventive health services, prescription drug coverage, and catastrophic coverage.

Subdivision 7 [SPECIAL POPULATIONS.] requires the purchasing authority to consider special populations, including those who are elderly or disabled and persons with chronic conditions.

Subdivision 8 [COST AND QUALITY DISCLOSURE.] requires the purchasing authority to contract with a private, nonprofit organization to serve as a statewide source of comparative information on health care costs and quality.

Section 2 [EFFECTIVE DATE.] makes the entire bill effective July 1, 2005.

TSB:rer

Senators Kiscaden, Scheid, Higgins, Lourey and Skoe introduced--

S.F. No. 1796: Referred to the Committee on State and Local Government Operations.

A bill for an act

relating to state government; establishing the Minnesota Health Care Purchasing Authority; requiring a report.

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

Section 1. [STATE HEALTH CARE PURCHASING AUTHORITY.]

Subdivision 1. [PURCHASING AUTHORITY CREATED.] By December 15, 2005, the commissioner of employee relations, in consultation with the commissioners of health, human services, labor and industry, corrections, commerce, and administration and the Minnesota Comprehensive Health Association board of directors shall enter into interagency agreements regarding the formation of the Minnesota Health Care Purchasing Authority for the purpose of implementing a unified strategy and joint purchasing of health care services for the state of Minnesota. The strategy shall include implementing a process that examines the health care purchasing decisions and coverage in terms of cost and medical efficacy based on reliable research evidence to ensure access to appropriate and necessary health care. By December 15, 2006, the commissioners shall submit to the legislature a report and proposed legislation for the creation of the purchasing authority as a distinct agency of state government responsible for all state purchasing of health care.

Subd. 2. [PRINCIPLES OF STATE PURCHASING.] The purchasing authority shall prepare and submit to the governor and

legislature an annual report and plan for the unified purchasing of health care services. The plan must:

(1) promote personal choice and responsibility;

(2) encourage and promote better health of patients and residents of the state;

(3) provide incentives to privately based health plans and health care delivery systems to improve efficiency and quality;

(4) use community standards and measurement methods for determining the value of specific health care services based on quality and performance; and

(5) separate the health care purchasing functions of state government from those activities relating to regulation and delivery of services, but require consistent use of uniform quality and performance standards and methods for purchasing, regulation, and delivery of health care services.

Subd. 3. [PURCHASING AND COVERAGE GUIDELINES.] The purchasing authority shall convene a panel of health care policy experts to establish a process to select evidence-based guidelines based on sound research evidence and implement an integrated approach using these guidelines for state government purchasing decisions and coverage design.

Subd. 4. [PUBLIC AND PRIVATE PURCHASERS.] The purchasing authority shall prepare and submit to the governor and legislature by December 15, 2005, a plan for permitting public employers, including school districts, cities, counties, and other governmental entities; private employers with 49 or fewer employees; nursing homes and other long-term care employers; and individuals to purchase a secure benefit set through the state purchasing authority. The secure benefit set shall include health care services that are: (1) essential for the protection of individual and public health; and (2) effective in treating a health condition based on research evidence.

Subd. 5. [COMMON STANDARDS FOR STATE PURCHASING AND REGULATION.] The purchasing authority, in consultation with all state agencies, boards, and commissioners that have responsibility for purchasing or for regulating individuals and

organizations that provide health coverage or deliver health care services, shall prepare and submit to the governor and legislature by December 15, 2006, a report and proposed legislation that will require all state purchasing and regulatory requirements to use common standards and measurement methods for quality and performance.

Subd. 6. [SECURE BENEFIT SET DEVELOPMENT.] The purchasing authority, in consultation with a panel of health care policy experts, shall define a secure benefit set that includes coverage for preventive health services, as specified in preventive services guidelines for children and adults developed by the Institute for Clinical Systems Improvement, prescription drug coverage, and catastrophic coverage.

Subd. 7. [SPECIAL POPULATIONS.] In developing a plan for the unified purchasing of health care services and a secure benefit set, the purchasing authority must take into account the needs of special populations, including, but not limited to, persons who are elderly or disabled and persons with chronic conditions.

Subd. 8. [COST AND QUALITY DISCLOSURE.] The purchasing authority, in cooperation with organizations representing consumers, employers, physicians and other health professionals, hospitals, long-term care facilities, health plan companies, quality improvement organizations, research and education institutions, and other appropriate constituencies, shall identify and contract with a private, nonprofit organization to serve as a statewide source of comparative information on health care costs and quality.

Sec. 2. [EFFECTIVE DATE.]

Section 1 is effective July 1, 2005.

Senator ..... moves to amend S.F. No. 1796 as follows:

Page 2, line 18, after "experts" insert "and health care providers"

Page 2, delete lines 22 to 32 and insert:

"Subd. 4. [PUBLIC AND PRIVATE PURCHASERS.] (a) The purchasing authority shall prepare and submit to the governor and legislature by December 15, 2005, a plan for permitting public employers, including school districts, cities, counties, and other governmental entities; and nursing homes and other long-term care employers to purchase a secure benefit set through the state purchasing authority. The secure benefit set must include the services described under subdivision 6.

(b) Notwithstanding any laws to the contrary, the commissioner of employee relations may expand the range of health coverage options available to purchase under the public employees insurance program established under Minnesota Statutes, section 43A.316, including the option to purchase the secure benefit set as defined under subdivision 6. Under this option, public employers, nursing homes and other long-term care employers may purchase health coverage for their employees through the public employees insurance program beginning January 1, 2006.

(c) The purchasing authority shall include in the plan described in paragraph (a) a process for permitting private employers with 49 or fewer employees and individuals to purchase the secure benefit set through the State health care purchasing authority beginning January 1, 2009."

SF1796

NATIONAL ACADEMY
for STATE HEALTH POLICY

Models of Collaborative Purchasing

Prepared by the National Academy for State Health Policy
Under a grant from the Maine Health Access Foundation

Public purchasers through collaborative purchasing can seek better quality and value from their health care dollar. Collaborative purchasing, in the context of the Health Action Team's subcommittee on Public Purchasing, is when public entities purchase health care services together. Public entities are any entity that purchases health care for its employees using public (taxpayer) dollars, i.e., state universities, municipalities, school districts, Medicaid, state government, prisons, etc.

There are many models of collaboration the State of Maine can consider as it explores health reform. Models of collaborative purchasing include:

- Multiple public entities sign a single contract with one or more insurers. The contract may designate different benefit packages, cost sharing, etc. for different groups

- Multiple public entities issue a single RFP, but sign separate contracts for different rates, benefit packages, etc. In this case, each agency may conduct separate negotiations with the selected contractor(s) about the final details of the agency's contract.

- One public entity places a requirement to participate in another's program as a condition of contracting. For example, the agency that purchases insurance for state employees says it will only contract with insurers that also contract to serve Medicaid beneficiaries.

- Multiple public entities combine to purchase services other than health care. For example, several states use the same prescription benefit managers for different state agencies.

Snapshot of State Collaborative Purchasing Experience

	Administering department	Original Legislative Authority	Implementation date	Groups covered	Covered lives	Participation M/V	Purchasing power	Other Contracts	RX
Delaware	State Employee Benefits Committee	Title 29 Chapter 52 http://www.delcode.state.de.us/title29/chapter052.htm#TopOfPage	1994	State employees (including public school employees), higher education employees, Pensioners (pre and post 65) in one contract.	100,000 (03)	Municipal groups can join at their own discretion. They shop around and chose the least expensive rate.	$294,000,000 (FY 03) Self-insured with Blue Cross administering claims.	Contract separately for Medicaid, prison health care, and Department of Children and Families (foster care) in three contracts. If state employee contract is bid on must bid on other 3 contracts.	Carved-out and offered through Express Scripts through a multi state initiative called Rxis with New Mexico Missouri, West Virginia. $2,000,000 savings. Implemented July 1, 2002 (any state can join).
Georgia - State Health Benefit Plan (SHBP)	Department of Community Health	SB 241 http://www.legis.state.ga.us/cgi-bin/gl_codes_detail.pl?code=31-5A-1	July 2000	Teachers, school personnel, state employees, retirees, dependents, University personnel.	600,000 plus 60,000 University System	Universities as a whole can decide which delivery systems are offered and benefit package.	$1.5 billion	DCH also contracts for Medicaid benefits.	Managed RX via PBM for Medicaid and Public Employee
Missouri – Consolidated Health Care Plan (MCHCP)	Consolidated Health Care Plan w/Board of Trustees	http://www.sos.state.mo.us/adrules/csr/current/22csr/22csr.asp#22-10 Chapter 103 of the Revised Statute	Statutorily created and organized January 1994 Enrollment began in 1994 for state employees and in 1995 for other public entities.	State employees, retirees, and other public entities, including cities, counties, and school districts. Other public entities are underwritten separately	108,700 (103,600 in state enrollment)	Other public entities participate on a voluntary basis. If they chose not to participate, the entity must wait 2 years before they join again. Peak participation was in 2000 with 700 entities	$341,954,832 (03)	Medicaid is contracted separately out of the Department of Social Services	Carved-out though multi-state initiative using Express Scripts, but state has its own contract.

	Administering department	Original Legislative Authority	Implementation date	Groups covered	Covered lives	Participation M/V	Purchasing power	Other Contracts	RX
New York – New York State Health Insurance Program (NYSHIP)	Civil Service Employee Benefits Division	Civil Service Article 11 http://public.leginfo.state.ny.us/menugetf.cgi	1957 for state employees and 1958 for local governments and school districts.	State employees, legislature, Unified court system, local governments, school districts, dependants, other political subdivisions	1.1 million Over 800 local government employers offer NYSHIP	Voluntary- Less than half of the local government employers participate	$3.5 billion	The state contracts out Medicaid separately.	Carved-out
Washington	The Public Employees Benefits Board, created within the Washington State Health Care Authority	http://www.wa.gov/hca/laws.htm#hca	Statutorily created and organized in 1988.	Administers 3 programs: PEBB, Basic Health (BH) and Community Health Services (CHS). PEBB offers insurance coverage to state employees and K-12 school districts & local governments may apply to join PEBB. See below for more information about BH and CHS.	PEBB: 309,118 BH: 176,964	K-12 school districts and employer groups may also choose to join PEBB plans.	Approximately $743,000,000 for PEBB	PEBB contracts with 7 managed care organizations that are required to have integrated delivery systems (the MCOs frequently subcontract for certain services, e.g. Rx, mental health, etc.. PEBB also offers 1 self-insured PPO and subcontracts out its Rx	No carve out. Managed Care Organizations either self-deliver or subcontract.
West Virginia	Public Employees Insurance Agency (PEIA)	Chapter 16 http://129.71.164.29/wvcode_chap/wvcode_chapfrm.htm	1995	State government and its agencies, state-related colleges and universities, county boards of education, county and municipal governments and others as described in Code 5-16-2	210,000 10,000 separate pool local governments w/same benefits	Yes except for local government with 3 year required participation. Not all buy, they in shop around for better deal.	Estimated (03) $492,000,000 Minus $6M for life insurance.	SCHIP uses TPA. Separate contracts for Medicaid beneficiaries.	Carved out. Via Express Scripts in Multi-state purchasing alliance (See Delaware). As compared to previous RX estimate $25,000,000 savings over 3 year period. PEIA only. Medicaid will join in October 2003.

Notes on Collaborative Purchasing in Several States

›nnecticut – Participating municipalities and non-ofit organizations must bear the administrative cost of participating in the state plan. When a municipality or non-profit employer decides to participate in the state plan, it undergoes separate underwriting. As a result, the premium it pays depends on the demographics of its employees and their claims history experience. Also, benefits can vary from the state employee plan. The rates that the state pays for its employees cannot be adversely affected by inclusion of the non-state employees. The statutory and contractual rights of the state and state employees may not be impaired by an expansion.

Delaware – Enabling legislation available at www.delcode.state.de.us/title29/chapter052.htm. Benefits for state employee contract offered through two HMOs and one PPO; supplemental Medicare with different benefit packages.
The state estimates savings of $750,000 in 2003 for ›alth coverage.

Georgia – Teachers and school personnel represent almost 60% of the covered lives and retirees about 15%. State offers self-insured PPO, four HMOs and one indemnity plan. University offers the PPO, two HMOs and the indemnity plan. Two of the HMOs are self-insured.

Missouri – CHCP benefits are provided through a self-funded preferred provider organization (PPO) and various health maintenance organizations (HMO) and point of service (POS) contracts. Through 1994 all Plan members were state employees, retirees, and their dependents. Beginning January 1, 1995, additional members included public entity employees, retirees, and their dependants.

Prior to January 1, 1995, the Plan was self-insured for medical claims. Beginning in 1995, however, the ›an accepted bids from outside insurance contractors fully insure medical claims previously covered under the Plan's self-insured indemnity program. Beginning in 2000, the plan offered a PPO plan to state employees. The self-funded PPO is insured by American Life and Health for stop-loss coverage.

State contribution rates are based on the states approved appropriation and the number of anticipated participants. State employees and public entity contribution rates are established by the Plan's Board of Trustees based on contractor bids for the plan year, and budgeted employer contributions.

Currently MCHCP administers health insurance benefits for eligible members of the Missouri State Employees' Retirement System (except employees of the Department of Conservation, Highway Department, Highway Patrol and State Colleges and Universities), members of the Judicial Retirement Plan, legislators, statewide elected officials and certain members of the Public School Retirement system, and enrolled Missouri public entities. The state defines the benefit packages of which there are two. Standard and premium which offer different premium and copay levels.

2002 revenue and expenses
Revenue Fiscal year 2002
$222,987,803 state/employer contribution
$75,701,524 Member contribution
$37, 630,463 Public Entity Income
Total operating revenue = $336,319,790

Expenses Fiscal Year 2002
$334,208,591 Medical claims and capitation
$5,314,606 Administration and payroll
$1,795,708 Other
Total operating expenses and fees = $341, 318, 905

Lessons learned in Missouri
If participation is voluntary for other public entities, there must be a mechanism to help stabilize the pool. This state has a two-year wait period for between participation periods. If an entity participates and then leaves, the entity must wait two years before rejoining. Also, underwriting other entities separately helps stabilize rates for state employees.

New York - NYSHIP is the largest public employer health insurance program in the nation outside the Federal Government. Employees of NY state

government may choose the Empire Plan, a health insurance indemnity plan designed by NY State and the employee unions, or one of more than 16 'YSHIP-approved HMOs. The Empire Plan is ailable to local governments, school districts, and other political subdivisions. 800 local governments offer NYSHIP.

In 1986, NYSHIP introduced the Empire Plan, benefits are available for a wide spectrum of services:

- Inpatient and outpatient hospital coverage for medical, surgical and maternity care through Empire Blue Cross and Blue Shield. Covered inpatient services are paid in full.
- Medical and surgical coverage through United HealthCare. Coverage under the Participating Provider network, or under the Basic Medical Program if you choose a non-participating provider.
- Home care services, diabetic supplies, durable medical equipment and certain medical supplies through the Home Care Advocacy Program (HCAP).
  Chiropractic treatment and physical therapy coverage administered by Managed Physical Network, Inc. (MPN).
- Complementary and Alternative Medicine Program offering discounts on massage therapy, acupuncture and nutritional counseling.
- Disease Management Programs including cardiovascular disease, asthma, migraine headaches and diabetes.
- Centers of Excellence for Transplants Program and Infertility.
- Mental health and substance abuse coverage administered by ValueOptions.
- Prescription drug coverage administered by Express Scripts.

According to a study done by Towers Perrin, in the past ten years, the cost of other large U.S. employer plans increased 7.9 percent annually, on average. In comparison, the Empire Plan experienced an average nual net increase of 5.4 percent. The Empire Plan's mbination of managed care features and reasonable copayments have kept benefits rich and costs down.

Washington - The Health Care Authority (HCA) administers three health care programs: Basic Health, Community Health Services, and Public Employees Benefits Board (PEBB), and provides access to high-quality health care for more than 500,000 Washington residents. The HCA also oversees the Uniform Medical Plan (UMP), a state-administered, self-insured preferred provider plan that is available to PEBB enrollees.

Basic Health is a state-sponsored program that provides affordable health care coverage to low-income Washington residents through eight private health plans. Monthly premiums are based on family size, income, age, and the health plan selected. Copayments are required for most services, but there are no deductibles or coinsurance. For those who qualify for Basic Health, state funds will be used to help pay a portion of the monthly premium. These means members may pay as little as $10 per month for each enrolled adult. To qualify, applicants must meet Basic Health's income guidelines, live in Washington State, not be eligible for Medicare, and not be institutionalized at the time of enrollment.

Community Health Services (CHS) provides grants to community clinics for under served & uninsured low-income WA populations. The mission of CHS is to promote access to prevention and illness care for underserved and uninsured low-income populations in Washington State.

To accomplish this mission, Community Health Services:

- Provides over $6 million annually for dental, medical, and migrant funding to 29 not-for-profit community health clinics throughout the state.
- Provides technical assistance, consultation, education, and training to contracted clinics and potential new clinics.
- Collects, analyzes, and distributes health-related data supplied by the clinics.
- Fosters support and provides information regarding community clinic dental, medical, and migrant services within other state agencies.

Public Employees Benefits Board (PEBB). The State of Washington provides health benefits and related insurance coverage to all eligible state and higher-education employees as a benefit of employment. In addition, K-12 school districts and public employer

groups may also apply to join PEBB plans. The Public Employees Benefits Board, created within the Washington State Health Care Authority, establishes eligibility requirements and approves both the benefit design and enrollee contributions.

PEBB administers medical, dental, basic life, long-term care, auto/home and long-term disability insurance coverage for eligible employees, retirees and their dependents. PEBB offers insurance through 7 managed care organizations and the state's self-insured, preferred provider plan, The Uniform Medical Plan (UMP). www.hca.wa.gov http://www.pebb.hca.wa.gov/

Lessons learned in Washington
Both the Health Care Authority and Department of Social and Health Services purchase managed care for different state populations. DSHS provides health care for the Medicaid population. At one time WA tried to capitalize on combined purchasing clout. Their hope was that they would gain increased access for all state programs and gain rate concessions. In the initial year of collaboration they stated that if a health plan bid the Basic Health program, it must also bid on DSHS Healthy options program. What happened was that both programs lost access in areas that were critical to the unique needs of the programs and WA do not believe they received any financial benefit. Currently the state "encourages," but does not require, plans to serve both programs. The state also found that close collaboration between agencies and programs led to health plans cost shifting between all state programs. And finally, with the increased state and federal mandates, the state finds that many providers and health plans are starting to send the message that they can no longer afford to serve multiple state programs.

While the state found the initial objective of increased access and reduced rates was not met, the state did identify successes. Providers and carriers have complemented both agencies on their efforts to focus on streamlining the procurement process to ensure administrative simplification. Both agencies collaborate on common contract terms, procurement cycles, reporting requirements, and contract monitoring activities. The state is exploring future collaborative efforts with both other public and private sector purchasers.

West Virginia – Different types of employers may offer employees different benefit choices and payment levels. Self-insured Preferred Provider Benefit program, and 2 HMOs.
It is difficult to say what the savings are, but the state required that if providers accept PEIA they must accept the Medicaid rate

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S.F. No. 1164 - MCHA Assessment; Premium Tax; HSAs; and Cigarette Taxes (first engrossment)

Author: Senator Sheila M. Kiscaden

Prepared by: Christopher B. Stang, Senate Counsel (651/296-0539)

Date: March 28, 2005

Overview

This bill:

- eliminates the Minnesota Comprehensive Health Association (MCHA) assessment on health insurance;
- makes structural changes in MCHA to reflect the elimination of assessments;
- eliminates the premium tax on health insurance;
- conforms the Minnesota income tax to the federal tax treatment of Health Savings Accounts (HSAs); and
- increases the cigarette excise tax by 99 cents per pack to $1.47 per pack to offset the cost to the state of paying MCHA deficits and the revenue losses from conforming to HSAs and eliminating the premium tax.

Section 1 requires that health plan companies pass along to their customers in the form of lower premiums, savings from the elimination of taxes and assessments on health coverage accomplished in this bill.

Section 2 is a technical conforming change to amend a definition to eliminate a reference to insurers as being "contributing members" of the MCHA. Eliminates unnecessary language.

Section 3 eliminates a reference to solvency of contributing members as a factor for the Commissioner of Commerce to consider in approving MCHA premiums. Under this bill, insurers will not be assessed to cover MCHA's deficits, so their financial solvency will no longer be relevant.

Section 4 eliminates the list of types of insurers who are currently members of MCHA and provides that MCHA will no longer have members.

Section 5 eliminates designated insurance-related board positions on the MCHA board and provides that all board members will be selected by the Commissioner of Commerce. Retains the current requirements that at least two board members be MCHA enrollees and that at least two live outside the seven-county metropolitan area. Eliminates references to features of MCHA that are no longer relevant under this bill.

Section 6 eliminates the requirement that insurers be members of MCHA as a condition of doing business in this state.

Section 7 is a conforming change.

Section 8 eliminates obsolete language relating to MCHA providing reinsurance to member-insurers.

Sections 9 to 12 are conforming changes.

Section 13 provides an open general fund appropriation to the Commissioner of Commerce in whatever amount is necessary to offset the MCHA deficit for a fiscal year.

Sections 14 and 15 are conforming changes.

Section 16 provides that the effective date of Minnesota's conformity with the federal income tax treatment of HSAs would be retroactive to January 1, 2004.

Section 17 conforms Minnesota's income tax treatment of HSAs to the federal income tax laws.

Section 18 increases the excise tax rates on cigarettes by 99 cents per pack. This will raise the tax from 48 cents per pack of 20 to $1.47. This increase is effective on December 1, 2005.

Section 19 adjusts the dedication of the cigarette tax revenues to the Academic Health Center at the University of Minnesota and to the medical education and research account in the special revenue fund to hold the revenues of those funds constant in light of the tax increase in section 18. These funds both receive a share of the cigarette tax revenues, based on the number of cigarettes sold. Since increasing the excise tax will reduce purchases of cigarettes, this section raises the rates of the dedications by the amounts estimated to hold the two funds' revenues constant.

Section 20 exempts the premiums paid to health insurers for a "health plan" from the two percent premium tax.

Section 21 imposes a 99 cent per pack floor stocks cigarette tax on the stocks of cigarettes possessed by cigarette distributors, subjobbers, retailers, and others on December 1, 2005 (the day the new excise tax rate takes effect under section 18). The floor stocks tax is intended to prevent distributors, subjobbers, and retailers from purchasing large stocks of cigarettes in anticipation of the excise tax rate increase to avoid the tax.

Section 22 appropriates $210,309,000 to the Commissioner of Commerce to pay for the estimated MCHA deficit in the next biennium. The Governor is directed to include a recommendation for this item in the next biennial budget submitted to the Legislature.

Section 23 repeals current laws involving MCHA that involve the assessment or MCHA members.

CBS:cs

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

S.F. No. 1796: A bill for an act relating to state government; establishing the Minnesota Health Care Purchasing Authority; requiring a report.

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

Page 2, line 18, after "experts" insert "and health care providers"

Page 2, delete lines 22 to 32 and insert:

"Subd. 4. [PUBLIC AND PRIVATE PURCHASERS.] (a) The purchasing authority shall prepare and submit to the governor and legislature by December 15, 2005, a plan for permitting public employers, including school districts, cities, counties, and other governmental entities; and nursing homes and other long-term care employers to purchase a secure benefit set through the state purchasing authority. The secure benefit set must include the services described under subdivision 6.

(b) Notwithstanding any laws to the contrary, the commissioner of employee relations may expand the range of health coverage options available to purchase under the public employees insurance program established under Minnesota Statutes, section 43A.316, including the option to purchase the secure benefit set as defined under subdivision 6. Under this option, public employers, nursing homes and other long-term care employers may purchase health coverage for their employees through the public employees insurance program beginning January 1, 2006.

(c) The purchasing authority shall include in the plan described in paragraph (a) a process for permitting private employers with 49 or fewer employees and individuals to purchase the secure benefit set through the state health care purchasing authority beginning January 1, 2009."

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

.....
(Committee Chair)

March 30, 2005.....
(Date of Committee recommendation)

A bill for an act

relating to health; changing the governance structure of the Minnesota Comprehensive Health Association; increasing the cigarette tax; conforming to federal law on health savings accounts; providing a health insurance exemption from the insurance premiums tax; repealing the assessment for the Minnesota Comprehensive Health Association; appropriating money; amending Minnesota Statutes 2004, sections 62A.02, by adding a subdivision; 62E.02, subdivision 23; 62E.091; 62E.10, subdivisions 1, 2, 3, 6, 7; 62E.11, subdivisions 9, 10; 62E.13, subdivisions 2, 3a, by adding a subdivision; 62E.14, subdivisions 1, 6; 290.01, subdivisions 19, 31; 297F.05, subdivision 1; 297F.10, subdivision 1; 297I.15, subdivision 4; repealing Minnesota Statutes 2004, sections 62E.02, subdivision 23; 62E.11, subdivisions 5, 6, 13; 62E.13, subdivision 1.

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

Section 1. Minnesota Statutes 2004, section 62A.02, is amended by adding a subdivision to read:

Subd. 8. [EFFECTS ON PREMIUM RATES OF CERTAIN LAW CHANGES.] In approving premium rates under this section and sections 62A.021; 62A.65, subdivision 3; and 62L.08, subdivision 8, the commissioners of commerce and health shall ensure that the provisions of this act eliminating the Comprehensive Health Association assessment and reducing the scope of the premium tax are reflected in the premium rates charged by health plan companies.

[EFFECTIVE DATE.] This section is effective for coverage issued on or after January 1, 2006.

Sec. 2. Minnesota Statutes 2004, section 62E.02,

subdivision 23, is amended to read:

Subd. 23. [~~CONTRIBUTING-MEMBER~~ HEALTH PLAN COMPANY.] "~~Contributing-member~~ Health plan company" means those companies regulated under chapter 62A and offering, selling, issuing, or renewing policies or contracts of accident and health insurance; health maintenance organizations regulated under chapter 62D; nonprofit health service plan corporations regulated under chapter 62C; community integrated service networks regulated under chapter 62N; fraternal benefit societies regulated under chapter 64B; the Minnesota employees insurance program established in section 43A.317, effective July 1, 1993; and joint self-insurance plans regulated under chapter 62H. ~~For the purposes of determining liability of contributing members pursuant to section 62E.11 payments received from or on behalf of Minnesota residents for coverage by a health maintenance organization or community integrated service network shall be considered to be accident and health insurance premiums.~~

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

Sec. 3. Minnesota Statutes 2004, section 62E.091, is amended to read:

62E.091 [APPROVAL OF STATE PLAN PREMIUMS.]

The association shall submit to the commissioner any premiums it proposes to become effective for coverage under the comprehensive health insurance plan, pursuant to section 62E.08, subdivision 3. No later than 45 days before the effective date for premiums specified in section 62E.08, subdivision 3, the commissioner shall approve, modify, or reject the proposed premiums on the basis of the following criteria:

(a) whether the association has complied with the provisions of section 62E.11, subdivision 11;

(b) whether the association has submitted the proposed premiums in a manner which provides sufficient time for individuals covered under the comprehensive insurance plan to receive notice of any premium increase no less than 30 days prior to the effective date of the increase;

(c) the degree to which the association's computations and

conclusions are consistent with section 62E.08;

(d) the degree to which any sample used to compute a weighted average by the association pursuant to section 62E.08 reasonably reflects circumstances existing in the private marketplace for individual coverage;

(e) the degree to which a weighted average computed pursuant to section 62E.08 that uses information pertaining to individual coverage available only on a renewal basis reflects the circumstances existing in the private marketplace for individual coverage;

(f) a comparison of the proposed increases with increases in the cost of medical care and increases experienced in the private marketplace for individual coverage;

(g) the financial consequences to enrollees of the proposed increase;

(h) the actuarially projected effect of the proposed increase upon both total enrollment in, and the nature of the risks assumed by, the comprehensive health insurance plan; and

(i) ~~the relative solvency of the contributing members; and~~

~~(j)~~ other factors deemed relevant by the commissioner.

In no case, however, may the commissioner approve premiums for those plans of coverage described in section 62E.08, subdivision 1, paragraphs (a) to (d), that are lower than 101 percent or greater than 125 percent of the weighted averages computed by the association pursuant to section 62E.08. The commissioner shall support a decision to approve, modify, or reject any premium proposed by the association with written findings and conclusions addressing each criterion specified in this section. If the commissioner does not approve, modify, or reject the premiums proposed by the association sooner than 45 days before the effective date for premiums specified in section 62E.08, subdivision 3, the premiums proposed by the association under this section become effective.

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

Sec. 4. Minnesota Statutes 2004, section 62E.10, subdivision 1, is amended to read:

Subdivision 1. [CREATION; TAX EXEMPTION.] There is established a Comprehensive Health Association to promote the public health and welfare of the state of Minnesota ~~with membership consisting of all insurers, self-insurers, fraternals, joint self-insurance plans regulated under chapter 62H, the Minnesota employees insurance program established in section 43A.317, effective July 1, 1993, health maintenance organizations, and community integrated service networks licensed or authorized to do business in this state.~~ The association shall have no members. The Comprehensive Health Association is exempt from the taxes imposed under chapter 297I and any other laws of this state and all property owned by the association is exempt from taxation.

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

Sec. 5. Minnesota Statutes 2004, section 62E.10, subdivision 2, is amended to read:

Subd. 2. [BOARD OF DIRECTORS; ORGANIZATION.] The board of directors of the association shall be made up of ~~eleven members as follows: six directors selected by contributing members, subject to approval by the commissioner, one of which must be a health actuary, five public directors~~ 11 individuals selected by the commissioner, at least two of whom must be plan enrollees, ~~two of whom must be representatives of employers whose accident and health insurance premiums are part of the association's assessment base, and one of whom must be a licensed insurance~~ agent and at least six of whom have a working knowledge of health insurance. At least two of the ~~public~~ directors must reside outside of the seven county metropolitan area. ~~In determining voting rights at members' meetings, each member shall be entitled to vote in person or proxy. The vote shall be a weighted vote based upon the member's cost of self-insurance, accident and health insurance premium, subscriber contract charges, health maintenance contract payment, or community integrated service network payment derived from or on behalf of Minnesota residents in the previous calendar year, as determined by the commissioner. In approving directors of the board, the~~

~~commissioner shall consider, among other things, whether all types of members are fairly represented. Directors selected by contributing members may be reimbursed from the money of the association for expenses incurred by them as directors, but shall not otherwise be compensated by the association for their services. The costs of conducting meetings of the association and its board of directors shall be borne by members of the association.~~

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

Sec. 6. Minnesota Statutes 2004, section 62E.10, subdivision 3, is amended to read:

Subd. 3. [~~MANDATORY MEMBERSHIP~~ ORGANIZATIONAL DOCUMENTS.] ~~All members shall maintain their membership in the association as a condition of doing accident and health insurance, self insurance, health maintenance organization, or community integrated service network business in this state.~~ The association shall submit its articles, bylaws, and operating rules to the commissioner for approval; provided that the adoption and amendment of articles, bylaws, and operating rules by the association and ~~the~~ their approval by the commissioner ~~thereof shall be~~ is exempt from ~~the provisions of~~ sections 14.001 to 14.69.

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

Sec. 7. Minnesota Statutes 2004, section 62E.10, subdivision 6, is amended to read:

Subd. 6. [ANTITRUST EXEMPTION.] In the performance of their duties as ~~members~~ directors of the association, the ~~members~~ directors and their employers shall be exempt from the provisions of sections 325D.49 to 325D.66.

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

Sec. 8. Minnesota Statutes 2004, section 62E.10, subdivision 7, is amended to read:

Subd. 7. [GENERAL POWERS.] The association may:

(a) Exercise the powers granted to insurers under the laws of this state;

(b) Sue or be sued;

(c) Enter into contracts with insurers, similar associations in other states, or with other persons for the performance of administrative functions ~~including the functions provided for in clauses (e) and (f)~~; and

(d) Establish administrative and accounting procedures for the operation of the association~~.~~.

~~(e) Provide for the reinsuring of risks incurred as a result of issuing the coverages required by sections 62E.04 and 62E.16 by members of the association. Each member which elects to reinsure its required risks shall determine the categories of coverage it elects to reinsure in the association. The categories of coverage are:~~

~~(1) individual qualified plans, excluding group conversions;~~

~~(2) group conversions;~~

~~(3) group qualified plans with fewer than 50 employees or members; and~~

~~(4) major medical coverage.~~

~~A separate election may be made for each category of coverage. If a member elects to reinsure the risks of a category of coverage, it must reinsure the risk of the coverage of every life covered under every policy issued in that category. A member electing to reinsure risks of a category of coverage shall enter into a contract with the association establishing a reinsurance plan for the risks. This contract may include provision for the pooling of members' risks reinsured through the association and it may provide for assessment of each member reinsuring risks for losses and operating and administrative expenses incurred, or estimated to be incurred in the operation of the reinsurance plan. This reinsurance plan shall be approved by the commissioner before it is effective. Members electing to administer the risks which are reinsured in the association shall comply with the benefit determination guidelines and accounting procedures established by the association. The fee charged by the association for the reinsurance of risks shall not be less than 110 percent of the~~

~~total-anticipated-expenses-incurred-by-the-association-for-the reinsurance;-and~~

~~(f)-Provide-for-the-administration-by-the-association-of policies-which-are-reinsured-pursuant-to-clause-(e).--Each member-electing-to-reinsure-one-or-more-categories-of-coverage in-the-association-may-elect-to-have-the-association-administer the-categories-of-coverage-on-the-member's-behalf.--If-a-member elects-to-have-the-association-administer-the-categories-of coverage,-it-must-do-so-for-every-life-covered-under-every policy-issued-in-that-category.--The-fee-for-the-administration shall-not-be-less-than-110-percent-of-the-total-anticipated expenses-incurred-by-the-association-for-the-administration.~~

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

Sec. 9. Minnesota Statutes 2004, section 62E.11, subdivision 9, is amended to read:

Subd. 9. [SPECIAL ASSESSMENT UPON TERMINATION OF INDIVIDUAL HEALTH COVERAGE.] Each ~~contributing-member~~ health plan company that terminates individual health coverage for reasons other than (a) nonpayment of premium; (b) failure to make co-payments; (c) enrollee moving out of the area served; or (d) a materially false statement or misrepresentation by the enrollee in the application for membership; and does not provide or arrange for replacement coverage that meets the requirements of section 62D.121; shall pay a special assessment to the state plan based upon the number of terminated individuals who join the comprehensive health insurance plan as authorized under section 62E.14, subdivisions 1, paragraph (d), and 6. Such a ~~contributing-member~~ health plan company shall pay the association an amount equal to the average cost of an enrollee in the state plan in the year in which the ~~member~~ health plan company terminated enrollees multiplied by the total number of terminated enrollees who enroll in the state plan.

The average cost of an enrollee in the state comprehensive health insurance plan shall be determined by dividing the state plan's total annual losses by the total number of enrollees from that year. ~~This-cost-will-be-assessed-to-the-contributing~~

~~member-who-has-terminated-health-coverage-before-the-association makes-the-annual-determination-of-each-contributing-member's liability-as-required-under-this-section.~~

In the event that the ~~contributing-member~~ health plan company is terminating health coverage because of a loss of health care providers, the commissioner may review whether or not the special assessment established under this subdivision will have an adverse impact on the ~~contributing-member~~ health plan company or its enrollees or insureds, including but not limited to causing the ~~contributing-member~~ health plan company to fall below statutory net worth requirements. If the commissioner determines that the special assessment would have an adverse impact on the ~~contributing-member~~ health plan company or its enrollees or insureds, the commissioner may adjust the amount of the special assessment, or establish alternative payment arrangements to the state plan. For health maintenance organizations regulated under chapter 62D, the commissioner of health shall make the determination regarding any adjustment in the special assessment and shall transmit that determination to the commissioner of commerce.

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

Sec. 10. Minnesota Statutes 2004, section 62E.11, subdivision 10, is amended to read:

Subd. 10. [TERMINATION OF INDIVIDUAL PLAN WITHOUT REPLACEMENT COVERAGE.] Any ~~contributing-members~~ health plan companies who have terminated individual health plans and do not provide or arrange for replacement coverage that meets the requirements of section 62D.121, and whose former insureds or enrollees enroll in the state comprehensive health insurance plan with a waiver of the preexisting conditions pursuant to section 62E.14, subdivisions 1, paragraph (d), and 6, will be liable for the costs of any preexisting conditions of their former enrollees or insureds treated during the first six months of coverage under the state plan. ~~The liability for preexisting conditions will be assessed before the association makes the annual determination of each contributing member's liability as~~

~~required-under-this-section.~~

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

Sec. 11. Minnesota Statutes 2004, section 62E.13, subdivision 2, is amended to read:

Subd. 2. [SELECTION OF WRITING CARRIER.] The association may ~~select-policies-and-contracts,-or-parts-thereof,-submitted by-a-member-or-members-of-the-association,-or-by-the-association or-others,-to~~ develop specifications for bids from any entity which wishes to be selected as a writing carrier to administer the state plan. The selection of the writing carrier shall be based upon criteria established by the board of directors of the association and approved by the commissioner. The criteria shall outline specific qualifications that an entity must satisfy in order to be selected and, at a minimum, shall include the entity's proven ability to handle large group accident and health insurance cases, efficient claim paying capacity, and the estimate of total charges for administering the plan. The association may select separate writing carriers for the two types of qualified plans and the $2,000, $5,000, and $10,000 deductible plans, the qualified Medicare supplement plan, and the health maintenance organization contract.

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

Sec. 12. Minnesota Statutes 2004, section 62E.13, subdivision 3a, is amended to read:

Subd. 3a. [EXTENSION OF WRITING CARRIER CONTRACT.] Subject to the approval of the commissioner, and subject to the consent of the writing carrier, the association may extend the effective writing carrier contract for a period not to exceed three years, if the association and the commissioner determine that it would be in the best interest of the association's enrollees and ~~contributing-members~~ of the state. This subdivision applies notwithstanding anything to the contrary in subdivisions 2 and 3.

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

Sec. 13. Minnesota Statutes 2004, section 62E.13, is amended by adding a subdivision to read:

Subd. 14. [APPROPRIATION.] An amount sufficient to offset

any deficit of the association for the fiscal year is appropriated to the commissioner of commerce for payment to the association.

Sec. 14. Minnesota Statutes 2004, section 62E.14, subdivision 1, is amended to read:

Subdivision 1. [APPLICATION, CONTENTS.] The comprehensive health insurance plan shall be open for enrollment by eligible persons. An eligible person shall enroll by submission of an application to the writing carrier. The application must provide the following:

(a) name, address, age, list of residences for the immediately preceding six months and length of time at current residence of the applicant;

(b) name, address, and age of spouse and children if any, if they are to be insured;

(c) evidence of rejection, a requirement of restrictive riders, a rate up, or a preexisting conditions limitation on a qualified plan, the effect of which is to substantially reduce coverage from that received by a person considered a standard risk, by at least one ~~association-member~~ health plan company within six months of the date of the application, or other eligibility requirements adopted by rule by the commissioner which are not inconsistent with this chapter and which evidence that a person is unable to obtain coverage substantially similar to that which may be obtained by a person who is considered a standard risk;

(d) if the applicant has been terminated from individual health coverage which does not provide replacement coverage, evidence that no replacement coverage that meets the requirements of section 62D.121 was offered, and evidence of termination of individual health coverage by an insurer, nonprofit health service plan corporation, or health maintenance organization, provided that the contract or policy has been terminated for reasons other than (1) failure to pay the charge for health care coverage; (2) failure to make co-payments required by the health care plan; (3) enrollee moving out of the

area served; or (4) a materially false statement or misrepresentation by the enrollee in the application for the terminated contract or policy; and

(e) a designation of the coverage desired.

An eligible person may not purchase more than one policy from the state plan. Upon ceasing to be a resident of Minnesota a person is no longer eligible to purchase or renew coverage under the state plan, except as required by state or federal law with respect to renewal of Medicare supplement coverage.

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

Sec. 15. Minnesota Statutes 2004, section 62E.14, subdivision 6, is amended to read:

Subd. 6. [TERMINATION OF INDIVIDUAL POLICY OR CONTRACT.] A Minnesota resident who holds an individual health maintenance contract, individual nonprofit health service corporation contract, or an individual insurance policy previously approved by the commissioners of health or commerce, may enroll in the comprehensive health insurance plan with a waiver of the preexisting condition as described in subdivision 3, without interruption in coverage, provided (1) no replacement coverage that meets the requirements of section 62D.121 was offered by the ~~contributing member~~ health plan company, and (2) the policy or contract has been terminated for reasons other than (a) nonpayment of premium; (b) failure to make co-payments required by the health care plan; (c) moving out of the area served; or (d) a materially false statement or misrepresentation by the enrollee in the application for the terminated policy or contract; and, provided further, that the option to enroll in the plan is exercised by submitting an application that is received by the writing carrier no later than 90 days after termination of the existing policy or contract.

Coverage allowed under this section is effective when the contract or policy is terminated and the enrollee has submitted the proper application that is received within the time period stated in this subdivision and paid the required premium or fee.

Expenses incurred from the preexisting conditions of

individuals enrolled in the state plan under this subdivision must be paid by the ~~contributing-member~~ health plan company canceling coverage as set forth in section 62E.11, subdivision 10.

The application must include evidence of termination of the existing policy or certificate as required in subdivision 1.

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

Sec. 16. Minnesota Statutes 2004, section 290.01, subdivision 19, is amended to read:

Subd. 19. [NET INCOME.] The term "net income" means the federal taxable income, as defined in section 63 of the Internal Revenue Code of 1986, as amended through the date named in this subdivision, incorporating any elections made by the taxpayer in accordance with the Internal Revenue Code in determining federal taxable income for federal income tax purposes, and with the modifications provided in subdivisions 19a to 19f.

In the case of a regulated investment company or a fund thereof, as defined in section 851(a) or 851(g) of the Internal Revenue Code, federal taxable income means investment company taxable income as defined in section 852(b)(2) of the Internal Revenue Code, except that:

(1) the exclusion of net capital gain provided in section 852(b)(2)(A) of the Internal Revenue Code does not apply;

(2) the deduction for dividends paid under section 852(b)(2)(D) of the Internal Revenue Code must be applied by allowing a deduction for capital gain dividends and exempt-interest dividends as defined in sections 852(b)(3)(C) and 852(b)(5) of the Internal Revenue Code; and

(3) the deduction for dividends paid must also be applied in the amount of any undistributed capital gains which the regulated investment company elects to have treated as provided in section 852(b)(3)(D) of the Internal Revenue Code.

The net income of a real estate investment trust as defined and limited by section 856(a), (b), and (c) of the Internal Revenue Code means the real estate investment trust taxable income as defined in section 857(b)(2) of the Internal Revenue

Code.

The net income of a designated settlement fund as defined in section 468B(d) of the Internal Revenue Code means the gross income as defined in section 468B(b) of the Internal Revenue Code.

The provisions of sections 1113(a), 1117, 1206(a), 1313(a), 1402(a), 1403(a), 1443, 1450, 1501(a), 1605, 1611(a), 1612, 1616, 1617, 1704(l), and 1704(m) of the Small Business Job Protection Act, Public Law 104-188, the provisions of Public Law 104-117, the provisions of sections 313(a) and (b)(1), 602(a), 913(b), 941, 961, 971, 1001(a) and (b), 1002, 1003, 1012, 1013, 1014, 1061, 1062, 1081, 1084(b), 1086, 1087, 1111(a), 1131(b) and (c), 1211(b), 1213, 1530(c)(2), 1601(f)(5) and (h), and 1604(d)(1) of the Taxpayer Relief Act of 1997, Public Law 105-34, the provisions of section 6010 of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206, the provisions of section 4003 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Public Law 105-277, and the provisions of section 318 of the Consolidated Appropriation Act of 2001, Public Law 106-554, shall become effective at the time they become effective for federal purposes.

The Internal Revenue Code of 1986, as amended through December 31, 1996, shall be in effect for taxable years beginning after December 31, 1996.

The provisions of sections 202(a) and (b), 221(a), 225, 312, 313, 913(a), 934, 962, 1004, 1005, 1052, 1063, 1084(a) and (c), 1089, 1112, 1171, 1204, 1271(a) and (b), 1305(a), 1306, 1307, 1308, 1309, 1501(b), 1502(b), 1504(a), 1505, 1527, 1528, 1530, 1601(d), (e), (f), and (i) and 1602(a), (b), (c), and (e) of the Taxpayer Relief Act of 1997, Public Law 105-34, the provisions of sections 6004, 6005, 6012, 6013, 6015, 6016, 7002, and 7003 of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206, the provisions of section 3001 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Public Law 105-277, the

provisions of section 3001 of the Miscellaneous Trade and Technical Corrections Act of 1999, Public Law 106-36, and the provisions of section 316 of the Consolidated Appropriation Act of 2001, Public Law 106-554, shall become effective at the time they become effective for federal purposes.

The Internal Revenue Code of 1986, as amended through December 31, 1997, shall be in effect for taxable years beginning after December 31, 1997.

The provisions of sections 5002, 6009, 6011, and 7001 of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206, the provisions of section 9010 of the Transportation Equity Act for the 21st Century, Public Law 105-178, the provisions of sections 1004, 4002, and 5301 of the Omnibus Consolidation and Emergency Supplemental Appropriations Act, 1999, Public Law 105-277, the provision of section 303 of the Ricky Ray Hemophilia Relief Fund Act of 1998, Public Law 105-369, the provisions of sections 532, 534, 536, 537, and 538 of the Ticket to Work and Work Incentives Improvement Act of 1999, Public Law 106-170, the provisions of the Installment Tax Correction Act of 2000, Public Law 106-573, and the provisions of section 309 of the Consolidated Appropriation Act of 2001, Public Law 106-554, shall become effective at the time they become effective for federal purposes.

The Internal Revenue Code of 1986, as amended through December 31, 1998, shall be in effect for taxable years beginning after December 31, 1998.

The provisions of the FSC Repeal and Extraterritorial Income Exclusion Act of 2000, Public Law 106-519, and the provision of section 412 of the Job Creation and Worker Assistance Act of 2002, Public Law 107-147, shall become effective at the time it became effective for federal purposes.

The Internal Revenue Code of 1986, as amended through December 31, 1999, shall be in effect for taxable years beginning after December 31, 1999. The provisions of sections 306 and 401 of the Consolidated Appropriation Act of 2001, Public Law 106-554, and the provision of section 632(b)(2)(A) of

the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107-16, and provisions of sections 101 and 402 of the Job Creation and Worker Assistance Act of 2002, Public Law 107-147, shall become effective at the same time it became effective for federal purposes.

The Internal Revenue Code of 1986, as amended through December 31, 2000, shall be in effect for taxable years beginning after December 31, 2000. The provisions of sections 659a and 671 of the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107-16, the provisions of sections 104, 105, and 111 of the Victims of Terrorism Tax Relief Act of 2001, Public Law 107-134, and the provisions of sections 201, 403, 413, and 606 of the Job Creation and Worker Assistance Act of 2002, Public Law 107-147, shall become effective at the same time it became effective for federal purposes.

The Internal Revenue Code of 1986, as amended through March 15, 2002, shall be in effect for taxable years beginning after December 31, 2001.

The provisions of sections 101 and 102 of the Victims of Terrorism Tax Relief Act of 2001, Public Law 107-134, shall become effective at the same time it becomes effective for federal purposes.

The Internal Revenue Code of 1986, as amended through June 15, 2003, shall be in effect for taxable years beginning after December 31, 2002. The provisions of section 201 of the Jobs and Growth Tax Relief and Reconciliation Act of 2003, H.R. 2, if it is enacted into law, are effective at the same time it became effective for federal purposes.

Section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108-173, relating to health savings accounts, is effective at the same time it became effective for federal purposes.

Except as otherwise provided, references to the Internal Revenue Code in subdivisions 19a to 19g mean the code in effect for purposes of determining net income for the applicable year.

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

Sec. 17. Minnesota Statutes 2004, section 290.01, subdivision 31, is amended to read:

Subd. 31. [INTERNAL REVENUE CODE.] Unless specifically defined otherwise, "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended through June 15, 2003, and as amended by section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108-173, relating to health savings accounts.

[EFFECTIVE DATE.] This section is effective for taxable years beginning after December 31, 2003.

Sec. 18. Minnesota Statutes 2004, section 297F.05, subdivision 1, is amended to read:

Subdivision 1. [RATES; CIGARETTES.] A tax is imposed upon the sale of cigarettes in this state, upon having cigarettes in possession in this state with intent to sell, upon any person engaged in business as a distributor, and upon the use or storage by consumers, at the following rates:

(1) on cigarettes weighing not more than three pounds per thousand, ~~24~~ 73.5 mills on each such cigarette; and

(2) on cigarettes weighing more than three pounds per thousand, ~~48~~ 147 mills on each such cigarette.

[EFFECTIVE DATE.] This section is effective December 1, 2005.

Sec. 19. Minnesota Statutes 2004, section 297F.10, subdivision 1, is amended to read:

Subdivision 1. [TAX AND USE TAX ON CIGARETTES.] Revenue received from cigarette taxes, as well as related penalties, interest, license fees, and miscellaneous sources of revenue shall be deposited by the commissioner in the state treasury and credited as follows:

(1) the revenue produced by ~~3.25~~ 3.95 mills of the tax on cigarettes weighing not more than three pounds a thousand and ~~6.5~~ 7.9 mills of the tax on cigarettes weighing more than three pounds a thousand must be credited to the Academic Health Center

special revenue fund hereby created and is annually appropriated to the Board of Regents at the University of Minnesota for Academic Health Center funding at the University of Minnesota; and

(2) the revenue produced by ~~1.25~~ 1.52 mills of the tax on cigarettes weighing not more than three pounds a thousand and ~~2.5~~ 3.04 mills of the tax on cigarettes weighing more than three pounds a thousand must be credited to the medical education and research costs account hereby created in the special revenue fund and is annually appropriated to the commissioner of health for distribution under section 62J.692, subdivision 4; and

(3) the balance of the revenues derived from taxes, penalties, and interest (under this chapter) and from license fees and miscellaneous sources of revenue shall be credited to the general fund.

[EFFECTIVE DATE.] This section is effective for revenues received for taxes subject to the rate increase in Minnesota Statutes, section 297F.05, subdivision 1, as amended by section 18, as determined by the commissioner of revenue.

Sec. 20. Minnesota Statutes 2004, section 297I.15, subdivision 4, is amended to read:

Subd. 4. [PREMIUMS PAID TO HEALTH CARRIERS ~~BY STATE~~.] A health carrier as defined in section 62A.011 is exempt from the taxes imposed under this chapter on premiums paid to it ~~by the state. Premiums paid by the state under medical assistance, general assistance medical care, and the MinnesotaCare program are not exempt under this subdivision~~ for a health plan, as defined in section 62A.011, subdivision 3, but including coverage described in clause (10) of that subdivision.

[EFFECTIVE DATE.] This section is effective for premiums received after December 31, 2005.

Sec. 21. [FLOOR STOCKS TAX.]

Subdivision 1. [TAX IMPOSED.] (a) A floor stocks tax is imposed on every person engaged in business in this state as a distributor, retailer, subjobber, vendor, manufacturer, or manufacturer's representative of cigarettes, on the stamped

cigarettes and unaffixed stamps in the person's possession or under the person's control at 12:01 a.m. on December 1, 2005. The tax is imposed at the following rates:

(1) on cigarettes weighing not more than three pounds per thousand, 49.5 mills on each cigarette; and

(2) on cigarettes weighing more than three pounds per thousand, 99 mills on each cigarette.

(b) Each distributor, by December 8, 2005, shall file a report with the commissioner of revenue, in the form the commissioner prescribes, showing the stamped cigarettes and unaffixed stamps on hand at 12:01 a.m. on December 1, 2005, and the amount of tax due on the cigarettes and unaffixed stamps. The tax imposed by this section is due and payable by January 3, 2006, and after that date bears interest as provided in Minnesota Statutes, section 270.75. Each retailer, subjobber, vendor, manufacturer, or manufacturer's representative shall file a return with the commissioner, in the form the commissioner prescribes, showing the cigarettes on hand at 12:01 a.m. on December 1, 2005, and pay the tax due on them by January 3, 2006. Tax not paid by the due date bears interest as provided in Minnesota Statutes, section 270.75.

Subd. 2. [AUDIT AND ENFORCEMENT.] The tax imposed by this section is subject to the audit, assessment, and collection provisions applicable to the taxes imposed under Minnesota Statutes, chapter 297F. The commissioner shall deposit the revenues from this tax in the general fund.

[EFFECTIVE DATE.] This section is effective December 1, 2005.

Sec. 22. [APPROPRIATION.]

$210,309,000 is appropriated from the general fund to the commissioner of commerce to offset the deficit in the Minnesota Comprehensive Health Association program; $60,734,000 of this appropriation is for fiscal year 2006 and $149,575,000 for fiscal year 2007. Any amount not expended in fiscal year 2006 may be carried over to fiscal year 2007. Beginning for the 2008-2009 fiscal biennium, the commissioner of commerce shall

include estimates of the cost of the Minnesota Comprehensive Health Association deficits in its submissions under Minnesota Statutes, section 16A.10, and the governor shall include recommendations on it in the governor's budget submission to the legislature under Minnesota Statutes, section 16A.11.

Sec. 23. [REPEALER.]

Minnesota Statutes 2004, sections 62E.02, subdivision 23; 62E.11, subdivisions 5, 6, and 13; and 62E.13, subdivision 1, are repealed.

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

APPENDIX
Repealed Minnesota Statutes for S1164-1

62E.02 DEFINITIONS.

Subd. 23. **Contributing member.** "Contributing member" means those companies regulated under chapter 62A and offering, selling, issuing, or renewing policies or contracts of accident and health insurance; health maintenance organizations regulated under chapter 62D; nonprofit health service plan corporations regulated under chapter 62C; community integrated service networks regulated under chapter 62N; fraternal benefit societies regulated under chapter 64B; the Minnesota employees insurance program established in section 43A.317, effective July 1, 1993; and joint self-insurance plans regulated under chapter 62H. For the purposes of determining liability of contributing members pursuant to section 62E.11 payments received from or on behalf of Minnesota residents for coverage by a health maintenance organization or community integrated service network shall be considered to be accident and health insurance premiums.

62E.11 OPERATION OF COMPREHENSIVE PLAN.

Subd. 5. **Allocation of losses.** Each contributing member of the association shall share the losses due to claims expenses of the comprehensive health insurance plan for plans issued or approved for issuance by the association, and shall share in the operating and administrative expenses incurred or estimated to be incurred by the association incident to the conduct of its affairs. Claims expenses of the state plan which exceed the premium payments allocated to the payment of benefits shall be the liability of the contributing members. Contributing members shall share in the claims expense of the state plan and operating and administrative expenses of the association in an amount equal to the ratio of the contributing member's total accident and health insurance premium, received from or on behalf of Minnesota residents as divided by the total accident and health insurance premium, received by all contributing members from or on behalf of Minnesota residents, as determined by the commissioner. Payments made by the state to a contributing member for medical assistance, MinnesotaCare, or general assistance medical care services according to chapters 256, 256B, and 256D shall be excluded when determining a contributing member's total premium.

Subd. 6. **Member assessments.** The association shall make an annual determination of each contributing member's liability, if any, and may make an annual fiscal year end assessment if necessary. The association may also, subject to the approval of the commissioner, provide for interim assessments against the contributing members whose aggregate assessments comprised a minimum of 90 percent of the most recent prior annual assessment, in the event that the association deems that methodology to be the most administratively efficient and cost-effective means of assessment, and as may be necessary to assure the financial capability of the association in meeting the incurred or estimated claims expenses of the state plan and operating and administrative expenses of the association until the association's next annual fiscal year end assessment. Payment of an assessment shall be due within 30 days of receipt by a contributing member of a written notice of a fiscal year end or interim assessment. Failure by a contributing member to tender to the association the assessment within 30 days shall be grounds for termination of the contributing member's membership. A contributing member which ceases to do accident and health insurance business within the state shall remain

liable for assessments through the calendar year during which accident and health insurance business ceased. The association may decline to levy an assessment against a contributing member if the assessment, as determined herein, would not exceed ten dollars.

Subd. 13. **State funding; effect on premium rates of members.** In approving the premium rates as required in sections 62A.65, subdivision 3; and 62L.08, subdivision 8, the commissioners of health and commerce shall ensure that any appropriation to reduce the annual assessment made on the contributing members to cover the costs of the Minnesota comprehensive health insurance plan as required under this section is reflected in the premium rates charged by each contributing member.

62E.13 ADMINISTRATION OF PLAN.

Subdivision 1. **Submission of plans of coverage.** Any member of the association may submit to the commissioner the policies of accident and health insurance or the health maintenance organization contracts which are being proposed to serve in the comprehensive health insurance plan. The time and manner of the submission shall be prescribed by rule of the commissioner.

Senator ..... moves to amend S.F. No. 1164 as follows:

Page 4, line 26, delete "a working knowledge of" and insert "relevant experience and expertise in the health insurance industry"

Page 4, line 27, delete "health insurance"

Senator ..... moves to amend S.F. No. 1164 as follows:

Page 19, after line 10, insert:

"Sec. 24. [EXPIRATION.]

Sections 2 to 15 and 23 expire at such time as the commissioner of finance certifies to the legislature that the revenue produced by the increase in the cigarette tax under section 18 is not sufficient to offset the deficit in the Minnesota Comprehensive Health Association program."

Senator ..... moves to amend S.F. No. 1164 as follows:

Page 17, delete section 20, and insert:

"Sec. 20. Minnesota Statutes 2004, section 297I.15, is amended by adding a subdivision to read:

Subd. 4a. [HEALTH PREMIUMS.] A health carrier, as defined in section 62A.011, is exempt from the taxes imposed under this chapter other than the tax imposed by section 297I.05, subdivision 5, on premiums paid to it for a health plan, as defined in section 62A.011, subdivision 3, but including coverage described in clause (10) of that subdivision."

Amend the title as follows:

Page 1, line 15, delete "subdivision 4" and insert "by adding a subdivision"

SF~~1446~~ 1164

Chairman, Senators, Thank you for your time; I will be very brief. My name is Annette Caruthers. I am President of the Association of MCHA Policyholders, and a policyholder myself. I am grateful to Senator Kiscaden for trying to solve funding problems with medical care. I love the idea of raising the tobacco tax, hopefully reducing teen smoking and therefore, future medical costs. I do not love the idea of adding MCHA to the list of state-funded programs.

Statistically, I am an example of the typical MCHA policyholder. In terms of age I am in the largest segment of the 35,000 enrollees, with my income being slightly above average. I and other policyholders do not want to be on a state welfare-type program, begging the legislature for funds to meet our basic needs.

I know policyholders who have incomes just at the state's average who pay one-third of their incomes for medical expenses, yet continue to pursue self-sufficiency. Many of us are self-employed; this is American enterprise and determination at its best! Ironically, we have no choice for our healthcare, having been rejected by the insurance companies, and we currently pay premiums at 112% of market rates, with a proposed rate of 120% of market for the coming year. Our stake in this issue is huge.

Unlike members of other high-risk groups, MCHA policyholders tend to be responsible citizens who have much in common with the business community and our lawmakers. Are any of you over 50? If you are ever ill, if your blood pressure goes up a bit, if you leave the legislature and become a consultant… you will also be in the MCHA pool. What will you want the program to be, should you or anyone in your family need it?

MCHA was formed 29 years ago as a way to provide a safety net for those high-risk people the insurance industry did not want to insure in the regular market. Although the risk pool has been allowed to seek government subsides, MCHA has never been a government program. It is intended to be a safety net program within the insurance industry. ERISA laws allow many large employers to avoid contributing to the assessments, which have hovered around 2% for quite some time. Washington, Oregon, Colorado, Indiana, New Hampshire, and South Dakota base their assessments on the number of covered lives, allowing these states to assess stop-loss insurers.

Similar action here in Minnesota would cut the assessment to 1% or less, and would be much preferable to turning what is now a private, non-profit organization into a state-funded program that has to ask every two years for an appropriation from the cash-strapped Legislature. In a political climate that has been encouraging privatization, I see nothing to be gained from this. I ask you to defeat this bill and look into what other states are doing that is effective.

Also, just this morning the StarTribune printed an article highlighting provisions of another bill sponsored by Senator Kiscaden and the Minnesota Medical Association (SF1933) just introduced yesterday, that I would recommend you look into, as it shows promise of addressing systemic problems in medical care.

March 30, 2005

STATE AND LOCAL GOVERNMENT OPERATIONS

S.F. No. 1164 - MCHA Assessment; Premium Tax; HSAs; and Cigarette Taxes

Prepared testimony of John M. Schwarz, MCHA policyholder and member of AMP (Association of MCHA Policyholders).

Chairwoman, Senators, Thank you for having me here today. My name is John Schwarz. I have been in MCHA for 4 years, am a member of the Association of MCHA Policyholders, and a health system researcher for about 10 years.

There are many reasons why changing the structure of MCHA as it is now to the structure called for in SF1164 is inadvisable, but I will address the several most salient points.

The main objection to changing MCHA is that SF1164 would unnecessarily politicize what has been, until now, largely a private market issue. This politicization would put MCHA's funding on an unstable, politically-motivated basis, subject to the vicissitudes of political competition, not economic competition. To whatever extent 1164 tries to make it otherwise, MCHA funding will be just another ball up in the air of the juggling act of government funding and revenue. Using tobacco tax revenues as funding is in principle a laudable, but unstable method. The tobacco tax is intended to raise revenue, and to be a disincentive against smoking. If it works as a disincentive, then the tobacco revenue will continually decline, as does tobacco use. And many people will want a slice of that pie.

The reason we need MCHA is because of a market, not government, problem. Adam Smith's seminal work on markets as a social mechanism to organize a society was not to be a system based on the law of the jungle, as many of those professing to be followers of him assert. His vision was that markets could take care of all of society's needs for the production and distribution of goods and services, via the work of the "invisible hand." But knowing that markets are never wholly perfect, he and his economist heirs recognize the problems that are called "market failures." Market failures are things that prevent a market from operating adequately. These are "problems" that need to be solved. The market failure most commonly known is that of monopolies: You can't have a true market when one supplier has a monopoly, and so governments correct that market "failure" with anti-trust regulation.

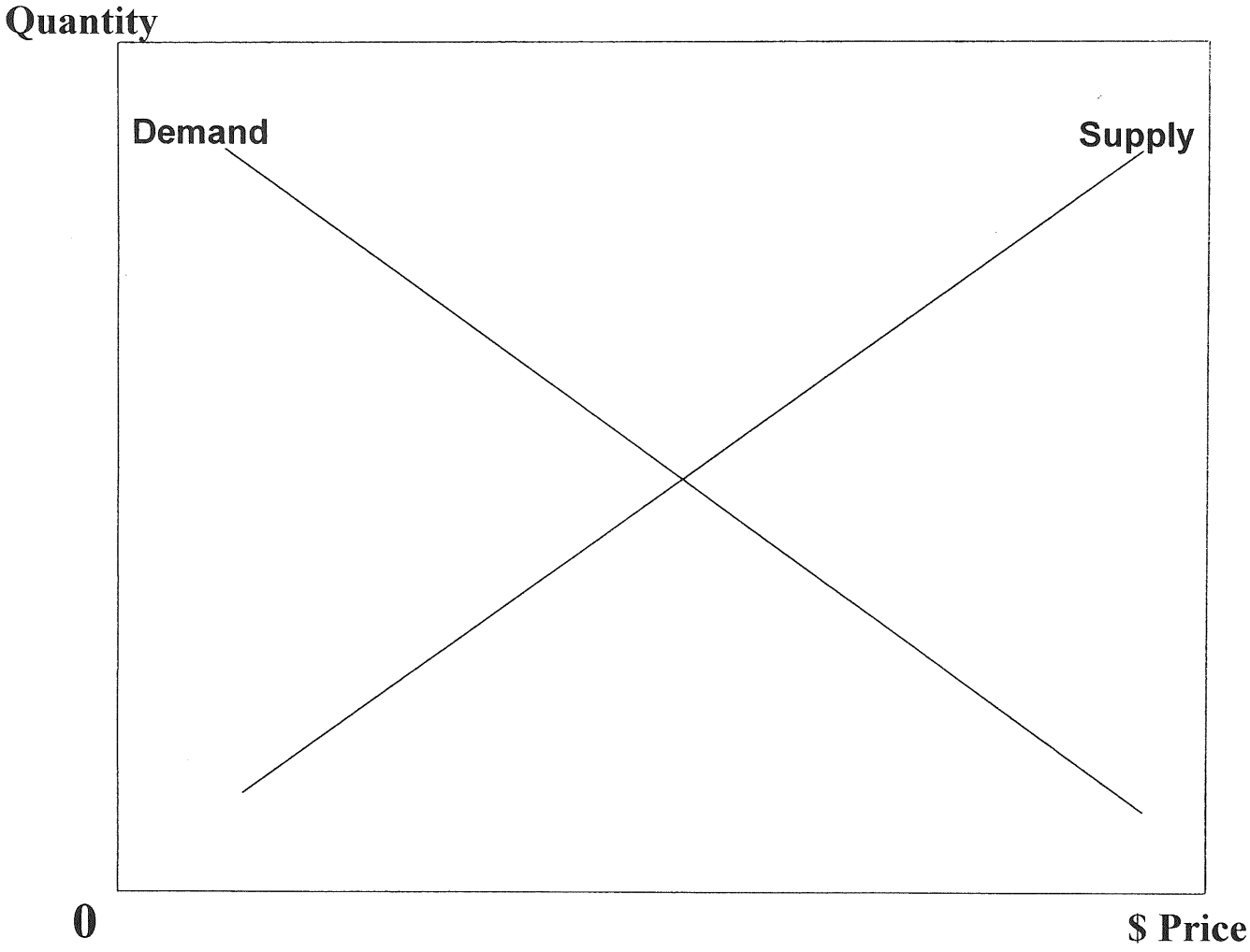
Smith also envisioned that there are reasonable substitutes for given goods or services to satisfy peoples' needs; that in that short run that there will be market winners and losers, but that in the long run the "losers" will learn how to better shape their supply and demand positions, or products and needs via substitutes, or through other changes and become "winners."

In health care demand there are no substitutes in most cases and little learning is possible. You can't learn how not to have cancer. How not to have diabetes. There are not reasonable substitutes for brain surgery, etc.

The market failure that MCHA exists to correct is that of a non-existent health insurance market for high-risk individuals. It's not that Smith's "hand" is "invisible," but that it's been amputated. No matter how much I am willing to pay for health insurance, no one will sell it to me; my "demand" cannot be met because insurance companies will not supply it. Since the problem in the market is the refusal of insurance companies to make the supply demanded available—at all, the correction rests on their shoulders. They cause the problem, so they contribute to fixing it via MCHA's funding structure. That is only fair, and is much more of a market- rather than government-based solution. 1164 turns the entire issue into a government matter. That's bigger government that does not hold health insurers responsible for the problem they've created. Alternative ways to correct the failure includes mandating that insurers accept all applicants, controlling the costs and distributing them more widely via government-regulated rates, or financing via community-rating. I think the MCHA solution is much more palatable to them than those alternatives.

Right now MCHA is a mechanism to correct for the market failure produced because of insurers' refusal to sell insurance to high-risk individuals—at any price at all; none. We can't buy health insurance, but the MCHA fix keeps the matter and the fix in the health market, with merely skeletal government involvement. Moving to a publicly-funded and run system unnecessarily makes MCHA just another variable in the State government system, subject to ideological, partisan, and funding battles. By making MCHA a public-program, we will see that what has been happening to MinnesotaCare recently will happen to MCHA a few years down the road. Going down that road is in no one's best interest.

The Standard Competitive Market Model: Supply and Demand Curves



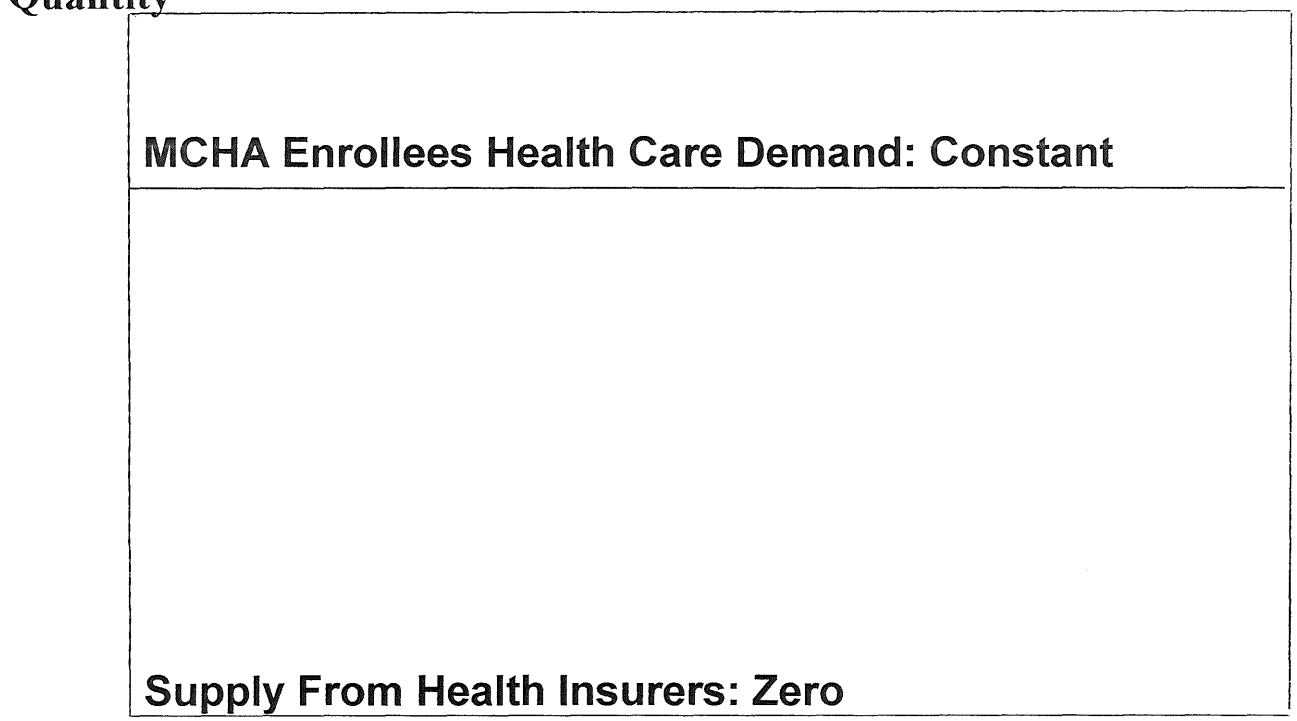
Demand:

The *Lower* the Price, the *Higher* the Quantity Demanded by *Consumers*
The *Higher* the Price, the *Lower* the Quantity Demanded by *Consumers*

Supply:

The *Higher* the Price, the *Higher* the Quantity Supplied by *Producers*
The *Lower* the Price, the *Lower* the Quantity Supplied by *Producers*

The High-Risk Health Insurance Market Model: Consistent Demand, No Supply



<u>Hi-Risk Consumer Demand:</u> Unchanging and Unmet: Minimal price-elasticity

<u>Health Insurer's Supply:</u> None at all, regardless of price: No price elasticity.

<u>Market correction for this non-functioning market:</u>

MCHA

Chart 2 of 2. Author: John M. Schwarz, AMP

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

S.F. No. 1164: A bill for an act relating to health; changing the governance structure of the Minnesota Comprehensive Health Association; increasing the cigarette tax; conforming to federal law on health savings accounts; providing a health insurance exemption from the insurance premiums tax; repealing the assessment for the Minnesota Comprehensive Health Association; appropriating money; amending Minnesota Statutes 2004, sections 62A.02, by adding a subdivision; 62E.02, subdivision 23; 62E.091; 62E.10, subdivisions 1, 2, 3, 6, 7; 62E.11, subdivisions 9, 10; 62E.13, subdivisions 2, 3a, by adding a subdivision; 62E.14, subdivisions 1, 6; 290.01, subdivisions 19, 31; 297F.05, subdivision 1; 297F.10, subdivision 1; 297I.15, subdivision 4; repealing Minnesota Statutes 2004, sections 62E.02, subdivision 23; 62E.11, subdivisions 5, 6, 13; 62E.13, subdivision 1.

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

Page 4, line 26, delete "a working knowledge of" and insert "relevant experience and expertise in the health insurance industry"

Page 4, line 27, delete "health insurance"

Page 17, delete section 20 and insert:

"Sec. 20. Minnesota Statutes 2004, section 297I.15, is amended by adding a subdivision to read:

Subd. 4a. [HEALTH PREMIUMS.] A health carrier, as defined in section 62A.011, is exempt from the taxes imposed under this chapter other than the tax imposed by section 297I.05, subdivision 5, on premiums paid to it for a health plan, as defined in section 62A.011, subdivision 3, but including coverage described in clause (10) of that subdivision."

Page 19, after line 10, insert:

"Sec. 24. [EXPIRATION.]

Sections 2 to 15 and 23 expire at such time as the commissioner of finance certifies to the legislature that the revenue produced by the increase in the cigarette tax under section 18 is not sufficient to offset the deficit in the Minnesota Comprehensive Health Association program."

Amend the title as follows:

Page 1, line 15, delete "subdivision 4" and insert "by adding a subdivision"

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

.....
(Committee Chair)

March 30, 2005.....
(Date of Committee recommendation)