Senate Counsel, Research, and Fiscal Analysis

G-17 State Capitol
75 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155-1606
(651) 296-4791
FAX: (651) 296-7747
Jo Anne Zoff Sellner
Director

Senate

State of Minnesota

S.F. No. 3282 – 911 Service Fee Increase and Public Safety Radio System Bond Issue – A-1 Amendment

Author: Senator Steve Kelley

Prepared by: Matthew S. Grosser, Senate Research (296-1890) MG

Date: April 20, 2006

Section 1 increases the maximum allowable per customer charge for the 911 fee from 65 cents to 93 cents, effective January 1, 2007.

Section 2 appropriates $277,732,000 from the 911 revenue bond proceeds account for various projects related to the establishment of a public safety radio communications system.

Section 3 appropriates $9,562,000 from the 911 telecommunications service account in the special revenue fund to pay debt service on the state 911 revenue bonds, and appropriates $234,000 from the 911 telecommunications service account to the Commissioner of Public Safety to supervise construction and operation of the public safety radio and communications system.

Consolidated Fiscal Note – 2005-06 Session

Bill #: S3282-0 **Complete Date:** 03/31/06

Chief Author: KELLEY, STEVE

Title: 911 EMERGENCY TELECOMM FEE INCREASE

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

Agencies: Public Safety Dept (03/31/06)
Finance Dept (03/23/06)
Transportation Dept (03/31/06)

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

Dollars (in thousands)	FY05	FY06	FY07	FY08	FY09
Net Expenditures					
General Fund					1,350
Public Safety Dept					1,350
911 Emergency Fund			234	412	403
Public Safety Dept			234	412	403
Trunk Highway Fund		0	0	1,009	6,475
Transportation Dept		0	0	1,009	4,225
Public Safety Dept					2,250
911 Rev Bond Debt Service Fund			363	3,936	10,226
Finance Dept			363	3,936	10,226
911 Revenue Bond Capital Projt Fund			4,800	15,000	25,000
Public Safety Dept			4,800	15,000	25,000
Revenues					
911 Emergency Fund			363	3,936	10,226
Finance Dept			363	3,936	10,226
Trunk Highway Fund					240
Transportation Dept					240
Net Cost <Savings>					
General Fund					1,350
Public Safety Dept					1,350
911 Emergency Fund			(129)	(3,524)	(9,823)
Finance Dept			(363)	(3,936)	(10,226)
Public Safety Dept			234	412	403
Trunk Highway Fund		0	0	1,009	6,235
Transportation Dept		0	0	1,009	3,985
Public Safety Dept					2,250
911 Rev Bond Debt Service Fund			363	3,936	10,226
Finance Dept			363	3,936	10,226
911 Revenue Bond Capital Projt Fund			4,800	15,000	25,000
Public Safety Dept			4,800	15,000	25,000
Total Cost <Savings> to the State		0	5,034	16,421	32,988

	FY05	FY06	FY07	FY08	FY09
Full Time Equivalents					
911 Emergency Fund			3.00	6.00	6.00
Public Safety Dept			3.00	6.00	6.00
Trunk Highway Fund				3.00	8.00
Transportation Dept				3.00	8.00
Total FTE			3.00	9.00	14.00

Consolidated EBO Comments

Estimates of debt service and the levels of 911 fee change needed to generate revenue to pay debt service are included in the comments to the DPS fiscal note.

EBO Signature: NORMAN FOSTER
Date: 03/31/06 Phone: 215-0594

Expenditure and/or Revenue Formula

Expenditure of funds from bond proceeds:

FY2007	$4.8 million
FY2008	$15 million
FY2009	$25 million
FY2010	$30 million
FY2011	$12.41 million

One time costs for radio replacements:

	FY2007	FY2008	FY 2009
State Patrol – Trunk Highway Fund 450 mobile & 300 portable radios	$0	$0	$2,100,000
Alcohol & Gambling Enforcement, BCA, Fire Marshal\Pipeline Safety-General Fund 150 mobile and 300 portable radios	$0	$0	$1,260,000
	$0	$0	$3,360,000

On-going operational costs:

Operational & Maintenance cost of radio system-

State Patrol – Trunk Highway Fund 450 mobile & 300 portable radios	$0	$0	$150,000
AGED, BCA, Fire Marshal\Pipeline-General Fund 150 mobile and 300 portable radios	$0	$0	$90,000
	$0	$0	$240,000

Coordination & Administration of Radio System- 911 Emergency Fund

3 Interoperability/Panning & educ. Coordinators	$218,195	$218,195	$218,195
2 Project Management Specialist (step 7)	$0	$119,639	$119,639
1 Grants Administrator (step 7)	$0	$58,287	$58,287
	$218,196	$396,121	$396,121
Travel costs for coordinators	$6,675	$6,675	$6,675
On-time costs for new positions	$9,300	$9,300	$0

MnDOT will provide the basic engineering services necessary to proceed with the project and those costs will be paid from capital appropriations allocated to MnDOT or MNDOT annualized operating costs.

Long-Term Fiscal Considerations

The construction (5 year period) would be the most intense period of education, coordination and out reach, as a partnership between state, regional and local users the coordination role of the Statewide Radio Board would continue throughout the life of the system. Once fully implemented that role would involve coordination with regional radio boards and continued education of interoperability procedures. A reduction in personnel may be anticipated once the system is built, but there would clearly be a continued role for the SRB and DPS requiring the commitment of staff to that purpose.

Local Government Costs

Local governments would be required to pay the portion of local enhancement costs not funded from local grants. They would also be required to fund subscriber units (portables and mobiles) necessary to operate on the system.

It is noted that due to technology changes (narrow banding, analog to digital conversion) local units of government are currently facing equipment up-grade issues that must be funded also.

References/Sources

Statewide Public Safety Radio and Communication System Plan and associated documents- See: MnDOT- OEC website. http://www.dot.state.mn.us/oec/statewide/statewideinfo.html

Agency Contact Name: Ron Whitehead 296-5778
FN Coord Signature: FRANK AHRENS
Date: 03/28/06 Phone: 296-9484

EBO Comments

Section 1 of the bill includes an unspecified change to the monthly emergency telecommunications service fee. The table below summarizes information from the fiscal note regarding debt service and revenue from the fee.

1. Debt service is from the Department of Finance note. Average debt service is estimated at $18.522 million, and the maximum debt service will be $22.303 million.
2. The Department of Public Safety's note includes the current forecasted revenues for the emergency telecommunications service fee. In FY2009, this estimate is for $665,000 per penny of fee (currently 65 cents per month).
3. For purposes of this fiscal note, the FY2009 value of $665,000 per penny was used to estimate the range of fee changes that would cover the estimated debt service amounts. The revenue per penny is relatively stable in the forecast for FY2006-2009 but the small declines could continue beyond FY2009.
4. The average debt service would equate to about 28 cents of FY2009's fee revenue. The maximum debt service year would equate to 33.5 cents.
5. Depending on how the fee change was implemented, various strategies could be followed to generate the needed debt service, especially if flexibility was authorized to vary the fee to follow the anticipated debt service profile.

$000s	2006	2007	2008	2009	Average	Maximum
SF 3282-0 Debt service	-	363	3,936	10,226	18,522	22,303
Forecast revenue per penny February 2006	682	683	675	665		
Change from previous year		0.1%	-1.2%	-1.5%		
Assumed FY2009 level for future					665	665
Equivalent cents of 911 fee		0.5	5.8	15.4	27.9	33.5

EBO Signature: NORMAN FOSTER
Date: 03/31/06 Phone: 215-0594

Fiscal Note – 2005-06 Session

Bill #: S3282-0 **Complete Date:** 03/23/06

Chief Author: KELLEY, STEVE

Title: 911 EMERGENCY TELECOMM FEE INCREASE

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

Agency Name: Finance Dept

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

Dollars (in thousands)	FY05	FY06	FY07	FY08	FY09
Expenditures					
911 Rev Bond Debt Service Fund			363	3,936	10,226
Less Agency Can Absorb					
-- No Impact --					
Net Expenditures					
911 Rev Bond Debt Service Fund			363	3,936	10,226
Revenues					
911 Emergency Fund			363	3,936	10,226
Net Cost <Savings>					
911 Emergency Fund			(363)	(3,936)	(10,226)
911 Rev Bond Debt Service Fund			363	3,936	10,226
Total Cost <Savings> to the State					

	FY05	FY06	FY07	FY08	FY09
Full Time Equivalents					
-- No Impact --					
Total FTE					

Bill Description

The legislation would provide 911 revenue bond financing for the completion of the construction of the 911 emergency telecommunication system and to raise the telephone access fee to pay the debt service cost on the revenue bonds.

It is assumed that $277,732.0 of state revenue bonds will be sold to finance the capital projects. The bonds are sold with level debt payments and mature over 20 years. The bonds will be sold over an estimated five-year timeframe. The cash flow estimate used for selling the bonds is the same as the cash flow for existing bond authorization for the Department of Public Safety Local Reimbursement program and the Department of Transportation Backbone Phase 3. The costs shown in the fiscal note are the amounts that would be required to be collected from the 911-customer access line and deposited to the debt service fund annually.

Bond Sale Date	Bond Interest Rate	Bonds Sold	Cash Flow Est.
August 2006	4.75%	15,293.0	5.51%
August 2007	4.95%	129,698.0	46.70%
August 2008	5.25%	99,652.0	35.88%
August 2009	5.55%	17,818.0	6.42%
August 2010	5.75%	15,272.0	5.5 %

Debt Service Costs by Fiscal Year

2006	-0-
2007	363.2
2008	3,936.4
2009	10,226.0

The average annual debt service cost over the life of the bonds is estimated to be $18,521.7 and the maximum annual debt service cost is $22,303.3.

911 Revenue Bonds

2005 Authorization	Total	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	Total
DPS - Met Emergency Service Brd*	8,000,000	0	0	0	0	0	0
MnDOT – Backbone Third Phase	45,000,000	3,004,000	25,477,000	16,575,000	0	0	45,056,000
Public Safety - Local Reimbursement	9,500,000	0	0	3,000,000	3,500,000	3,000,000	9,500,00
	62,500,000	3,004,000	25,477,000	19,575,000	3,500,000	3,000,000	54,556,0
		4.81%	40.76%	31.32%	5.60%	4.80%	87.29%
*Exclude DPS - Met Emergency Serv Brd Cash Flow per Public Safety since that is for existing infrastructure.		5.51%	46.70%	35.88%	6.42%	5.50%	100.00%

		Cash Flow using Same Percentages					
2006 Authorization	**Total**	**FY 2007**	FY 2008	FY 2009	FY 2010	FY 2011	Total
ARMER - Cost to Complete	277,732,000	15,292,670	129,697,525	99,651,805	17,817,692	15,272,307	277,732,000

FN Coord Signature: PETER SAUSEN
Date: 03/17/06 Phone: 296-8372

EBO Comments

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: PEGGY LEXAU
Date: 03/23/06 Phone: 296-6237

Fiscal Note – 2005-06 Session

Bill #: S3282-0 **Complete Date:** 03/31/06

Chief Author: KELLEY, STEVE

Title: 911 EMERGENCY TELECOMM FEE INCREASE

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

Agency Name: Transportation Dept

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

Dollars (in thousands)	FY05	FY06	FY07	FY08	FY09
Expenditures					
Trunk Highway Fund		0	0	1,009	4,225
Less Agency Can Absorb					
Trunk Highway Fund				0	0
Net Expenditures					
Trunk Highway Fund		0	0	1,009	4,225
Revenues					
Trunk Highway Fund					240
Net Cost <Savings>					
Trunk Highway Fund		0	0	1,009	3,985
Total Cost <Savings> to the State		0	0	1,009	3,985

	FY05	FY06	FY07	FY08	FY09
Full Time Equivalents					
Trunk Highway Fund				3.00	8.00
Total FTE				3.00	8.00

Bill Description

Senate File 3282 proposes authorizing the sale of state 911 revenue bonds and increasing the 911 emergency telecommunications fee to cover the costs associated with the debt service on the bonds. The bill would authorize the Commissioner of Finance to issue bonds for expanding the public safety radio and communication system (M.S. 403.36). The bill would appropriate a majority of the bond proceeds to the Commissioner of Transportation for the construction of the public safety radio and communication system backbone for phases 4 through 6. A portion of the bond proceeds would also be appropriated to the Commissioner of Public Safety for providing reimbursement to local units of government in the areas covered by phases 4 through 6 for up to 50% of their costs associated with building their subsystems of the public safety radio and communication system.

(Under current law Mn/DOT has statutory responsibility to own, operate, and maintain the public safety radio and communication system backbone. It works closely with the State Radio Board and all subsystem owners on any modifications, additions, or enhancements to the system, since this work can have a potential impact on system performance and to the ongoing operating and maintenance costs of the system.)

Assumptions

1) Since Mn/DOT has responsibility to own, operate, and maintain the public safety radio and communication system, Mn/DOT will incur all increased costs associated with providing support for implementation and ongoing maintenance of phases 4 through 6.

2) Implementation of phases 4 through 6 will occur simultaneously.

3) The radios needed for the new system will cost $2,800 per unit.

4) Personnel for these positions require a high level of expertise; therefore, top of the range salaries were used to calculate personnel costs, as shown below (number in parenthesis is the total number of positions required).

Radio Engineer 1 (4)	@ $38.18/hour (salary + state paid fringe) = $79,722 per year
Radio Technician 3 (9)	@ $33.66/hour (salary + state paid fringe) = $70,275 per year
Laborer Trades & Equipment (3)	@ $21.24/hour (salary + state paid fringe) = $51,139 per year

The weighted average cost of these positions is $69,049 per position, which will be used to calculate the incremental staff resource cost associated with Mn/DOT's responsibilities under this bill.

Expenditure and/or Revenue Formula

Mn/DOT would have two types of increased expenditures. First, expenditures would be incurred to support the implementation and ongoing maintenance related to phases 4 through 6. These would begin at relatively lower amounts and increase in subsequent years. Secondly, a series of one-time expenditures would be incurred related to the first type of expenditures for items such as training, and computers and test equipment for the new employees. Once phases 4 through 6 were fully implemented, these expenditures would not be needed, although on an ongoing basis these would recur, are assumed to be part of long term operating budgets, and have not been included in this fiscal note.

Implementation and Ongoing Maintenance Costs

Personnel: The need for additional positions is expected to begin in FY 2008. Three positions would be needed in FY 2008, with the need escalating to a total of 16 positions in FY 2011. The ongoing cost for the 16 additional positions is estimated to be $1,104,787 per year. The estimated personnel costs by fiscal year are shown below.

	FY 2008	FY 2009	FY 2010	FY 2011
Personnel Cost	$207,148	$552,393	$897,639	$1,104,787

Maintenance Costs: These costs; consisting of utilities, spare parts, site maintenance, vendor services (primarily subscription services), and site leases; would begin at relatively lower amounts in FY 2008 and would increase to the full amount needed for phases 4 through 6 by FY 2011. These amounts are shown below:

Type of Expenditure	FY 2008	FY 2009	FY 2010	FY 2011
Utilities	$110,000	$ 340,000	$ 560,100	$ 660,000
Spare Parts	40,000	120,000	196,600	240,000
Site Maintenance	17,250	50,000	79,100	91,500
Vendor Services	500,000	1,340,600	2,238,200	2,671,200
Site Leases	50,000	150,000	245,700	300,000
Total	$717,250	$2,000,600	$3,319,700	$3,962,700

The total implementation and ongoing maintenance costs are the sum of the amounts immediately above plus the personnel costs. These are summarized below.

Type of Expenditure	FY 2008	FY 2009	FY 2010	FY 2011
Personnel Cost	$207,148	$ 552,393	$ 897,639	$1,104,787
Maintenance Cost	717,250	2,000,600	3,319,700	3,962,700
Total ongoing costs	$924,398	$2,552,993	$4,217,339	$5,067,487

One-Time Costs

Costs for training, computers, vehicles (7 in all, to be used by 16 employees), and test equipment for the additional employees would be needed. In addition an estimated 1,640 radios would need to be purchased. These expenditures are show in the table below.

Type of Expenditures	FY 2008	FY 2009	FY 2010	FY 2011
Training	$ 3,300	$ 5,500	$ 5,500	$ 3,300
Computers	9,300	15,500	15,500	9,300
Vehicles	25,000	50,000	50,000	50,000
Test Equipment	46,775	69,625	69,625	21,775
Radios (1,640 needed in all)		1,531,600	1,531,600	1,528,800
Total	$84,375	$1,672,225	$1,672,225	$1,613,175

Total Costs

The amounts shown below are the total costs estimated for Mn/DOT if Senate File 3282 were to become law.

	FY 2008	FY 2009	FY 2010	FY 2011
Personnel Cost	$ 207,148	$ 552,393	$ 897,639	$1,104,787
Maintenance Cost	717,250	2,000,600	3,319,700	3,962,700
One Time Costs	84,375	1,672,225	1,672,225	1,613,175
Total Amounts	$1,008,773	$4,225,218	$5,889,564	$6,680,662

The amounts shown above for FY 2008 and 2009 have been entered on the fiscal note as expenditures from the trunk highway fund.

Impact on Revenues

The State Radio Board is presently in the process of determining a radio user fee to offset the ongoing operating costs of the public safety radio and communication system. This fee will be allocated among the users of the radio system, in accordance with the statewide radio system plan developed by the Board. A specific recommendation has not yet been made. Therefore, a total revenue estimate cannot be readily developed, nor can the amount of any revenue that might be received by the trunk highway fund be estimated. Thus, no revenue amounts have been entered on the fiscal note, except for the amount described in the next paragraph.

$240,000 is being shown as revenue to the trunk highway fund in FY 2009 to correspond to the $240,000 of expenditures being shown in the Department of Public Safety's fiscal note for FY 2009. This is based on an assumption of a fee of $200 per radio being charged to cover part of the operating cost of phases 4 through 6 of the system. Based on national trends for statewide public safety radio systems, it is typical to establish a fixed fee to help fund the operation of the system, and the $240,000 expenditure assumed by the Department of Public Safety assumes that this type of policy would be adopted in Minnesota by the State Radio Board.

Long-Term Fiscal Considerations

1) The long term, ongoing maintenance cost for Mn/DOT is estimated to be $5,067,487, the amount of ongoing cost estimated for FY 2011.
2) The $240,000 shown as revenue to the trunk highway fund in FY 2009 would continue in years after FY 2009.
3) It is estimated that a user charge will eventually be implemented and that some portion of the revenues from this charge would be received by the trunk highway fund, offsetting the cost identified above, at least to some degree. This is based on national trends for statewide public safety radio systems.

Local Government Costs

There will be several fiscal impacts on local governments. These include: 1) paying for 50% of the cost of building local subsystems to connect to the backbone to be constructed by Mn/DOT; 2) purchase of radios at an estimated cost of $2,800 per unit; and 3) paying a proportionate share of the operation and maintenance costs, in all likelihood based on a user fee charge per radio, as mentioned above.

References/Sources

Mn/DOT Office of Electronic Communications

FN Coord Signature: BRUCE BRIESE
Date: 03/31/06 Phone: 297-1203

EBO Comments

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: NORMAN FOSTER
Date: 03/31/06 Phone: 215-0594

Senators Kelley and Ranum introduced–

S.F. No. 3282: Referred to the Committee on Jobs, Energy and Community Development.

A bill for an act

relating to public safety; increasing 911 emergency telecommunications service fee; providing for completion of statewide public safety radio communication system; authorizing sale of state 911 revenue bonds; appropriating money; amending Minnesota Statutes 2005 Supplement, section 403.11, subdivision 1.

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

Section 1. Minnesota Statutes 2005 Supplement, section 403.11, subdivision 1, is amended to read:

Subdivision 1. **Emergency telecommunications service fee; account.** (a) Each customer of a wireless or wire-line switched or packet-based telecommunications service provider connected to the public switched telephone network that furnishes service capable of originating a 911 emergency telephone call is assessed a fee based upon the number of wired or wireless telephone lines, or their equivalent, to cover the costs of ongoing maintenance and related improvements for trunking and central office switching equipment for 911 emergency telecommunications service, plus administrative and staffing costs of the commissioner related to managing the 911 emergency telecommunications service program. Recurring charges by a wire-line telecommunications service provider for updating the information required by section 403.07, subdivision 3, must be paid by the commissioner if the wire-line telecommunications service provider is included in an approved 911 plan and the charges are made pursuant to contract. The fee assessed under this section must also be used for the purpose of offsetting the costs, including administrative and staffing costs, incurred by the State Patrol Division of the Department of Public Safety in handling 911 emergency calls made from wireless phones.

(b) Money remaining in the 911 emergency telecommunications service account after all other obligations are paid must not cancel and is carried forward to subsequent years and may be appropriated from time to time to the commissioner to provide financial assistance to counties for the improvement of local emergency telecommunications services. The improvements may include providing access to 911 service for telecommunications service subscribers currently without access and upgrading existing 911 service to include automatic number identification, local location identification, automatic location identification, and other improvements specified in revised county 911 plans approved by the commissioner.

(c) The fee may not be less than eight cents nor more than ~~65~~ ... cents a month for each customer access line or other basic access service, including trunk equivalents as designated by the Public Utilities Commission for access charge purposes and including wireless telecommunications services. With the approval of the commissioner of finance, the commissioner of public safety shall establish the amount of the fee within the limits specified and inform the companies and carriers of the amount to be collected. When the revenue bonds authorized under section 403.27, subdivision 1, have been fully paid or defeased, the commissioner shall reduce the fee to reflect that debt service on the bonds is no longer needed. The commissioner shall provide companies and carriers a minimum of 45 days' notice of each fee change. The fee must be the same for all customers.

(d) The fee must be collected by each wireless or wire-line telecommunications service provider subject to the fee. Fees are payable to and must be submitted to the commissioner monthly before the 25th of each month following the month of collection, except that fees may be submitted quarterly if less than $250 a month is due, or annually if less than $25 a month is due. Receipts must be deposited in the state treasury and credited to a 911 emergency telecommunications service account in the special revenue fund. The money in the account may only be used for 911 telecommunications services.

(e) This subdivision does not apply to customers of interexchange carriers.

(f) The installation and recurring charges for integrating wireless 911 calls into enhanced 911 systems must be paid by the commissioner if the 911 service provider is included in the statewide design plan and the charges are made pursuant to contract.

Sec. 2. **911 REVENUE BOND DEBT SERVICE.**

$..,...,000 in the fiscal year ending June 30, 2007, is appropriated to the commissioner of finance to pay debt service on revenue bonds issued under Minnesota Statutes, section 403.275. Any portion of this appropriation not needed to pay debt service in a fiscal year may be used by the commissioner of public safety to pay cash for any of the capital improvements for which bond proceeds are appropriated in section 3.

Sec. 3. **PUBLIC SAFETY RADIO AND COMMUNICATION SYSTEM CONSTRUCTION.**

Subdivision 1. **Total Appropriation** $277,732,000

The sums shown in this section are appropriated from the 911 revenue bond proceeds account for the purposes indicated, to be available until the project is completed or abandoned, subject to Minnesota Statutes, section 16A.642.

Subd. 2. **Phase 3 Subsystems** 9,860,000

To the commissioner of public safety to reimburse local units of government for up to 50 percent of the cost of building a subsystem of the public safety radio and communication system established under Minnesota Statutes, section 403.36, in the St. Cloud district of the State Patrol, outside the counties of Benton, Sherburne, Stearns, and Wright.

Subd. 3. **Phase 4 System Backbone** 59,004,000

To the commissioner of transportation to construct the system backbone in the fourth phase of the public safety radio and communication system plan under Minnesota Statutes, section 403.36.

Subd. 4. **Phase 4 Subsystems** 20,275,000

To the commissioner of public safety to reimburse local units of government for up to 50 percent of the cost of building a subsystem of the public safety radio and communication system established under Minnesota Statutes, section 403.36, in the Brainerd and Duluth districts of the State Patrol.

Subd. 5. **Phase 5 System Backbone** 61,614,000

To the commissioner of transportation to construct the system backbone in the fifth phase of the public safety radio and communication system plan under Minnesota Statutes, section 403.36.

Subd. 6. **Phase 5 Subsystems** 39,370,000

To the commissioner of public safety to reimburse local units of government for up to 50 percent of the cost of building a subsystem of the public safety radio and communication system established under Minnesota Statutes, section 403.36, in the Detroit Lakes, Mankato, and Marshall districts of the State Patrol.

Subd. 7. **Phase 6 System Backbone** 52,953,000

To the commissioner of transportation to construct the system backbone in the sixth phase of the public safety radio and communication system plan under Minnesota Statutes, section 403.36.

Subd. 8. **Phase 6 Subsystems** 17,705,000

To the commissioner of public safety to reimburse local units of government for up to 50 percent of the cost of building a subsystem of the public safety radio and communication system established under Minnesota Statutes, section 403.36, in the Thief River Falls and Virginia districts of the State Patrol.

Subd. 9. **Bond sale authorization**

To provide the money appropriated in this section, the commissioner of finance shall sell and issue bonds of the state in an amount up to $277,732,000 in the manner, upon the terms, and with the effect prescribed by Minnesota Statutes, section 403.275.

Senator .... moves to amend S.F. No. 3282 as follows:

Page 2, line 8, delete "..." and insert "93"

Page 2, after line 28, insert:

"**EFFECTIVE DATE.** This section is effective January 1, 2007."

Page 2, delete section 2

Page 5, after line 6, insert:

"Sec. 3. **APPROPRIATIONS.**

Subdivision 1. **Commissioner of Finance.** $9,562,000 in the fiscal year ending June 30, 2007, is appropriated from the 911 emergency telecommunications service account in the special revenue fund to the commissioner of finance to pay debt service on revenue bonds issued under Minnesota Statutes, section 403.275. Any portion of this appropriation not needed to pay debt service in a fiscal year may be used by the commissioner of public safety to pay cash for any of the capital improvements for which bond proceeds are appropriated in section 2.

Subd. 2. **Commissioner of Public Safety.** $234,000 in the fiscal year ending June 30, 2007, is appropriated from the 911 emergency telecommunications service account in the special revenue fund to the commissioner of public safety to supervise construction and operation of the public safety radio and communication system."

Renumber the sections in sequence and correct the internal references

Amend the title accordingly

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

S.F. No. 3282: A bill for an act relating to public safety; increasing 911 emergency telecommunications service fee; providing for completion of statewide public safety radio communication system; authorizing sale of state 911 revenue bonds; appropriating money; amending Minnesota Statutes 2005 Supplement, section 403.11, subdivision 1.

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

Page 2, line 8, delete "..." and insert "93"

Page 2, after line 28, insert:

"**EFFECTIVE DATE.** This section is effective January 1, 2007."

Page 2, delete section 2

Page 5, after line 6, insert:

"Sec. 3. **APPROPRIATIONS.**

Subdivision 1. **Commissioner of finance.** $9,562,000 in the fiscal year ending June 30, 2007, is appropriated from the 911 emergency telecommunications service account in the special revenue fund to the commissioner of finance to pay debt service on revenue bonds issued under Minnesota Statutes, section 403.275. Any portion of this appropriation not needed to pay debt service in a fiscal year may be used by the commissioner of public safety to pay cash for any of the capital improvements for which bond proceeds are appropriated in section 2.

Subd. 2. **Commissioner of public safety.** $234,000 in the fiscal year ending June 30, 2007, is appropriated from the 911 emergency telecommunications service account in the special revenue fund to the commissioner of public safety to supervise construction and operation of the public safety radio and communication system."

Renumber the sections in sequence

Amend the title accordingly

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

....
(Committee Chair)

May 17, 2006 ....5-17-06....
(Date of Committee recommendation)

Bill Summary — **Senate**

Senate Counsel & Research — State of Minnesota

S.F. No. 2672 - Health Care Cost Payment by Large Employers (first engrossment)

Author: Senator Becky Lourey
Prepared by: John C. Fuller, Senate Counsel (651/296-3914)
Date: April 25, 2006

OVERVIEW

This bill amends the chapter of Minnesota Statutes related to labor standards and wages. It requires private employers with more than 10,000 employees in Minnesota to pay to the state for deposit in the health care access fund account the difference between eight percent of the wages paid to Minnesota employees and what the employer pays for medical costs of its employees. If the employer pays more than eight percent, there is no payment obligation.

Section 1 contains definitions.

Subdivision 2 defines "commissioner" as the Commissioner of Labor and Industry.

Subdivision 3 defines "employee" and excludes independent contractors from the definition..

Subdivision 4 defines an "employer" as an entity employing more than 10,000 individuals within the state.

Subdivision 5 defines "health care costs" as those paid for by an employer to provide health care or health insurance and that are deductible by the employer under federal tax law.

Subdivision 6 defines "wages" by reference to the definition of wages contained in the unemployment compensation law. Excluded from wages are those paid to employees enrolled in Medicare and those wages that are in excess of the state median household income.

Section 2 requires employers that pay less than eight percent of wages for health care costs to make a payment to the state for the difference between eight percent and what the employer pays for health care costs. The obligation is enforced on an annual calendar-year basis. The payment must be made to the Commissioner for deposit into the health care access fund. The first year an employer has the obligation is calendar year 2007.

Section 3 requires the Commissioner of Labor and Industry to enforce section 2. The Commissioner is authorized to engage in various activities to ensure compliance with section 2. The Commissioner of Employment and Economic Development is required to cooperate with the Commissioner in providing wage and employment count information.

Consolidated Fiscal Note – 2005-06 Session

Bill #: S2672-1A **Complete Date:** 03/20/06

Chief Author: LOUREY, BECKY

Title: LARGE EMPLOYER HEALTH COST PAYMENTS

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

Agencies: Labor & Industry (03/20/06)
Employee Relations (03/20/06)
Employment & Economic Dev Dept (03/17/06)
Human Services Dept (03/17/06)

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

Dollars (in thousands)	FY05	FY06	FY07	FY08	FY09
Net Expenditures					
Health Care Access Fund			163	216	221
Labor & Industry			163	216	221
State Employees Insurance Fund		0	0	0	0
Employee Relations		0	0	0	0
Revenues					
-- No Impact --					
Net Cost <Savings>					
Health Care Access Fund			163	216	221
Labor & Industry			163	216	221
State Employees Insurance Fund		0	0	0	0
Employee Relations		0	0	0	0
Total Cost <Savings> to the State		0	163	216	221

	FY05	FY06	FY07	FY08	FY09
Full Time Equivalents					
Health Care Access Fund			1.20	2.00	2.00
Labor & Industry			1.20	2.00	2.00
Total FTE			1.20	2.00	2.00

Consolidated EBO Comments

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: KEITH BOGUT
Date: 03/20/06 Phone: 296-7642

Fiscal Note – 2005-06 Session

Bill #: S2672-1A **Complete Date:** 03/20/06

Chief Author: LOUREY, BECKY

Title: LARGE EMPLOYER HEALTH COST PAYMENTS

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

Agency Name: Labor & Industry

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

Dollars (in thousands)	FY05	FY06	FY07	FY08	FY09
Expenditures					
Health Care Access Fund			163	216	221
Less Agency Can Absorb					
-- No Impact --					
Net Expenditures					
Health Care Access Fund			163	216	221
Revenues					
-- No Impact --					
Net Cost <Savings>					
Health Care Access Fund			163	216	221
Total Cost <Savings> to the State			163	216	221

	FY05	FY06	FY07	FY08	FY09
Full Time Equivalents					
Health Care Access Fund			1.20	2.00	2.00
Total FTE			1.20	2.00	2.00

Bill Description

This bill requires employers with more than 10,000 employees in Minnesota to make a payment to the Department of Labor and Industry (DLI) if they do not spend at least 8% of total wages paid to employees in a calendar year for health costs. The payment amount would be the difference between the actual amount spent for health care and 8% of total wages paid. The payments would be deposited into the Health Care Access Fund. DLI is allowed to retain up to 5% of the payment amount for administrative costs.

Wages are defined as the wages reported to the Department of Employment and Economic Development (DEED) for unemployment insurance purposes. Wages in excess of the state median household income as determined by the Department of Housing and Urban Development ($68,200 for 2006) and wages paid to an employee who is enrolled in or eligible for Medicare are excluded for the health care cost calculation.

Assumptions

There are approximately 11 employers with over 10,000 employees in Minnesota. DLI would hire two Labor Standards Investigators to develop a reporting process and inspect these employer health care cost records to ensure compliance. It will also require the assistance of a Research Analyst to compare wage detail information from the DEED with Medicare information maintained by the Department of Human Services and determine the aggregate amount of wages to be included in the calculation.

It is assumed that data collection, calculation, and auditing would begin in January 2007 for the calendar year 2006.

It is also assumed that DLI administrative expenditures would be funded from the Health Care Access Fund.

Expenditure and/or Revenue Formula

Revenue:

DLI does not have any information regarding the current health care benefit levels provided by these employers, therefore is unable to estimate the amount of revenue that might be generated under this bill.

Expenditures:

	2007	2008	2009
Personnel	$85,000	$144,000	$148,000
Other Operating	$78,000	$72,000	$73,000
Total	$163,000	$216,000	$221,000

Long-Term Fiscal Considerations

If all defined employers' health care costs exceed the 8% threshold there would be no revenue generated from which to offset DLI's administrative costs.

Local Government Costs

Local governments with more than 10,000 employees could be affected if they are not paying at least 8% of wages for employee health costs.

References/Sources

DLI Assistant Commissioner, Workplace Services
DLI Research Director
Business Journal

FN Coord Signature: CINDY FARRELL
Date: 03/17/06 Phone: 284-5528

EBO Comments

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: KEITH BOGUT
Date: 03/20/06 Phone: 296-7642

Fiscal Note – 2005-06 Session

Bill #: S2672-1A **Complete Date:** 03/17/06

Chief Author: LOUREY, BECKY

Title: LARGE EMPLOYER HEALTH COST PAYMENTS

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

Agency Name: Human Services Dept

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

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

	FY05	FY06	FY07	FY08	FY09
Full Time Equivalents					
-- No Impact --					
Total FTE					

NARRATIVE: SF 2672-1A

Bill Description

As amended, SF 2672 would require employers with 10,000 or more employees who does not spend at least 8% of total wages in a calendar year to employees for health costs to make a payment to the commissioner of labor and industry equal to the difference between what the employer spends for health costs and 8% of total wages paid to employees in the state. The definition of employer includes any corporation or other legal entity with more than 10,000 employees in the state, including the state and any of its political subdivisions.

The payments must be deposited by the commissioner of labor and industry into the Health Care Access Fund. The commissioner of labor and industry is allowed to keep up to 5% of the payment for administrative costs.

The bill is effective January 1, 2007.

The amendments to the bill do not impact DHS.

Assumptions

It is anticipated that there would be no program, systems or administrative impacts attributed to DHS.

Expenditure and/or Revenue Formula

Long-Term Fiscal Considerations

Local Government Costs

References/Sources

Agency Contact Name: Steve Nelson 651-431-2202
FN Coord Signature: STEVE BARTA
Date: 03/17/06 Phone: 431-2916

EBO Comments

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: LISA MUELLER
Date: 03/17/06 Phone: 296-6661

Fiscal Note – 2005-06 Session

Bill #: S2672-1A **Complete Date:** 03/20/06

Chief Author: LOUREY, BECKY

Title: LARGE EMPLOYER HEALTH COST PAYMENTS

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

Agency Name: Employee Relations

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

Dollars (in thousands)	FY05	FY06	FY07	FY08	FY09
Expenditures					
State Employees Insurance Fund		0	0	0	0
Less Agency Can Absorb					
State Employees Insurance Fund		0	0	0	0
Net Expenditures					
State Employees Insurance Fund		0	0	0	0
Revenues					
-- No Impact --					
Net Cost <Savings>					
State Employees Insurance Fund		0	0	0	0
Total Cost <Savings> to the State					

	FY05	FY06	FY07	FY08	FY09
Full Time Equivalents					
-- No Impact --					
Total FTE					

BILL DESCRIPTION:
Senate file 2672-1A requires certain health cost payments by large employers.

BACKGROUND:
The Minnesota Advantage Health Plan is a self-insured health plan offered by the State of Minnesota to state employees and their dependents. Both the employer and the employee make contributions to the cost of premiums. The bill requires large employers (10,000 + employees) who do not spend at least 8% of total wages paid to employees for health costs to make a payment to the Commissioner of Labor and Industry.

Based on 2005 data, The State of Minnesota spent approximately 18% of total wages for health care costs.

ASSUMPTIONS:
DOER has assumed that health care costs will continue to rise at a faster rate than the rate of wage increases.

DOER has assumed the Employer Contribution formula, as specified by bargaining agreements, will remain relatively stable over the next five years.

DOER therefore concludes the state will continue to spend 18% of wages or more on health care costs, and would not be required to make an additional payment.

EXPENDITURE FORMULA:
Not applicable.

LONG-TERM FISCAL CONSIDERATIONS:
Not applicable.

LOCAL GOVERNMENT COSTS:
Not applicable.

REFERENCES:
- Current premium costs from the Minnesota Advantage Health Plan.
- Current average salary calculated from report PDHR6200, *Executive Branch Appointment and Employment Statistics*, dated July 19, 2005.

Agency Contact Name: Liz Houlding (651-259-3700)
FN Coord Signature: MIKE HOPWOOD
Date: 03/20/06 Phone: 259-3780

EBO Comments

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: KRISTI SCHROEDL
Date: 03/20/06 Phone: 215-0595

Fiscal Note – 2005-06 Session

Bill #: S2672-1A **Complete Date:** 03/17/06

Chief Author: LOUREY, BECKY

Title: LARGE EMPLOYER HEALTH COST PAYMENTS

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

Agency Name: Employment & Economic Dev Dept

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

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

	FY05	FY06	FY07	FY08	FY09
Full Time Equivalents					
-- No Impact --					
Total FTE					

Bill Description
This agency is not involved in the administration of the program initiated by this bill. The data exchange with this agency, called for on Page 2, lines 29-31, is already authorized under MN Statutes 268.19, Subd. 1(7).

Assumptions

Expenditure and/or Revenue Formula

Long-Term Fiscal Considerations

Local Government Costs

References/Sources

FN Coord Signature: MIKE MEYER
Date: 03/17/06 Phone: 297-1978

EBO Comments

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: KEITH BOGUT
Date: 03/17/06 Phone: 296-7642

The George Washington University
WASHINGTON DC
MEDICAL CENTER

SCHOOL OF PUBLIC HEALTH AND HEALTH SERVICES
CENTER FOR HEALTH SERVICES RESEARCH & POLICY

January 5, 2006

Jonathan Parker
National Director
SEIU, Americans for Health Care
1313 L St., NW
Washington, DC 20005

Dear Mr. Parker:

This is in response to your request for me to review the provisions of the Maryland Fair Share Health Care Fund Act ("the Maryland Act"), which was adopted by the Maryland Legislature in the 2005 Session, to determine whether its provisions imposing an assessment on certain employers who do not spend a specified percentage of total wages on "health insurance costs" are preempted by the Employee Retirement Income Security Act of 1974 ("ERISA"). Although no court has directly addressed this issue, for the reasons described below, I have concluded that ERISA does not preempt the Maryland Fair Share Health Care Fund Act.

Overview of Current ERISA Preemption Jurisprudence

In the more than thirty years since the Federal law was passed, no issue of statutory interpretation under ERISA has so occupied the attention of the U.S. Supreme Court as the interrelationship of state laws and ERISA through ERISA's preemption clause. The Court has heard nearly twenty-five cases on this topic alone during this period.

It is fair to say that until 1995, the Supreme Court took a very narrow view of the extent to which state laws could survive an ERISA preemption challenge. Since then, however, beginning with the Court's 1995 watershed decision, *New York State Conference of Blue Cross &Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645 (1995) ("*Travelers*"), the Court has revisited, redefined and broadened its historical view of two critical components of the ERISA preemption test: whether a state law "relates to" an ERISA plan and whether a state law is a "law regulating insurance" that should be saved from preemption under ERISA's so-called "savings clause." For purposes of analyzing the Maryland Fair Share Health Care Fund Act, however, the Court's new "relates to" interpretation is most relevant.

The effect of the Court's shifting view of the relative relationship between state laws and ERISA's preemption provisions is to give states considerably more latitude in regulating matters that may affect ERISA covered-employee benefit plans, while preventing in most instances direct state regulation of the plans themselves. It is in this context that one must examine the Maryland Fair Share Health Care Act to determine whether its provisions can withstand an ERISA preemption challenge.

What Does the Maryland Law Require?

The Maryland Fair Share Health Care Fund Act requires employers, beginning January 1, 2007, to report to the Maryland Department of Labor, Licensing and Regulation (DLLR) the number of its employees and the amount and percentage of payroll spent by the employer in the year preceding the previous calendar year. In addition, the employer must report the amount spent by the employer for the same period on "health insurance costs" in the state. Non-profit employers that do not spend at least 6% of total wages and for-profit employers that do not spend at least 8% of total wages during the same period are required to pay the Fair Share Health Care Fund an assessment equal to the difference between the amount spent and the applicable percentage. "Health insurance costs" include any "payments for medical care, prescription drugs, vision care, medical savings accounts, and any other costs to provide health benefits" as those payments and costs are defined in Section 213(d) of the Internal Revenue Code.

What Criteria Is Used for Determining Whether A State Law Is Preempted by ERISA?

The general statutory framework under ERISA for deciding whether a state law will be preempted can be simply stated:

1. Does the challenged law "relate to" an ERISA plan (regardless of whether the plan is insured or self-insured)?

2. If so, does the challenged law fall into one of the statutory exceptions (state insurance, banking, and securities laws, as well as generally applicable criminal laws) and therefore, within the ambit of the "savings" clause?

3. Is the "saved" state insurance law, nevertheless, preempted because it violates the "deemer" clause?

For purposes of analyzing whether the Maryland Fair Share Health Care Fund Act is preempted, the relevant question is whether this law "relates to" an ERISA plan. If the answer is no, then the remaining questions asked above are irrelevant.

Section 514(a) of ERISA provides that ERISA will "... supersede any and all state laws insofar as they may now or hereafter *relate to* any employee benefit plan described in section 4(a) and not exempt under section 4(b) (emphasis added)."[1] As previously noted, the early Supreme Court cases interpreting the "relate to" clause of ERISA took a very expansive view of whether a state law related to an ERISA plan. Some argued that, in effect, the Court assumed

[1] 29 U.S.C. §1144(a) – (b).

that any state law or regulation that had an impact on an ERISA plan would be preempted. However, that is not the framework for analysis that the Court has used since 1995.

In *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645 (1995) ("*Travelers*"), the Court examined a New York statute that required hospitals to collect surcharges on hospital bills from patients or payers on their behalf (only Empire Blue Cross Blue Shield was exempt from these surcharges). The revenue from the surcharges was used to subsidize the state's uncompensated care programs. The New York statute was challenged by commercial insurers and health maintenance organizations (HMOs) who argued that, with respect to their covered enrollees in ERISA plans, the surcharges were taxes imposed on ERISA plans and thus preempted by ERISA.

The Supreme Court disagreed, holding, among other things, that even if the surcharges had an indirect economic influence on ERISA plans, they were not preempted by ERISA because they did not "relate to" employee benefit plans. 514 U.S. at 649. Adopting the traditional presumption that federal law (ERISA) should not preempt state laws unless Congress clearly intended it to do so (514 U.S. at 654-55), the Court refused to overturn the New York law, since it did not "bind plan administrators to any particular choice" or "preclude uniform administrative practice or the provision of a uniform interstate benefit package, if a plan wishes to provide one. It simply bears on the **cost of benefits** and the relative costs of competing insurance to provide them [emphasis added]." 514 U.S. at 659. Moreover, the Court recognized that although the surcharges were meant to increase the costs of health insurance and health care for some of the HMOs, they did not interfere with the choices that ERISA plans make for benefit coverage. 514 U.S. at 654.

Finally, Justice Souter, writing for a unanimous Court, described the *Travelers'* decision as follows:

> …we do not hold today that ERISA pre-empts only direct regulation of ERISA plans, nor could we do that with fidelity to the views expressed in our prior opinions on the matter … (citations omitted). We acknowledge that a state law might produce such acute, albeit indirect, economic effects, by intent or otherwise, to force an ERISA plan to adopt a certain scheme of substantive coverage or effectively restrict its choice of insurers, and that such a state law might indeed be pre-empted under § 514…."

In a subsequent case, the Supreme Court expanded on this more narrow view of when ERISA preemption should nullify state law. For instance, in *California Div. of Labor Standards Enforcement v. Dillingham Constr.*, 519 U.S. 316 (1997), a unanimous Court reinforced the presumption against preemption articulated in *Travelers*. 519 U.S. at 331. *Dillingham* involved the enforcement of California's prevailing wage law that allowed employers to pay a lower wage to employees who were participating in a state-approved apprenticeship program. Employers whose employees were enrolled in non-state approved apprenticeship programs were required to pay prevailing wages, not the lower wage. Among other things, the state law was challenged as preempted by ERISA, since the contractors argued that the California prevailing wage law "related to" an ERISA covered plan.

However, the Court rejected that argument since to be a state-approved apprenticeship program, the apprenticeship program did not need to be an ERISA plan. So in *Dillingham*, the Court reaffirmed that a state law only "relates to" an ERISA plan if it refers to or has a significant connection with an ERISA plan. 519 U.S. at 324. For a state law to meet this requirement, the existence of an ERISA plan is essential to the law's operation. 519 U.S. at 325.

As the *Dillingham* Court concluded, if the state law merely "alters the incentives" which exist for an ERISA plan, but "does not dictate the choices," then the law is not sufficiently connected with an ERISA plan to trigger preemption. 519 U.S. at 333.

Does the Maryland Fair Share Health Care Fund Act Violate ERISA's Preemption Provisions?

Based on existing current Supreme Court precedent, it cannot be reasonably argued that the Maryland Act is preempted by ERISA.

The Maryland Act imposes an assessment on employers based on the extent to which their health care expenditures for their employees as a percentage of their total wages for a measuring period fall below a specified percentage. This is a regulation on employers, not ERISA plans.

Moreover, the Maryland Act does not "relate to" ERISA-covered plans. It does not require employers to establish ERISA plans; it only requires employer to spend a certain amount of their payroll on health-related expenditures. Under the structure of the law, an employer may choose to spend no percent of its payroll on health expenditures for its employees. If an employer chooses that route, it simply pays the applicable assessment to the state's DLLR.

If an employer chooses to meet the applicable expenditure target, for instance, by establishing a series of on-site medical clinics where its employees can receive care or by hiring a nurse on an ad hoc basis to provide periodic immunizations for employees and their families, the employer may do so and those costs count toward the expenditure target. The Act permits any expenditures for health care costs that meet the Internal Revenue Service's definition of medical expenses to be counted toward this expenditure level.

If an employer subject to the law chooses to meet the expenditure level through the establishment or maintenance of an ERISA plan, the employer is free to do so. The employer may design its plan to cover as many or as few benefits as it wishes, as many or as few employees as it chooses, and using whatever financing and employer-employee cost-sharing formula it chooses to adopt. Clearly the Maryland Fair Share Health Care Fund Act does not in any way constrain an employer's plan design choices.

Thus the Maryland Fair Share Health Care Fund Act cannot be said to require any employer to establish an ERISA plan to comply. Under the analysis used by a unanimous Supreme Court in *Dillingham*, the Maryland law would not be preempted. Nor can it be said that the Maryland Act binds plan administrators to any particular choice or prevents uniform benefit administration or plan design for a covered employer who operates in many states. Under the precedent established by a unanimous Supreme Court in *Travelers*, the Maryland Act would not be preempted either.

Based on existing current Supreme Court precedent, therefore, it cannot be reasonably argued that the Maryland Fair Share Health Care Fund Act is preempted by ERISA.

If I can be of any further assistance, please let me know.

Phyllis C Borzi

Phyllis C. Borzi, J.D., M.A.
Research Professor
Department of Health Policy
School of Public Health and Health Services
The George Washington University

Largest Minnesota employers ranked by total number of employees

Research by Jera Peterson

Rank 2005	Rank 2000	Name / Address, phone	Minnesota employees[2] / Companywide employees	5-year employment change[1] / Company type	Total revenue / Fiscal year	Description	Top executive[4] / Year founded / Website
1		**State of Minnesota** 130 State Capitol St. Paul, MN 55155 (651) 296-6013	55,321 55,321	0.04% Government	$14.5 billion June 30, 2004	Executive, judicial and legislative branches of state government	Gov. Tim Pawlenty 1858 www.state.mn.us
2	3	**United States Federal Government** U.S. Federal Building, Fort-Snelling St. Paul, MN (800) 333-4636	35,000 2,715,000	0.5% Government	$2.4 trillion Sept. 30, 2005	Federal government	President George Bush 1776 www.firstgov.gov
3	5	**Mayo Foundation** 200 First St. S.W. Rochester, MN 55905 (507) 284-2430	32,500 NP	39.0% Nonprofit	$4.82 billion Dec. 31, 2003	Charitable organization providing care through integrated clinical practice, education and research	Denis Cortes 1919 www.mayo.edu
4	4	**University of Minnesota** 200 Donhowe Building Minneapolis, MN 55455 (612) 625-5000	30,240 30,240	23.4% Educational	2 billion June 30, 2004	Public university	Robert Bruininks 1851 www.umn.edu
5	2	**Target Corp.** 1000 Nicollet Mall Minneapolis, MN 55403 (612) 304-6073	24,294 328,000	-30.6% Public	$42.03 billion January 2004	General merchandise retailer	Robert Ulrich 1902 www.target.com
6	6	**Allina Health System** 710 E. 24th St. Minneapolis, MN 55404 (612) 775-5000	22,500 24,500	0.2% Nonprofit	$1.64 billion December 2003	Integrated health care organization serving communities throughout Minnesota	Richard Pettingill 1994 www.allina.com
7	10	**Wells Fargo Bank Minnesota** Sixth Street and Marquette Avenue Minneapolis, MN 55479 (612) 667-7271	19,100 NP	37.0% Public	$30.1 billion Dec. 31, 2004	Financial-services company providing banking, insurance, investments, mortgage and consumer finance	Jon Campbell 1852 www.wellsfargo.com
8	8	**Fairview Health Services** 2450 Riverside Ave. Minneapolis, MN 55454 (612) 672-6300	18,500 18,500	0.1% Nonprofit	$1.7 billion December 2003	Regionally integrated health care system of hospitals, nursing homes, senior housing facilities and clinics	David Page 1906 www.fairview.org
9	11	**Wal-Mart Stores Inc.** 702 S.W. Eighth St. Bentonville, AR 72716 (501) 273-4000	17,964 1,500,000	50.6% Public	$256.33 billion January 2004	Discount retailer	H.L. Scott Jr. 1962 www.walmartstores.com
10	9	**3M Co.** 3M Center Maplewood, MN 55144 (651) 733-1110	16,289 67,071	-10.3% Public	$20.01 billion Dec. 31, 2004	Manufactures and markets a diversified group of business and consumer products	W. James McNerney Jr. 1902 www.3M.com
11	7	**Northwest Airlines Corp.** 2700 Lone Oak Parkway Eagan, MN 55121 (612) 726-3673	16,000 39,000	-24.8% Public	$11.28 billion Dec. 31, 2004	World's fourth-largest airline as measured by revenue passenger miles	Douglas Steenland 1926 www.nwa.com
12	12	**Hennepin County** 300 S. Sixth St. Minneapolis, MN 55487 (612) 348-4443	12,459 12,459	13.1% Government	$1.6 billion December 2004	County government	Sandra Vargas 1852 www.co.hennepin.mn.us
13	14	**HealthPartners** 8100 34th Ave. S. Bloomington, MN 55425 (952) 883-6000	9,600 9,600	-0.03% Nonprofit	$2.1 billion Dec. 31, 2003	Consumer-governed family of nonprofit Minnesota health care organizations	Mary Brainerd 1957 www.healthpartners.com
14	13	**U.S. Bancorp** U.S. Bancorp Center, 800 Nicollet Mall Minneapolis, MN 55402 (612) 303-5657	9,442 55,000	-13.6% Public	$14.71 billion Dec. 31, 2004	Sixth-largest financial-services holding company in the United States	Jerry Grundhofer 1863 www.usbank.com
15	16	**Supervalu Inc.** 11840 Valley View Road Eden Prairie, MN 55344 (952) 828-4000	9,400 55,000	9.3% Public	$20.0 billion Feb. 26, 2005	One of the largest companies in the U.S. grocery channel with more than 1,500 retail grocery locations	Jeff Noddle 1870 www.supervalu.com
16	31	**Medtronic Inc.** 710 Medtronic Parkway Fridley, MN 55432 (763) 514-4000	8,900 30,200	56.2% Public	$9.09 billion April 29, 2005	Medical technology company providing life-long solutions for people with chronic disease	Art Collins 1949 www.medtronic.com
17	20	**Hormel Foods Corp.** One Hormel Place Austin, MN 55912 (507) 437-5611	7,800 15,500	8.8% Public	$4.78 billion October 2004	Multinational food and consumer-products company, supplying processed and packaged food	Joel Johnson 1891 www.hormel.com
18	24	**HealthEast Care System** 559 Capitol Blvd. St. Paul, MN 55103 (651) 232-2300	7,600 7,600	9.8% Nonprofit	$588.7 million August 2003	Community-focused, nonprofit health care system providing a full spectrum of family health services	Timothy Hanson 1986 www.healtheast.org
19	25	**Park Nicollet Health Services** 6500 Excelsior Blvd. St. Louis Park, MN 55426 (952) 993-9900	7,536 7,536	14.0% Nonprofit	$862.1 million[5] Dec. 31, 2004	Integrated-care system with programs to measure and improve health care	David Wessner 1993 www.parknicollet.com
20	57	**General Mills Inc.** One General Mills Blvd. Golden Valley, MN 55426 (763) 764-7600	6,500 27,889	71.7% Public	$12.3 billion May, 31 2004	Leading producer of packaged consumer foods	Stephen Sanger 1866 www.generalmills.com
20	17	**American Express Financial Advisors** 108 AXP Financial Center Minneapolis, MN 55474 (612) 671-3131	6,500 9,000	-15.7% Public	$7.04 billion December 2004	Financial-planning company providing services to more than 2.3 million clients throughout the United States	James Cracchiolo 1894 www.americanexpress.com/financial
22	27	**Best Buy Co. Inc.** 7601 Penn Ave. S. Richfield, MN 55423 (612) 291-1000	6,200 105,000	-4.6% Public	$24.55 billion Feb. 26, 2005	Specialty retailer of consumer electronics, home office equipment, entertainment software and appliances	Bradbury Anderson 1966 www.bestbuy.com
23	43	**UnitedHealth Group** UnitedHealth Group Center Minnetonka, MN 55343 (952) 936-1300	6,005 33,000	27.9% Public	$37.21 billion Dec. 31, 2004	Nation's largest health care management services company serving 55 million Americans	William McGuire 1974 www.unitedhealthgroup.com
24	42	**St. Mary's/Duluth Clinic Health System** 407 E. Third St. Duluth, MN 55805 (218) 786-4380	5,872 6,202	24.1% Nonprofit	$1.1 billion June 30, 2004	Health care system serving northern Minnesota and northern Wisconsin	Peter Person, M.D. 1997 www.smdc.org
25	19	**IBM Corp.** Highway 52 and Northwest 37th Rochester, MN 55901 (507) 253-8838	5,800 319,000	-19.4% Public	$96.5 billion December 2004	Minnesota's largest computer company focusing on e-business and business servers	Samuel Palmisano 1956 www.ibm.com

Abbreviations:
Gov't = Government
NA = Not applicable
NP = Not provided
NR = Not ranked
Soc. = Society

Footnotes:
1. 2000 rankings and five-year employment percentage changes are based on data taken from *2001 Fact Book's* 100 Largest Employer's list.
2. Employment count is based on the total number of both full-time and part-time employees located in the state of Minnesota.
3. Edited to fit
4. When applicable, the top local executive for regional companies has been listed.
5. Unaudited

Notes:
– Mentor Network Inc. (formerly REM) may have made this list, but refused to disclose employment information
– The St. Paul Travelers Cos. Inc. may have made this list, but was unable to calculate total number of Minnesota employees at press time
– Staffing companies and school districts were not included in this list

Sources: Company representatives, Web sites and *The Business Journal Factbook Online*

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WALMART.com

Estimated Cost to State and Federal Taxpayers of Wal-Mart Workers and Dependents

State	2005 - Total # of Wal-Mart Employees in State	2005 - Reported/ Estimated # of Wal-Mart Workers on Medicaid	2005 - Reported/ Estimated # of Wal-Mart Dependents on Medicaid-SCHIP	Average Total Medicaid Spending Per Worker Enrollee	Average Total Medicaid-SCHIP Spending Per Dependent Enrollee	2005 - Estimated Total Cost of Wal-Mart Workers	2005 - Estimated Total Cost of Wal-Mart Dependents	2005 - Estimated Total Cost (Workers & Children; Federal & State)	2005 - Portion of Estimated Total Cost (Workers & Dependents) Paid By *Federal Taxpayers*	2005 - Portion of Estimated Total Cost (Workers & Children) Paid By *State Taxpayers*
Alabama	40,275	5,319	5,112	$4,451	$1,480	$23,673,847	$7,566,383	$31,240,230	$23,024,050	$8,216,181
Alaska	2,833	374	228	$9,982	$2,927	$3,734,615	$668,400	$4,403,016	$2,700,810	$1,702,206
Arizona	30,291	2,921	487	$3,947	$1,425	$11,529,188	$693,718	$12,222,906	$8,581,702	$3,641,204
Arkansas	46,887	6,192	3,779	$5,210	$1,426	$32,258,755	$5,389,386	$37,648,140	$29,222,487	$8,425,654
California	73,787	9,745	5,948	$3,297	$1,179	$32,129,283	$7,012,308	$39,141,590	$20,725,472	$18,416,118
Colorado	25,382	3,352	2,046	$8,128	$1,694	$27,247,178	$3,465,824	$30,713,003	$16,262,535	$14,450,468
Connecticut	9,451	1,248	857	$12,455	$1,859	$15,545,661	$1,594,053	$17,139,714	$9,075,479	$8,064,236
Delaware	4,230	559	341	$6,587	$1,569	$3,679,573	$534,971	$4,214,545	$2,231,601	$1,982,943
Florida	95,853	12,659	7,726	$5,713	$1,061	$72,325,637	$8,197,632	$80,523,268	$49,827,798	$30,695,470
Georgia	54,626	7,214	13,346	$5,787	$1,220	$41,745,477	$16,281,695	$58,027,172	$36,295,996	$21,731,176
Hawaii	4,583	605	369	$4,990	$1,232	$3,020,111	$455,122	$3,475,233	$2,149,432	$1,325,801
Idaho	6,972	921	562	$9,298	$1,106	$8,561,449	$621,555	$9,183,004	$6,787,158	$2,395,846
Illinois	46,467	6,137	3,746	$7,775	$1,399	$47,714,297	$5,239,980	$52,954,278	$28,039,290	$24,914,988
.ndiana	38,647	5,104	3,115	$8,511	$1,400	$43,440,191	$4,361,251	$47,801,443	$31,200,002	$16,601,441
Iowa	18,011	882	1,452	$8,882	$1,531	$7,837,001	$2,222,697	$10,059,698	$6,727,926	$3,331,772
Kansas	20,136	2,659	1,623	$9,354	$1,445	$24,873,824	$2,345,354	$27,219,178	$17,357,670	$9,861,508
Kentucky	32,249	4,259	2,599	$6,925	$1,808	$29,492,767	$4,699,828	$34,192,596	$24,974,272	$9,218,324
Louisiana	38,110	5,033	3,072	$6,567	$996	$33,053,921	$3,059,607	$36,113,527	$26,933,469	$9,180,059
Maine	7,350	971	592	$5,451	$3,570	$5,291,493	$2,115,061	$7,406,554	$5,123,113	$2,283,440
Maryland	16,988	2,244	1,369	$10,668	$2,327	$23,933,383	$3,186,441	$27,119,825	$14,359,947	$12,759,877
Massachusetts	11,608	1,969	3,280	$7,724	$1,547	$15,207,575	$5,074,160	$20,281,735	$10,739,179	$9,542,556
Michigan	30,181	3,986	2,433	$5,237	$971	$20,873,383	$2,362,219	$23,235,602	$13,671,828	$9,563,774
Minnesota	19,171	2,532	1,545	$10,512	$2,264	$26,614,469	$3,498,553	$30,113,022	$15,944,845	$14,168,177
Mississippi	26,801	3,540	2,160	$6,298	$1,196	$22,291,257	$2,583,744	$24,875,001	$19,907,463	$4,967,538
Missouri	44,641	5,896	3,598	$6,215	$1,530	$36,639,409	$5,505,448	$42,144,857	$27,149,717	$14,995,140
Montana	4,656	615	195	$7,984	$2,022	$4,909,620	$394,397	$5,304,017	$4,026,279	$1,277,738
Nebraska	10,882	737	877	$8,985	$1,637	$6,620,432	$1,435,902	$8,056,333	$5,062,600	$2,993,733
Nevada	12,045	1,591	971	$5,001	$1,247	$7,955,667	$1,210,711	$9,166,378	$5,305,500	$3,860,878
New Hampshire	8,772	488	707	$13,069	$2,354	$6,380,713	$1,664,456	$8,045,170	$4,259,917	$3,785,252
New Jersey	13,847	1,829	741	$9,427	$1,499	$17,239,851	$1,111,424	$18,351,276	$9,717,000	$8,634,275
w Mexico	14,341	1,894	1,156	$6,003	$1,623	$11,368,664	$1,876,140	$13,244,804	$10,304,457	$2,940,346
New York	35,671	4,711	2,875	$11,934	$1,835	$56,220,999	$5,276,169	$61,497,167	$32,562,750	$28,934,417
North Carolina	49,956	6,598	4,027	$7,386	$1,410	$48,732,264	$5,677,721	$54,409,985	$35,801,770	$18,608,215

WakeUpWalMart.com

Estimated Cost to State and Federal Taxpayers of Wal-Mart Workers and Dependents

State	2005 - Total # of Wal-Mart Employees in State	2005 - Reported/ Estimated # of Wal-Mart Workers on Medicaid	2005 - Reported/ Estimated # of Wal-Mart Dependents on Medicaid-SCHIP	Average Total Medicaid Spending Per Worker Enrollee	Average Total Medicaid-SCHIP Spending Per Dependent Enrollee	2005 - Estimated Total Cost of Wal-Mart Workers	2005 - Estimated Total Cost of Wal-Mart Dependents	2005 - Estimated Total Cost (Workers & Children; Federal & State)	2005 - Portion of Estimated Total Cost (Workers & Dependents) Paid By *Federal Taxpayers*	2005 - Portion of Estimated Total Cost (Workers & Children) Paid By *State Taxpayers*
North Dakota	2,745	363	221	$9,531	$1,473	$3,455,229	$325,921	$3,781,150	$2,696,338	$1,084,812
Ohio	50,068	6,612	4,036	$9,929	$1,295	$65,656,081	$5,226,336	$70,882,417	$44,074,687	$26,807,730
Oklahoma	31,611	4,175	2,548	$6,492	$1,208	$27,104,256	$3,078,027	$30,182,284	$22,186,997	$7,995,287
Oregon	11,035	1,457	889	$4,597	$1,505	$6,699,024	$1,338,678	$8,037,702	$5,124,839	$2,912,863
Pennsylvania	49,861	6,585	4,019	$8,050	$1,670	$53,009,556	$6,711,889	$59,721,445	$34,465,246	$25,256,199
Rhode Island	2,214	292	178	$9,451	$2,106	$2,763,553	$375,840	$3,139,393	$1,851,614	$1,287,779
South Carolina	27,401	3,619	2,209	$4,835	$1,372	$17,496,644	$3,030,315	$20,526,959	$14,945,679	$5,581,280
South Dakota	4,912	649	396	$8,471	$1,661	$5,495,175	$657,651	$6,152,825	$4,222,069	$1,930[illegible]
Tennessee	41,017	10,661	3,306	$3,817	$1,067	$40,695,642	$3,527,732	$44,223,375	$29,868,467	$14,354,907
Texas	151,994	20,073	4,947	$6,324	$1,459	$126,943,313	$7,218,152	$134,161,466	$84,749,798	$49,411,668
Utah	15,805	2,087	1,274	$7,013	$1,751	$14,637,473	$2,230,735	$16,868,207	$12,595,490	$4,272,717
Vermont	728	286	59	$5,226	$2,071	$1,494,666	$121,529	$1,616,194	$1,056,345	$559,850
Virginia	39,782	5,254	3,207	$7,350	$1,351	$38,618,485	$4,332,208	$42,950,692	$22,970,030	$19,980,662
Washington	16,609	3,599	1,339	$4,635	$1,039	$16,682,328	$1,390,997	$18,073,326	$9,569,826	$8,503,500
West Virginia	12,054	1,592	462	$6,619	$1,458	$10,537,230	$673,773	$11,211,002	$8,760,277	$2,450,725
Wisconsin	27,864	809	443	$7,504	$1,156	$6,070,616	$512,108	$6,582,724	$4,040,476	$2,542,248
Wyoming	3,690	487	297	$8,019	$1,275	$3,907,635	$379,231	$4,286,866	$2,755,169	$1,531,697
TOTAL	1,385,090	183,382	112,768	7,352	1,574	$1,213,408,857	$158,513,435	$1,371,922,293	$861,986,861	$509,935,432

Senator .... moves to amend S.F. No. 2672 as follows:

Page 2, line 13, delete everything after "fund" and insert a period

Page 2, delete lines 14 and 15

Page 2, after line 32, insert:

"Sec. 4. **APPROPRIATION.**

$163,000 is appropriated from the health care access fund to the commissioner of labor and industry to pay administrative costs related to this act, to be available for the fiscal year ending June 30, 2007, provided that the amount available must not exceed five percent of the payments received under new Minnesota Statutes, section 177.46, subdivision 2."

Renumber the sections in sequence and correct the internal references

Amend the title accordingly

A bill for an act

relating to employment; requiring certain health cost payments by large employers; proposing coding for new law in Minnesota Statutes, chapter 177.

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

Section 1. **[177.45] DEFINITIONS.**

Subdivision 1. **Applicability.** For purposes of sections 177.45 to 177.47, the terms defined in this section have the meanings given them.

Subd. 2. **Commissioner.** "Commissioner" means the commissioner of labor and industry.

Subd. 3. **Employee.** "Employee" means a person who performs services for hire for an employer, and includes all individuals employed at any site in Minnesota owned or operated by an employer. Employee does not include an independent contractor.

Subd. 4. **Employer.** "Employer" means any corporation or other legal entity with more than 10,000 employees in Minnesota including the state or any of its political subdivisions.

Subd. 5. **Health costs.** "Health costs" means the amount paid by an employer to provide health care or health insurance to employees to the extent the costs are deductible by an employer under federal tax law. Health costs include payments for insurance, medical care, prescription drugs, vision care, medical savings accounts, exercise programs, and any other costs to provide health benefits as defined in section 213(d) of the federal Internal Revenue Code of 1986, as amended.

Subd. 6. **Wages.** "Wages" has the meaning provided in section 268.035, subdivision 29.

Wages do not include:

(1) wages paid to any employee in excess of the state median household income as most recently determined by the Department of Housing and Urban Development; and

(2) wages paid to an employee who is enrolled in or eligible for Medicare.

EFFECTIVE DATE. This section is effective January 1, 2007.

Sec. 2. **[177.46] EMPLOYER HEALTH COST PAYMENT.**

Subdivision 1. **When payment required.** An employer that does not spend at least eight percent of the total wages paid in a calendar year to employees for health costs must make a payment to the commissioner equal to the difference between what the employer spends for health costs and eight percent of the total wages paid to employees in the state. The payment must be made by December 31 of the year following the year for which payment is required.

Subd. 2. **Use of payments.** The commissioner shall deposit payments into the health care access fund created under section 16A.724 for the purposes of that fund, except that the commissioner may retain up to five percent of the payment for administrative costs related to sections 177.45 to 177.47.

Subd. 3. **Employee not responsible.** An employer may not deduct any payment made under subdivision 1 from the wages of an employee.

EFFECTIVE DATE. This section is effective January 1, 2007.

Sec. 3. **[177.47] DUTIES OF COMMISSIONER.**

The commissioner shall enforce sections 177.45 to 177.47 and may, in addition to other powers the commissioner may possess:

(1) investigate employers suspected of violating section 177.45, including inspecting the records of employers;

(2) request and receive information from other state agencies to enforce compliance with sections 177.45 to 177.47; and

(3) collect payments not timely made by commencing an action in district court and by any other collection method available, including referring the debt to the commissioner of revenue for collection under the Debt Collection Act.

The Department of Employment and Economic Development shall, upon request of the commissioner, provide the commissioner with unemployment insurance information related to wages and number of employees of an employer.

EFFECTIVE DATE. This section is effective January 1, 2007.

To: Senator Cohen, Chair

Committee on Finance

Senator Berglin,

Chair of the Health and Human Services Budget Division, to which was referred

S.F. No. 2672: A bill for an act relating to employment; requiring certain health cost payments by large employers; proposing coding for new law in Minnesota Statutes, chapter 177.

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

Page 2, delete lines 29 to 31

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

Linda Berglin
(Division Chair)

March 28, 2006
(Date of Division recommendation)

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

S.F. No. 2672: A bill for an act relating to employment; requiring certain health cost payments by large employers; proposing coding for new law in Minnesota Statutes, chapter 177.

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

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Amend the title accordingly

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

....
(Committee Chair)

May 17, 2006 ....5-17-06....................
(Date of Committee recommendation)