Short Subjects

Minnesota House of Representatives, House Research

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Mike Bull

January 2003

State Utility Statutes to Promote Renewable Electric Energy

This short subject summarizes state utility statutes that promote or require the development of wind and other forms of renewable electric energy. In addition to these, Minnesota law provides for a number of financial assistance programs for full-time farmers to develop renewable energy projects. For a summary of those programs, see the Minnesota Department of Agriculture's Agricultural Finance web site on energy programs at www.mda.state.mn.us/agfinance/energy.pdf.

Renewable Development Fund

Minn. Stat. § 116C.779. This statute requires Xcel Energy to transfer to a renewable development account (the "Renewable Development Fund" or RDF) $500,000 annually for each dry cask containing spent fuel that is filled and placed at Xcel's Prairie Island after January 1, 1999. With 17 casks filled and placed, this requirement amounts to $8.5 million a year that Xcel is required to devote to the development of renewable energy. Money from the fund is spent with the approval of the Public Utilities Commission, but the RDF is an account internal to Xcel Energy, not an account in the state treasury.

Net Metering

Minn. Stat. § 216B.164. This statute requires utilities to purchase the output of certain renewable energy facilities of 40 kilowatts or less, net of the amount of electricity used by the owner of the facility. The rate that a utility is required to pay for this net energy is the utility's average retail rate (the amount that the utility charges retail customers for electricity).

"Green Pricing" Programs

Minn. Stat. § 216B.169. This statute requires each distribution utility to offer customers the option to purchase renewable energy. Distribution utilities are those utilities that provide electric service directly to retail customers. Rural electric cooperatives and municipal distribution utilities are examples of distribution utilities. Investor-owned utilities, such as Xcel Energy or Minnesota Power, are also included.

Renewable Energy Objectives

Minn. Stat. § 216B.1691. This statute requires each generation and transmission cooperative, municipal power agency, and investor-owned utility to make a good faith effort to get 10 percent of their power supply from renewable energy by 2015. Municipal distribution utilities and rural electric cooperatives are not subject to the good faith requirement.

Distributed Energy Resources

Minn. Stat. § 216B.2411. This statute requires utilities to spend 5 percent of their required conservation spending under Minnesota Statutes, section 216B.241, on renewable energy projects, including those using "methane or other combustible gases derived from the processing of plant or animal waste." Utilities are required to spend these funds "to the extent cost-effective projects are available" in the utility's service territory.

Integrated Resource Planning

Minn. Stat. § 216B.2422. This statute establishes a preference for renewable energy in planning for power supply requirements. The statute prohibits the Public Utilities Commission from approving the construction of a nonrenewable energy facility unless the utility proposing the facility has demonstrated that a renewable energy facility is not in the public interest.

Wind Power Mandate

Minn. Stat. § 216B.2423. This statute requires Xcel Energy to acquire 825 megawatts of wind energy capacity. Xcel currently has 480 megawatts under contract and is required to have the balance under contract by 2012.

Biomass Power Mandate

Minn. Stat. § 216B.2424. This statute requires Xcel Energy to acquire 125 megawatts of biomass energy capacity by December 1998.

Currently, the required 125 megawatts of biomass capacity under contract are from the following three projects:

Project Name	Contract Date	Size	Fuel	Operation Date
FibroMinn	August 31, 2000	50 MW	Poultry Litter	Dec. 31, 2002
EPS/Beck	December 30, 1998	50 MW	Whole Tree	June 30, 2004
St. Paul Cogeneration	December 23, 1998	25 MW	Waste Wood	Dec. 14, 2002

Renewable Energy Production Incentive

Minn. Stat. § 216C.41. This statute provides 1.5 cents per kilowatt-hour produced by eligible renewable energy facilities. Eligible renewable energy facilities includes certain:

- small wind energy facilities (generally, under 2 megawatts)
- on-farm anaerobic digester facilities
- refurbished hydroelectric dams

The production incentive is paid out of the general fund by a statutory appropriation (i.e., not subject to biennial appropriation). For wind facilities, the production incentive is limited to the first 100 megawatts of capacity. That cap is expected to be met in the next year or two.

Wind Energy Facilities Sales Tax Exemption

Minn. Stat. § 297A.68. This statute provides sales tax exemption for the materials used to manufacture, install, construct, repair, or replace a wind energy facility.

For more information: Contact legislative analyst Mike Bull at 651-296-8961.

HOUSE RESEARCH | Short Subjects

Joel Michael

January 2003

State Responses to the 2001 Federal Estate Tax Changes

The 2001 federal tax act or EGTRRA eliminated the ability of states to impose pure "pickup" estate taxes that are borne by the federal treasury

From 1924 through 2001, the federal estate tax allowed a dollar-for-dollar credit for state death taxes paid (up to maximum limits). All states imposed estate taxes up to the amount of the federal credit; some states also imposed additional inheritance or estate taxes. In 2001, 38 states, including Minnesota, imposed pickup estate taxes as their only form of a death tax.

The Economic Growth and Tax Relief and Reconciliation Act of 2001 (EGTRRA) repealed the federal credit for state death taxes in three steps. *See box at the right.* After 2004, states can no longer impose estate taxes that do not increase total taxes. EGTRRA also increased the exemption amounts and reduced tax rates.

Phase-out of State Death Tax Credit Under EGTRRA

Calendar Year	% allowed
2002	75%
2003	50%
2004	25%
2005 – 2010	No credit

Minnesota opted not to continue with a pure pickup tax. Minnesota now has a stand-alone estate tax equal to the federal credit before EGTRRA passed. This short subject summarizes how states have responded to EGTRRA's repeal of the federal credit. It reflects changes enacted by states through December 2002.

Thirty-two states are reducing their pickup taxes by the full amount of the reductions in the federal credit

- Twenty-two states that impose only pickup taxes are automatically linked to federal law (AL, AK, AZ, AR, CA, CO, DE, FL, GA, HA, ID, IL, MI, MS, MO, MT, NV, ND, TX, UT, WV, and WY) and have not taken action to decouple. Constitutions in three states (AL, FL, and NV) limit the tax to a pure pickup tax.
- Two states imposing only pickup taxes (SC and SD) legislatively adopted EGTRRA's changes.
- Eight states with stand-alone taxes have pickup taxes that are automatically linked to federal law (CT, IN, IA, KY, LA, NH, OK, and TN) and have not taken action to decouple from EGTRRA. The pickup taxes will be reduced with the phase-out of the federal credit. The stand-alone taxes will continue, so EGTRRA will reduce revenues to the level of the stand-alone taxes. Two states' stand-alone taxes (LA: 6/30/2004; CT: 12/31/2005) are set to expire.

Three states temporarily opted out of EGTRRA's reductions

Maine (2002), North Carolina (2002-03), and Wisconsin (10/1/2002 through 12/31/2007) temporarily opted not to allow EGTRRA's reductions to reduce taxes. These states impose only pickup estate taxes. Absent additional legislative changes, their estate taxes will revert to full conformity and will expire.

Five states adopted EGTRRA's higher exemptions, but not the credit reductions

Maine, Maryland, North Carolina, Nebraska, and Vermont adopted at least the first stage of the increases in the exemption amounts under EGTRRA, but not the reductions in the federal credit for state death taxes. Maine and North Carolina, as noted above, delayed full conformity by one or two years. Vermont's tax will expire when the federal tax is repealed.

Twelve states have adopted none of EGTRRA's major changes

Seven states with taxes tied to pre-EGTRRA federal law have not adopted EGTRRA or have made explicit changes confirming that EGTRRA's provisions do not apply (KS, MN, NY, OH, OR, VA, and WA). Minnesota updated its law for changes in federal law, but excluded the estate tax from this update. Five states whose laws were automatically linked to changes in federal law have decoupled by either linking to federal law at a specific date (MA, NJ, PA, and RI) or by enacting a estate tax not explicitly tied to federal law (NE).

Changes in stand-alone taxes

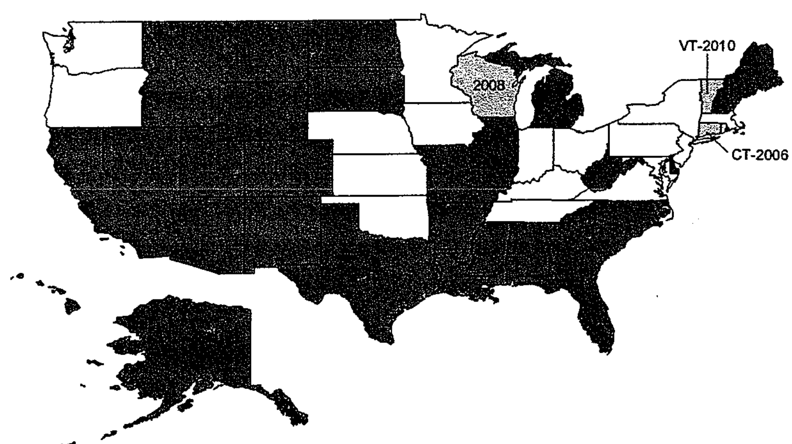
New Hampshire repealed its stand-alone succession tax, effective January 1, 2003. Kansas enacted a new stand-alone succession tax.

Thirty-five states are scheduled to have no death tax

When the federal credit for state death taxes is fully repealed in 2005, 32 states are now scheduled to have no state death tax. Three additional states will have their taxes expire in later years. These states are shown in the map below. For more detail on state actions see the House Research publication, *The Minnesota Estate Tax after 2001 Federal Tax Act* (January 2003).

States Scheduled to Have No Tax

(2005 unless otherwise noted)



For more information: Contact legislative analyst Joel Michael at 651-296-5057. Also see the House Research publications *The Minnesota Estate Tax*, September 2002, and *The Minnesota Estate Tax after the 2001 Federal Tax Act*, January 2003.

Deborah K. McKnight January 2003

House Approval of Campaign Finance and Public Disclosure Board Appointments

The Campaign Finance and Public Disclosure Board oversees the law on campaign finance and disclosure, lobbyist reporting, economic interest statements, and conflicts of interest.

How are board members appointed and approved?

There are six members, appointed by the governor. After they are appointed by the Governor, members must be approved by three-fifths of the members of the House and three-fifths of the members of the Senate acting separately (total members, not just those present). In the House, the Governmental Operations Committee holds hearings on appointees and reports to the floor a recommendation whether or not to approve each appointee.

What is the deadline for approving appointments?

The deadline is the earlier of 45 legislative days after appointment or adjournment sine die. A legislative day is a day that either the House or Senate meets.

- If either house fails to approve an individual within that time period, the appointment terminates the day after the 45th legislative day/adjournment sine die, whichever applies.
- If either house votes not to confirm an appointment, the appointment terminates the day after the vote not to confirm.

What are the membership requirements for the board?

Of the six board members:

- Two must be former legislators of different parties.
- Two must be persons who have not been public officials as defined by Minnesota Statutes, chapter 10A, held any political party office other than precinct delegate, or been elected to a partisan office in the three years before the appointment.
- Two must support different political parties.
- Overall, no more than three board members may support the same political party.
- No board member may be a lobbyist while serving on the board.

How long do board members serve?

Board terms are four years and end the first Monday in January. Minn. Stat. § 15.0575, subd. 2. Of the current members, two have terms that end January 2003. Two other members' terms end January 2004. One has a term ending January 2005, and another has a term that ends January 2006.

How are vacancies handled?	Vacancies are filled by appointment for the duration of the time left in the term. The new appointee must meet the criteria met by the departed member. The approval process for individuals filling vacancies is the same as for members appointed to a full term. Minn. Stat. § 10A.02, subd. 2.
Do board members receive compensation?	Members receive $55 per day if authorized by the board, plus expenses authorized by the Commissioner of Employee Relations' plan. Expenses include child care costs that would not otherwise be incurred. Members who are full-time state or local government employees may not receive the daily payment and may receive day care reimbursement only for time outside normal work hours. These individuals must not suffer loss in compensation or benefits as a result of board service and can receive expense reimbursement from the board unless compensated by another source. Minn. Stat. § 15.0575, subd. 3.
May board members be removed?	The governor may remove a member: (1) for cause, after notice and hearing, or (2) after the member misses three consecutive meetings. Minn. Stat. § 15.0575, subd. 4.

For more information: Contact legislative analyst Deborah McKnight at 651-296-5056.

HOUSE RESEARCH | Short Subjects

John Williams

August 2003

Charitable Gambling

Nonprofit organizations can conduct gambling to raise money for "lawful purposes" with a license from the Lawful Gambling Control Board.

Who may conduct gambling?

A charitable, religious, veterans, or other nonprofit organization may be licensed to conduct charitable gambling if it has at least 15 active members and has been in existence for at least three years. About 1,500 Minnesota organizations are licensed to conduct gambling at about 3,500 different locations.

What kinds of games are allowed?

Licensed organizations may conduct bingo, raffles, and tipboards, sell pull-tabs, and operate paddlewheels.

Who regulates charitable gambling?

Charitable gambling is regulated by the seven-member Lawful Gambling Control Board. It licenses organizations and gambling managers and makes rules for the conduct of gambling. It also regulates bingo halls and the distributors and manufacturers of gambling equipment.

What can gambling proceeds be spent for?

Gross gambling profits (gross receipts less prizes) can only be spent for *gambling expenses* and *lawful purposes*.

Gambling expenses are all expenses directly related to the conduct of gambling. Examples are gambling supplies, rent, license fees, and wages of gambling workers. Expenses are limited to 70 percent of gross profits for bingo and 55 percent for other gambling.

Gross profit not spent for expenses (net profit) can only be spent for *lawful purposes*:

▸ Expenditure by or contribution to a 501(c)(3) organization	▸ Contributions to or expenditures by a religious institution
▸ Contributions to relieve poverty, disability, or homelessness	▸ Snowmobiles and ATV trails and wildlife management projects
▸ Compulsive gambling treatment	▸ Up to one-half the cost of gambling audits
▸ Scholarships and contributions to educational institutions	▸ Food shelves and dining programs primarily for older persons
▸ Recognition of humanitarian or military service	▸ Community arts organizations and programs
▸ Recreational and athletic facilities primarily for young people	▸ Utilities for veterans' organization buildings
▸ Property taxes on gambling premises up to $35,000 annually	▸ Recognition dinners for veterans, up to $5,000 per organization annually
▸ Contributions to government	

Net profits can also be spent to pay state, federal, and local taxes on gambling.

What are the rules for charitable gambling?

The major rules that apply to all gambling are:

- Gambling must be supervised by a gambling manager appointed by the organization
- Players must be at least 18 years old
- Players can't use checks or play on credit (except checks for raffle tickets)
- Odds and house rules must be posted on the premises
- Gambling workers must be registered with the board and may not gamble on days they are working

Are there prize limits for charitable gambling?

Prize limits are:

- Bingo, $200 per game and $2,500 for most bingo occasions
- Single pull-tab, $599
- Raffles, maximum cash prize per day, $12,000
- Single paddlewheel prize, $70
- Largest tipboard prize, $500

What taxes apply to charitable gambling?

The state imposes taxes on charitable gambling in lieu of sales taxes:

- Bingo, paddlewheels, and raffles, 8.5 percent of gross profit
- Pull-tabs and tipboards, 1.7 percent of "ideal gross" (potential gross receipts from all tickets in a package, with a refund for unsold tickets)
- Pull-tabs and tipboards, additional "combined receipts tax" of 1.7 percent to 5.1 percent of gross receipts, depending on the organization's annual receipts

What gambling is exempt from licensing?

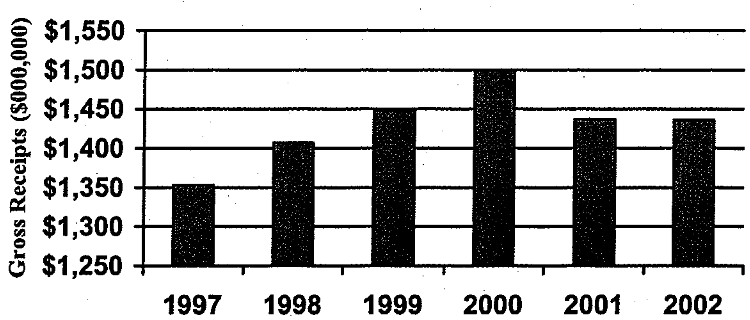
Organizations do not have to obtain a license for:

- Gambling conducted for five or fewer days a year with total prizes not exceeding $50,000
- Bingo conducted at fairs for up to 12 days a year
- Raffles with a prize of not more than $1,500

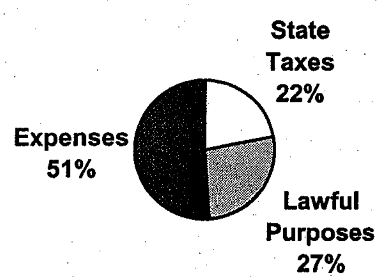
Exempt organizations must register with the board and follow state law on spending net profits.

Charitable Gambling Statistics

Charitable Gambling Gross Receipts 1997-2002



Spending of Gross Profit 2002 ($259 million)



For more information: Contact legislative analyst John Williams at 651-296-5045. Also see the House Research Publication *Charitable Gambling in Minnesota,* August 2003.

The Research Department of the Minnesota House of Representatives is a nonpartisan office providing legislative, legal, and information services to the entire House.

HOUSE RESEARCH | Short Subjects

Joe Cox

May 2003

Pistol Permits: Posting at Private Establishments

Minnesota recently enacted modifications to its law relating to the issuance of permits to carry pistols in public (Minnesota Laws 2003, chapter 28). As part of the new law, certain policies were adopted that regulate how a "private establishment" may notify permit holders that firearms are not allowed in a private building. This paper details the notification procedures and requirements set out in the new law.

Who may prohibit firearms?

Any "private establishment" may generally prohibit the carry or possession of firearms. Private establishment means "a building, structure, or portion thereof that is owned, leased, controlled, or operated by a nongovernmental entity for a nongovernmental purpose." This includes any private entity that is deemed "nongovernmental," including businesses, churches, private colleges, and nonprofit organizations.

Are there any areas where a private establishment may not prohibit firearms?

The new law provides that a private establishment may not prohibit the lawful possession of firearms in a parking facility or parking area.

Do the new posting provisions apply to homeowners?

No. The new posting provisions do not apply to "private residences." The lawful possessor of a private residence (a homeowner or apartment dweller) may "prohibit firearms, and provide notice thereof, in any lawful manner." This means that a homeowner can prevent the carrying of guns on the homeowner's property in the same manner he or she can prevent any unwanted trespass. Oral notice alone is sufficient. A posted sign alone is likely sufficient.

A landlord may not prohibit firearms. The new law says that "a landlord may not restrict the lawful carry or possession of firearms by tenants or their guests." This appears to apply to both residential and commercial landlords.

How do the posting provisions apply to private property that is not a private residence, building or parking area?

Private property that is not a private residence, building, or parking area appears to be governed by the general trespass statute. A private property owner should be able to prohibit firearms in those areas under the provisions of existing trespass law. For example, it appears that oral notice alone is sufficient.

How does a private establishment provide notice that firearms are not allowed in a building?

A private establishment must make a "reasonable request" to do so. Under the new law, a reasonable request requires (1) the posting of a sign, *and* (2) that the private establishment "personally informs" the person of the posted request and demands compliance. A sign alone is insufficient.

The term "personally inform" is not defined in the new law. It seems to include an oral request. It may also include written notice on the ticket of a ticketed event. But the term appears to be subject to some degree of interpretation.

Failure to leave a posted premises after a reasonable request to do so is a petty misdemeanor.

What are the requirements for the sign?

The sign must be 187 square inches in area. This includes an 11-inch-by-17-inch sign, but it could also be other dimensions, as long as it is of the required area. The background of the sign must be "bright."

The lettering must be black Arial typeface at least 1.5 inches in height. The lettering must contrast with the background of the sign.

The sign must indicate the identity of the operator of the private establishment and state that the operator "BANS GUNS IN THESE PREMISES." For example: "ACME ANVILS, INC., BANS GUNS IN THESE PREMISES."

Where must signs be posted?

The signs must be posted within four feet laterally of every entrance to the establishment. The bottom of the sign must be four to six feet above the floor.

Is anyone exempt from the posting provisions?

On-duty peace officers and security guards acting in the course and scope of employment are exempt. Off-duty peace officers are not exempt from the posting provisions at a private establishment.

Are there special provisions for employees?

Yes. The new law provides that an employer may establish policies that restrict the carry or possession of firearms by an employee while acting in the course and scope of employment. However, an employer may not prohibit the lawful carry or possession of firearms by employees in a parking area.

For more information: Contact legislative analyst Joe Cox by e-mail: joe.cox@house.mn

HOUSE RESEARCH | **Short Subjects**

John Williams **June 2003**

The 2:00 a.m. On-Sale Closing Hour
and Other Liquor Law Changes

The legislature in 2003 made some of the most far-reaching changes in liquor law since Sunday liquor was legalized more than 30 years ago, including allowing on-sale of alcoholic beverages until 2:00 a.m.

On-sale closing hours

The 2003 omnibus liquor bill moves back from 1:00 a.m. to 2:00 a.m. the hour at which on-sale of intoxicating liquor and 3.2 beer must cease. ("On-sale" is sale for consumption on the premises only.) The same change is made for the hour at which establishments with "consumption and display" permits (bottle clubs or set-ups) must stop consumption on the premises. The effective date of the change is July 1, 2003.

The 1:00 a.m. hour had been in effect since the 1940s.

Although the hour set in law is often referred to as the "closing hour," state law does not require establishments to close their doors at that hour but only to stop selling alcohol. A requirement to actually close may be included in local ordinances.

The bill made no changes in the hours for off-sale establishments (package stores).

Local authority to set other hours

Under present law, cities and counties may set more restrictive hours for alcoholic beverages than state law allows. So local governments have the right to retain the 1:00 a.m. closing hour for establishments within their jurisdiction. Cities cannot allow any on-sale of alcohol later than 2:00 a.m.

A city that has already adopted an ordinance that sets a 1:00 a.m. closing time will retain that closing time unless it decides to repeal or amend its ordinance. A city that enacts a 1:00 a.m. ordinance before July 1 will prevent the new closing time from taking effect within its jurisdiction. A city could still adopt such an ordinance after July 1, but it would mean rolling back the closing hour from 2:00 a.m. to 1:00 a.m.

Any local action to set on-sale hours that differ from state law must apply equally to intoxicating liquor and 3.2 beer.

Permits

In order to continue on-sales until 2:00 a.m., a licensed establishment must obtain a permit from the state Department of Public Safety. The permit is in addition to the establishment's on-sale license issued by the city or county. The permit is valid for a year. The fee for on-sale retailers of intoxicating liquor is based on the establishment's gross receipts from alcohol sales in the previous year:

- Up to $100,000 in gross receipts, $200
- Over $100,000 but not over $500,000 in gross receipts, $500
- Over $500,000 in gross receipts, $600

For intoxicating liquor establishments that have been in business less than a year, 3.2 beer licensees, and consumption and display permit holders, the fee is $200.

The legislature enacted the permit requirement in order to raise money to partly offset the cost of additional troopers for the State Patrol. A study by the Revenue Department will determine if the new hours generate at least $3.85 million annually in new state tax revenue. If the study shows that they do, the permit requirement will be repealed beginning July 1, 2005.

Local license limits

For many years state law has limited the number of on-sale intoxicating liquor licenses that cities could issue. First-class cities (Minneapolis, St. Paul, and Duluth), for instance, were allowed to issue one license for every 1,500 persons up to a maximum of 200. Cities wanting to issue more licenses than state law allowed had to come to the legislature for authorization.

The 2003 omnibus liquor bill exempted on-sale licenses to restaurants and hotels from these limits. Since almost all licenses for which legislative approval had been sought in past years fall into one of these categories, the result is to all but end the practice of seeking additional licenses from the legislature. Special liquor laws to allow licenses to establishments that couldn't be licensed under general law for other reasons are likely to continue.

Brewpubs selling at off-sale

The omnibus liquor bill also allowed "brewpubs" (restaurants that brew beer on the premises) to sell their products in bottles for consumption off the premises. Sales can only be made in 64-ounce bottles known as "growlers" that must be sealed on the premises. Brewpubs can sell no more than half their annual maximum output of 3,500 barrels at off-sale, up to a maximum of 500 barrels. Their off-sale hours would be the same as for package stores.

For more information: Contact legislative analyst John Williams at 651-296-5045.

Danyell Punelli

Revised: July 2003

Minnesota Family Investment Program

The Minnesota Family Investment Program (MFIP) is a jointly funded, federal-state program that provides income assistance for eligible low-income families. MFIP is the state's response to the 1996 federal welfare reform law, which replaced the Aid to Families with Dependent Children (AFDC) program with Temporary Assistance for Needy Families (TANF), a block grant program to states.

Who is eligible for MFIP?

A family must have income and assets below the program's limits. The income limit increases with family size. Families do not exit MFIP until their income reaches 115 percent of the federal poverty guidelines (FPG). The 2003 FPG for a family of three is $15,260 (115 percent of FPG for a family of three equals $17,549). Assets are limited to $2,000 for MFIP applicants and $5,000 for ongoing recipients, excluding certain items. In addition, families must meet the following eligibility requirements:

- have a minor child in the home (or be pregnant)
- be residents of Minnesota
- be U.S. citizens, qualified noncitizens, or noncitizens otherwise lawfully residing in the United States
- assign rights to child support
- have received fewer than 60 months assistance
- satisfy any other eligibility requirements of the program

Families are subject to a *lifetime limit of 60 months of assistance*. Some families may be eligible for assistance extensions past the 60-month limit if they meet specific criteria for one of the following extension categories: ill or incapacitated, hard to employ, and employed participants.

How much are monthly benefits?

The MFIP grant is based on a transitional standard that increases with family size. For example, a family of three's monthly benefit is currently $763; a family of four's benefit is $903. For families without earnings, the monthly grant equals the transitional standard. For families with earnings, the monthly grant equals the "family wage level" (110 percent of the transitional standard minus the family's net earned income). The MFIP grant is composed of a cash portion and a food portion, both of which are issued by counties in electronic debit card form.

What are the work requirements?

MFIP caregivers (i.e., persons who live with and provide care and support to minor children) are required to spend a specified number of hours every week engaged in work or work activities. Examples of acceptable activities include job search activities, unsubsidized employment, and on-the-job training.

Exemptions from the work requirement may be available to MFIP participants who meet certain criteria, such as being over age 60, being ill or incapacitated, caring for a disabled child, experiencing a personal crisis, or being the victim of family violence.

Post-secondary education is not routinely available to MFIP caregivers. Job counselors may approve post-secondary education only when the education program meets specific MFIP criteria.

Special requirements exist for *caregivers under age 20*. In most cases, education is the first priority for teen MFIP participants.

How do sanctions work?

MFIP participants who do not meet the program requirements may be sanctioned through reduction of their monthly grant. Sanctions last until one month after a participant comes into compliance. An MFIP case must be closed after the seventh occurrence of noncompliance.

What are MFIP's funding streams and expenditures?

MFIP is funded with a combination of federal funds and state appropriations. Minnesota received approximately $268 million annually in TANF block grant funding in federal fiscal years 1998-2002 (this amount is subject to federal reauthorization). In addition, federal law includes a maintenance of effort (MOE) provision that requires a state to spend 75 percent to 80 percent of the amount it spent in 1994 under its old AFDC and related programs to assist needy families. In fiscal year 2003, the state's required MOE amount was $179 million per year.

According to the Department of Human Services, for state fiscal year 2002, total expenditures were $189 million for the cash portion and $132.9 million for the food portion of the MFIP grants. Expenditures for emergency assistance were $24.1 million. In terms of funding, $140 million was financed with federal TANF funds, $130.3 million was from federal Food Stamp funds, and $75.7 million was financed with state appropriations. In addition, the state spent $67.3 million for employment and training services and $44.1 million for state and county administration costs.

How many families receive MFIP?

In April 2003, 45,465 families and a total of 130,690 participants were receiving MFIP assistance.

For more information: See the House Research publication *Minnesota Family Assistance*, January 2002, and the following Short Subjects: *Minnesota Family Investment Program Time Limit Exemptions and Extensions,* July 2003, and *MFIP Cases Reaching the 60-Month Time Limit,* September 2002.

Danyell Punelli **Revised: July 2003**

Basics of EGA

Emergency General Assistance (EGA) is a program that provides income assistance in emergency situations.

Who is eligible?

An individual, childless couple, or family without resources immediately available to resolve an emergency situation is eligible for EGA if:

- The person or family is not eligible for Minnesota Family Investment Program (MFIP);
- The person or family has not, without good cause, used more than 50 percent of available income and resources for purposes other than basic needs during the 60 days before application;
- The person or family is without resources immediately available to resolve the emergency; and
- The emergency did not arise because the person or family member has been disqualified from the General Assistance (GA) program.

Persons or families in need who are not state residents may also receive assistance to meet emergency needs. State law requires that nonresidents must reside in Minnesota for 30 days before applying for EGA.

An individual or family may receive EGA not more than once in any 12-month period.

What is an "emergency situation?"

An emergency situation is a situation in which an individual or family is without, or will lose within 30 days after application, a basic need item and requires immediate financial assistance. "Basic needs" are limited to food, clothing, shelter, utilities, and other items, the loss or lack of which pose a direct, immediate threat to the physical health or safety of the applicant.

The assistance must be temporary and must not exceed 30 days following the date of application. Assistance must be paid for needs that accrue before the 30-day period when it is necessary to resolve emergencies arising or continuing during the 30-day period.

How is EGA funded and how are benefits paid?

EGA is funded with state general fund dollars.

EGA grants are paid for with vouchers or in the form of a vendor payment unless the county determines that a cash grant will better meet the needs of the emergency situation.

For more information: Contact legislative analyst Danyell Punelli at 651-296-5058. Also see the House Research publication *Minnesota Family Assistance*, January 2002.

Danyell Punelli

Revised: July 2003

Minnesota Family Investment Program Time Limit Exemptions and Extensions

The federal welfare reform law imposes a 60-month lifetime limit on the receipt of assistance funded by Temporary Assistance for Needy Families (TANF). The state's welfare program, Minnesota Family Investment Program (MFIP), includes the federal 60-month lifetime limit on assistance. MFIP has some time limit exemptions and extensions, which are explained below.

MFIP time limit exemptions

For people in the following categories, months of assistance received do not count toward the 60-month time limit (Minn. Stat. § 256J.42):

- victims of domestic violence;
- caregivers who are 60 years or older;
- 18- and 19-year-olds who are engaged in education activities; and
- minor caregivers who are complying with living arrangement and education plan requirements for minor caregivers.

Under federal law, all states must disregard the following when calculating the 60-month time limit:

- months when a family receives assistance while living in Indian country (as defined by federal law 18 U.S.C. § 1151) where at least 50 percent of the adults are not employed;
- months when a pregnant minor or minor parent receives assistance when he or she is *not* the head of household or married to the head of household;
- months when the only assistance received is noncash assistance; and
- months when eligible for short-term Emergency Assistance or the Diversionary Work Program.

MFIP hardship extension categories

Families who reach the 60-month time limit on MFIP and who meet the following criteria are eligible for an extension.

Ill or incapacitated. This category includes participants who:

- are ill or incapacitated;
- are needed in the home to care for a household member who is ill or incapacitated; or
- have a household member who meets certain disability or medical criteria.

Hard-to-employ. This category includes participants who:

- are diagnosed as having mental retardation or mental illness, and that condition prevents the person from obtaining or retaining unsubsidized employment;
- have an IQ below 80 and are considered unemployable;
- have a learning disability that limits their employability; or
- are victims of family violence and have been granted a family violence waiver and are complying with an employment plan.

Employed participants. This category includes:

- a one-parent family, if the parent is participating in work activities for at least 30 hours per week, of which an average of at least 25 hours per week are spent in employment;
- a two-parent family if the parents are participating in work activities for at least 55 hours per week, of which an average of at least 45 hours per week are spent in employment; or
- a family in which a participant is working fewer than the number of hours required above if the participant submits verification that the number of hours that the participant may work is limited due to an illness or disability.

To qualify for this extension, the parent in a one-parent family or both parents in a two-parent family must not have been sanctioned for at least ten out of the 12 months before reaching the 60-month time limit, including the 60th month.

Accrued months. Some families are eligible for an extension equal to the number of months that they met certain criteria during their first 60 months on MFIP:

- If a participant was exempt from the employment and training requirements during the first 60 months because the person was needed in the home to care for a household member who meets specified medical or disability criteria, the participant is eligible for an extension equal to the number of months the participant was exempt for this reason.
- If a participant was exempt from the state time limit during the first 60 months, but the months were counted toward the federal 60-month limit, the participant is eligible for an extension equal to the number of months the participant was exempt from the state time limit.

Services for families who reach the time limit

In addition to MFIP extensions, there are a number of programs (e.g., Food Stamps, MinnesotaCare) that may be available to MFIP families that reach the 60-month limit. Eligibility requirements of each program vary.

For more information: Contact legislative analyst Danyell Punelli at 651-296-5058. Also see the House Research publication *The 60-Month Time Limit on TANF Assistance*, January 2002.

Nina Manzi

Updated: July 2003

Minnesota Taxable Income

What is Minnesota taxable income (MTI)?

Minnesota taxable income is the tax base used to calculate Minnesota income tax liability. Minnesota taxable income equals federal taxable income after Minnesota subtractions and additions.

Federal Taxable Income (FTI)	+	Minnesota additions	–	Minnesota subtractions	=	Minnesota taxable income (MTI)

What are Minnesota additions to taxable income?

Minnesota requires the following *additions* to federal taxable income:

- State income tax deduction. Filers who claimed a federal itemized deduction for state income taxes paid must add that amount back into Minnesota taxable income. Taxpayers making this addition are always allowed to claim at least the full standard deduction.
- Bond interest and mutual fund interest dividends paid by non-Minnesota state and local governments. The federal government does not tax state and local bond interest. Minnesota does not tax Minnesota state and local bond interest, but does tax interest on bonds of other states and their local governments.
- Expenses relating to income not taxed by Minnesota. These are mainly expenses deducted at the federal level and attributable to U.S. bond interest income, which is excluded from Minnesota taxable income.
- Capital gain portion of a lump-sum distribution from a qualified retirement plan

What subtractions does Minnesota allow from taxable income?

Minnesota allows the following *subtractions* from federal taxable income. The estimated cost of most subtractions is taken from the Department of Revenue's *Tax Expenditure Budget for 2002-2005*. Revenue estimates made during the 2003 legislative session will differ from the *Tax Expenditure Budget* because they will be based on a more recent economic forecast.

- **State income tax refund** (filers who claimed federal itemized deductions only). The federal income tax allows a deduction for state income taxes. Minnesota requires filers to add back the amount deducted, and allows a subtraction for amounts refunded in order to avoid twice taxing the same income.

- **Subtractions required by federal law**
    - **U.S. bond interest**
    - **Railroad retirement benefits**
    - **On-reservation earnings of enrolled tribal members.**

  Federal law prohibits state taxation of these three types of income.
- **K-12 dependent education expenses** ($17.5 million in fiscal year 2003). The deduction applies to school-related expenses, including tuition, textbooks, academic tutoring and camps, and instructional materials and supplies. The maximum deduction is $1,625 for each child in grades K-6, and $2,500 for each child in grades 7-12.
- **50 percent of charitable contributions in excess of $500** ($4.4 million in fiscal year 2003). Allowed only for filers who do not claim federal itemized deductions—those who itemize have already deducted their charitable contributions in computing federal taxable income.
- **Minnesota elderly/disabled exclusion** ($1.7 million in fiscal year 2003). An exclusion of up to $12,000 is allowed for low-income elderly and disabled filers with low amounts of Social Security and nontaxable pensions.
- **Foreign subnational income taxes.** Taxpayers subject to a foreign subnational income tax may subtract the amount of tax paid to the foreign governmental unit, to the extent the taxpayer did not use the subnational taxes to claim the federal foreign tax credit.
- **Minnesota Youth Works benefits** (minimal cost in fiscal year 2003). This subtraction applies to Minnesota Youth Works post-service benefits, such as tuition reimbursement or student loan payments. Minnesota Youth Works is a community service program. The state discontinued funding for post-service benefits in 2002, so this subtraction will become obsolete once current post-service benefit recipients receive the full amount of benefits for which they're eligible.
- **Gain on sale of farm property for insolvent taxpayers** ($100,000 in fiscal year 2003). This subtraction is allowed for taxpayers who use the proceeds of the sale of a farm to pay off a mortgage, contract for deed, or lien on the property.

For more information: Contact legislative analyst Nina Manzi at 651-296-5204 or Joel Michael at 651-296-5057. Also see the House Research publications *Income Tax Terms: Deductions and Credits*, October 2002; and *Minnesota's Elderly Exclusion* (web only) at www.house.mn/hrd/issinfo/tx_inc.htm.

Danyell Punelli

Revised: July 2003

Child Care Assistance

What is child care assistance?

Child care assistance programs subsidize the child care expenses of eligible low-income families. Minnesota administers two child care assistance programs, Minnesota Family Investment Program (MFIP) child care assistance and Basic Sliding Fee (BSF) child care assistance. MFIP child care subsidizes the child care costs of families receiving cash assistance through MFIP and provides child care assistance for eligible families for the first 12 months after the family leaves MFIP cash assistance (transition year child care). BSF child care provides a child care subsidy to low-income working families who are not receiving cash assistance from MFIP.

What are the eligibility requirements for child care assistance?

To be eligible for child care assistance, both parents (or one parent in single-parent households) must participate in an authorized work, education, or training activity, cooperate with child support enforcement, and meet income eligibility guidelines. The maximum income limit to be eligible for child care assistance is 175 percent of the federal poverty guidelines at program entry and 250 percent or less of the federal poverty guidelines at program exit.

Children up to age 13 are eligible for child care assistance (up to age 15 for disabled children).

County agencies or their contractors must determine eligibility within 30 days of receiving a request for child care assistance. Direct reimbursement is the only method of receiving child care assistance.

What is the average annual subsidy a family receives?

In fiscal year 2003, the estimated average annual subsidy for a family receiving MFIP child care assistance was $8,730, and the estimated average annual subsidy for a family receiving BSF child care assistance was $7,019.

The maximum reimbursement rate for child care assistance is capped at the 75th percentile of the cost of similar care in each county, based on a survey of providers.

Are families required to pay for some child care expenses?

There is a family co-payment requirement based on family size and income. The maximum family co-payment is about 22 percent of gross monthly income. Families with incomes below 75 percent of the federal poverty level are exempt from making co-payments.

How is child care assistance funded?

The child care assistance programs receive funding from a variety of sources, including: the federal Child Care Development Fund (CCDF), federal Temporary Assistance for Needy Families (TANF) funds, the state general fund, state special revenue fund, and county funds.

How many families receive child care assistance?

During fiscal year 2003, there were an estimated average of 13,480 families receiving MFIP and transition year child care assistance and 14,183 families receiving BSF child care assistance per quarter.

Not all families who apply for child care assistance receive it. MFIP child care is a forecasted, fully funded program, while BSF child care receives a capped allocation. As of April 30, 2003, there were 5,722 families on the waiting list for BSF child care assistance.

What are some potential legislative issues?

During the 2001 legislative session, there were several proposals to consolidate the child care assistance programs into one program to reduce administrative and program complexity. However, none of these proposals were passed by the legislature. There may be future attempts to consolidate the child care assistance programs.

The 2003 Legislature made several changes to the child care assistance program, including reducing the income eligibility level, repealing the At-home Infant Care program, freezing maximum provider reimbursement rates, and repealing accreditation bonuses. These issues may be revisited in future legislative sessions.

The BSF waiting list has grown substantially over the past 18 to 24 months. As of April 30, 2003, there were more than 5,700 families waiting for child care assistance. The legislature has increased BSF funding allocations in the past in attempts to eliminate the waiting list; however, the need for a waiting list always returns.

For more information: See the House Research publication *Funding to Support Child Care Assistance*, July 2003.

Kathy Novak

July 2003

Financial Aid for Higher Education: Minnesota State Grant Program

What is the state grant program?

Minnesota's state grant program provides financial aid to Minnesota undergraduates to attend a public or private post-secondary institution located in Minnesota. The Higher Education Services Office (HESO) administers the state grant program along with other financial aid programs.

Who is eligible for a state grant?

Each term, students must apply for a state grant by the deadline of 14 days after the start of the term. An eligible student must be a Minnesota resident who is a high school graduate or age 17 or older and able to meet the admission requirements of a participating post-secondary institution. The student must have demonstrated financial need and must not be in default on student loans or in arrears for child support.

Financial need is based on the student's ability to meet the cost of attending the selected institution according to the standard for federal financial aid through the Pell grant program.

How much aid is available through the state grant?

State law specifies that the grant award must be based on a shared responsibility for paying for the recognized cost of attending a post-secondary institution:

- Students are required to pay 46 percent of the cost
- The amount of any Pell grant is deducted from the cost
- The family's responsibility for the cost is determined through the federal needs analysis

The cost of attendance is equal to the amount of tuition and fees up to the cap set in law plus an allowance, also set in law, for living and miscellaneous expenses. For academic years 2003-2004 and 2004-2005, the maximum tuition and fees are $8,983 for four-year institutions and $6,913 for two-year institutions. The living allowance for these years is set at $5,205 per year.

Except for private and institutional scholarships, the state grant is the last contribution to the cost of attendance. The average state grant for the 2001-2002 year was $1,763.

Are part-time students and independent students eligible?

Part-time students are eligible for the state grant based on the cost of attendance, prorated for the number of credits the student is taking. Independent students (generally students who are not considered dependents for tax purposes) are eligible for the state grant program. Independent students are responsible for a larger portion of the cost of attending than dependent students.

How is the state grant program funded?

The legislature appropriates money from the general fund to HESO for the state grant program, based on HESO's estimate of the amount needed to fully fund grant awards. State law allows HESO to carry a balance from the first year of the biennium to the second year and authorizes the transfer of money to other financial aid programs, and from the tuition reciprocity program. Any balance remaining at the end of the biennium must cancel to the general fund. For several funding cycles, the grant program canceled money to the general fund. For fiscal year 2003, the legislature appropriated and authorized the transfer of additional money to cover projected shortages in the state grant program. In addition, HESO established an application deadline for the 2002-2003 academic year to avoid prorating grant awards.

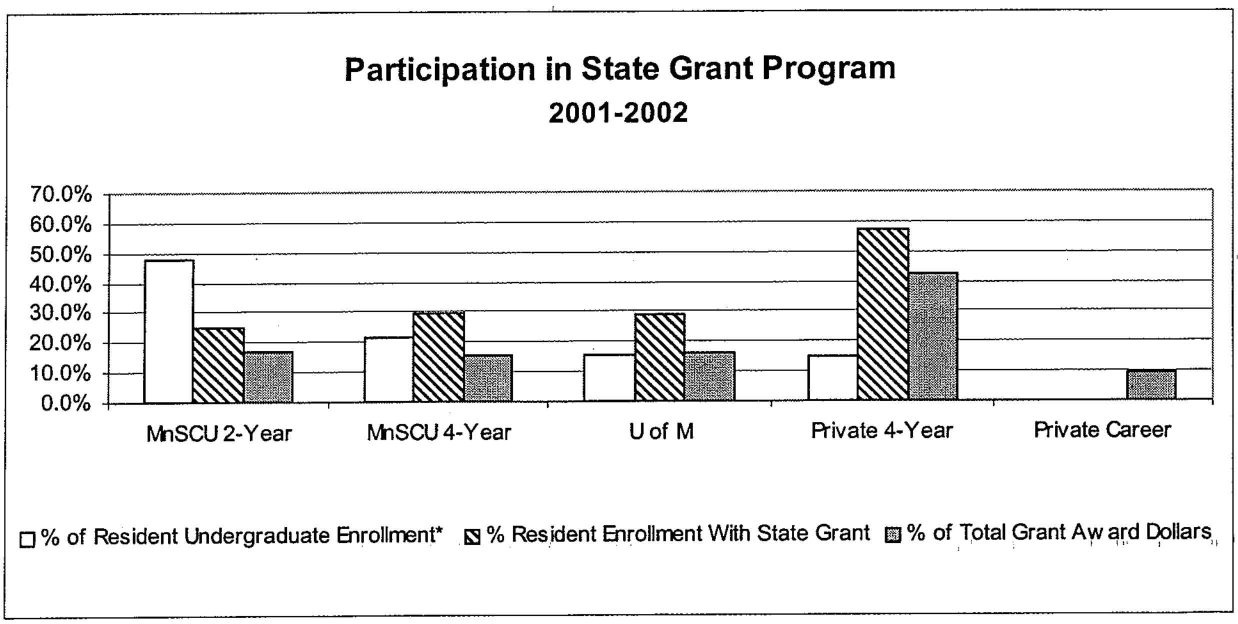
Are eligible students entitled to a state grant?

The state grant program is not an entitlement under state law, which requires HESO to award grants based on available funding. If the appropriations are insufficient for full awards, HESO must reduce all awards by adding a surcharge to the family responsibility and increasing the student's responsibility by a percentage.

How do grants compare to enrollment at state post-secondary institutions?

The graph below summarizes participation in the state grant program in fiscal year 2002. Of the 207,000 undergraduate students attending Minnesota public post-secondary institutions and private four-year colleges, 31 percent received a state grant.*

The percentage of resident students at private institutions who receive a grant is much larger (57 percent) than at public four-year institutions (30 percent for state universities and 29 percent for the University of Minnesota). The total amount of grant dollars awarded to students at private institutions is also larger. Of the $126 million in grants in fiscal year 2002, 42 percent went to students at private four-year colleges compared to 32 percent to students at public four-year universities (state universities and the University of Minnesota).



For more information: Contact legislative analyst Kathy Novak at 651-296-9253.

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* Enrollment statistics exclude undergraduates attending private career schools due to incomplete reporting.

Kathy Novak July 2003

Tuition Reciprocity Program

What is post-secondary tuition reciprocity?

This program lowers the amount of tuition a student pays to attend a public college or university in participating states. Minnesota law authorizes the Higher Education Services Office (HESO) to enter into reciprocity agreements with other states to provide reduced tuition for nonresident students. Participating students pay less than the nonresident tuition rate, but do not necessarily pay the in-state tuition rate.

Minnesota has tuition reciprocity agreements with North Dakota, South Dakota, and Wisconsin covering all public post-secondary institutions. Minnesota has limited agreements with Iowa (covering one institution in each state) and Manitoba (covering all Minnesota institutions and five universities and one college in Manitoba).

Who is eligible to participate?

Students who live in a participating state and enroll in two-year, baccalaureate, graduate, or professional programs in one of the other participating states are eligible for reciprocity. Most professional programs are included in the program (the Minnesota/Wisconsin agreement excludes medicine, veterinary medicine, and dentistry).

Students first apply to a college or university in a reciprocity state and then apply for reciprocity to the administering agency in their home state—HESO for Minnesota students. Application for reciprocity can be made until the last day of the academic term. The reciprocity program does not limit the number of participating students. Reciprocity benefits automatically renew for subsequent academic terms.

What tuition rates do students pay?

The terms of the agreements, modified by annual memorandums of understanding, govern undergraduate, graduate, and professional reciprocity tuition rates. Agreements are approved by post-secondary governing boards—in Minnesota, the Minnesota State Colleges and Universities (MnSCU) Board of Trustees, and the University of Minnesota Board of Regents. The annual memorandums are negotiated by HESO and the other state administrative agencies.

The most common tuition rate structures are:

- in-state tuition at a comparable institution in the student's home state (Minnesota/Wisconsin agreement and Minnesota students enrolled in South Dakota)
- in-state tuition at the institution the student attends (North Dakota and South Dakota students enrolled in Minnesota)
- an in-state tuition rate multiplied by a factor to adjust for tuition differences (Wisconsin students attending the U of M Twin Cities campus, Minnesota students attending certain North Dakota institutions, and South Dakota students attending Minnesota community colleges)

In addition to tuition, most students pay the fees charged by the institution they attend (only the South Dakota agreement covers tuition and fees).

Does the reciprocity program cost the state?

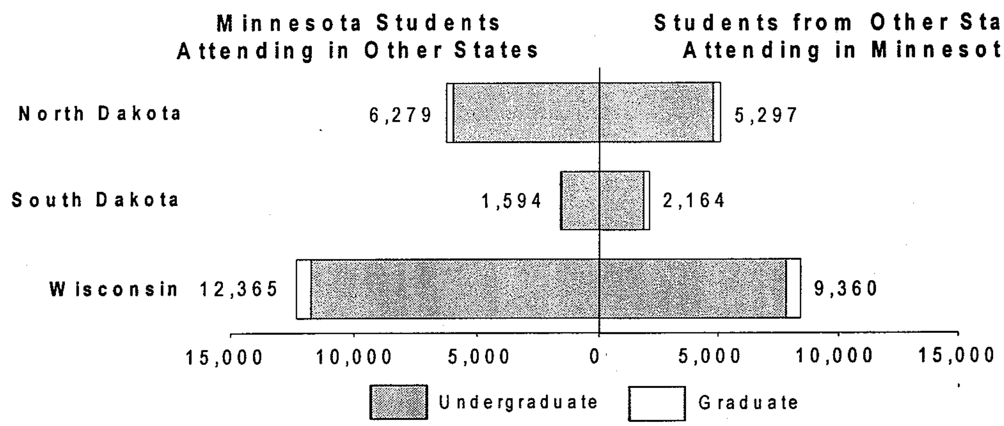
The state pays for the reciprocity program in two ways:

- state aid payments to MnSCU and the University of Minnesota include reciprocity students (nonresident, nonreciprocity students are excluded from the aid calculation); and
- general fund appropriations for payments to other states, if required, under the formulas in the agreements.

The state appropriated $7.2 million for fiscal years 2003-2004 for reciprocity payments to other states based on estimates of funding needs.

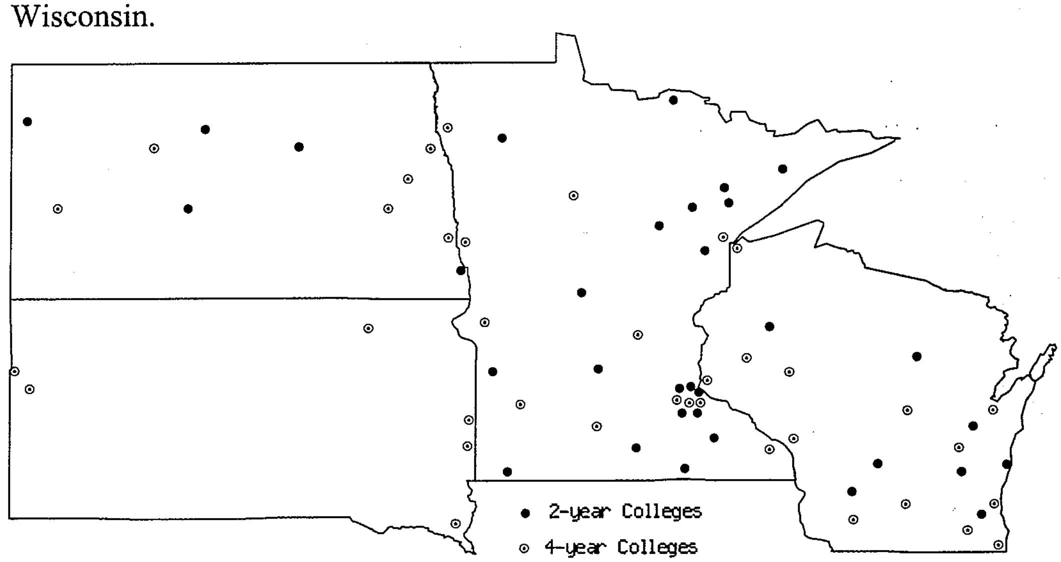
How many students participate in the program?

Students from Minnesota, North Dakota, South Dakota, and Wisconsin account for most of reciprocity participants. In 2001-2002, 20,240 students from Minnesota participated in tuition reciprocity and 16,820 students attended Minnesota institutions under the program.



What schools do reciprocity students attend?

The following map marks the location of campuses that undergraduate reciprocity students attended in 2001-2002 in Minnesota, North Dakota, South Dakota, and Wisconsin.



For more information: Contact legislative analyst Kathy Novak at 651-296-9253.

The Research Department of the Minnesota House of Representatives is a nonpartisan office providing legislative, legal, and information services to the entire House.

John Helland **July 2003**

The Pros and Cons of Recreational Fees

Fees for certain types of recreational pursuits, beyond general state tax revenue, have been around for some time (e.g., boat and recreational vehicle fees, cross-country skiing licenses). As the state has entered a period of general fund budget deficits, the debate over new or increased public recreational fees has accelerated. This short subject touches on the major pros and cons identified in the literature on recreational fees.

Pros

- Fees can allow certain recreational facilities to be self-supporting, or at least attempt to provide for adequate maintenance and operation.
- If facility operation and maintenance is suffering in a given time period, fees can be raised to ensure self-sufficiency.
- When the overall economy is down, leading to general revenue shortfalls and state budget deficits, fees for state services keep these programs going.
- Fees can provide flexibility in the overall funding mix of state services.
- Fees can allow citizens to make choices on whether they want the state service offered, or help determine how much it may be monetarily worth to them.
- Fees promote equity by charging recreational users; nonusers do not have to pay as much for something they don't use.
- Fees can be recreationally broad-based, or individual and specific, based on the recreational service offered.

Cons

- Public land, where recreational fees take place, is owned by the public, generally purchased by general tax revenue, and is meant to be enjoyed by all, regardless of ability to pay.
- General taxes purchase public recreational lands, generally pay for public employees management, so another fee/tax shouldn't be charged to enjoy their use.
- Recreational fees may cause state agencies to begin to favor higher fee services, rather than more equitable, traditional low-fee services.
- In the case of long-standing budget shortfalls, recreational managers may succumb to higher fee activities that change the whole nature of a recreational area (i.e., allowing golf in a wilderness park area).
- Recreational user fees constitute a regressive system because as the fees become higher, the percentage of population that can afford them become lower and there are more nonusers subsidizing users.
- Public recreation enables people to participate who might not do so

otherwise. If recreational managers go to self-funding through fees, pricing low-income people out of participating, the public purpose for ownership is defeated.

- Recreational fees can create an incentive for a public agency to make resource decisions based on increasing the number of visitors to recreational land, not based on the carrying capacity or what is best for the land and its natural resources.

For more information: Contact legislative analyst John Helland at 651-296-5039.

Kathy Novak

August 2003

Child Care Assistance for Post-Secondary Students

Does the state subsidize child care costs for students in higher education?

The child care grant program is one of the financial aid programs funded by the state and administered by the Higher Education Services Office (HESO). Its purpose is to reduce the child care costs for higher education students. The availability of child care assistance depends, in part, on the level of funding provided by the legislature.

Who is eligible for the HESO child care assistance grant?

To be eligible for a child care grant, a student must:

- be a resident Minnesota undergraduate enrolled at least half-time in a nonsectarian program leading to an undergraduate degree, diploma, or certificate at an eligible institution;
- have one or more children age 12 or under who receive regular care from a licensed or legal nonlicensed childcare provider;
- have had less than five years of full-time post-secondary education;
- meet the income guidelines that provide the maximum grant amount to families with incomes at or below 130 percent of the federal poverty guidelines adjusted for family size ($15,000 for a two-person family);
- have demonstrated financial need; and
- not receive tuition reciprocity or assistance through the Minnesota Family Investment Program (MFIP).

Are all post-secondary institutions part of the grant program?

For-profit institutions are not eligible to participate. State law limits the child care grant program to Minnesota institutions that are:

- public post-secondary colleges and universities;
- private four-year colleges and universities; and
- nonprofit, degree-granting vocational-technical institutions.

Schools must sign an agreement with HESO to be part of the program.

What is the size of the grant award?

The maximum grant is set in statute at $2,200 per student for a nine-month grant. A student may also receive a separate summer grant. The actual grant award depends on the availability of appropriations, the student's income, number of children, child care costs, and financial need.

The average child care grant in 2001-2002 was $1,956. In fiscal year 2003, it was $1,146.

What are the trends in funding and participation for the child care grant program?

Appropriations over the last five years have been stable at about $4.7 million per year with the exception of fiscal year 2003 when $3.6 million of the appropriation was transferred to the state grant program. Student participation peaked in 2000-2001 when 2,736 students received grants. The legislature increased the maximum grant from $1,500 in 1994-1995 to $2,600 beginning with the 2001-2002 school year and decreased it to $2,200 beginning with fiscal year 2003.

Trends in Child Care Grant Program

Year	Maximum Award	Appropriation	Number of Students	Average Award
99-00	$2,000	$4,710,000	2,659	$1,501
00-01	$2,000	$4,710,000	2,736	$1,618
01-02*	$2,600	$4,743,000	2,429	$1,956
02-03**	$2,600	$1,113,000	932	$1,146
03-04	$2,200	$4,743,000	–	–
04-05	$2,200	$4,743,000	–	–

* FY 02 expenditures exceeded appropriations because of carryforward

** $3.6 million of the $4.74 million of the FY 03 appropriation transferred to state grant program

Are post-secondary students eligible for other types of child care assistance?

Higher education students with children may be eligible for the Basic Sliding Fee (BSF) child care assistance program administered by the Department of Human Services. Students who meet the income and other criteria are eligible, on a space-available basis, in the county where they live.

Students are not required to work to receive BSF assistance but must be enrolled in a course of study approved by the county. Students who need child care assistance for both employment and school must work at least ten hours per week at a wage at least equal to the minimum wage.

Many more families are eligible for BSF assistance than can be served with the state and federal appropriations. Students tend to be a lower priority for assistance than working families.

The two child care assistance programs have been funded through different legislative committees. The committee with responsibility for higher education appropriates money for the HESO grant program, but does not fund the BSF program. BSF received a general fund appropriation of $27.6 million for fiscal year 2004.

For more information: Contact legislative analyst Kathy Novak at 651-296-9253.

Kathy Novak

August 2003

Governing Higher Education in Minnesota: Public Post-Secondary Systems and Agencies

Minnesota's public post-secondary systems and agencies

Minnesota has two public post-secondary systems:

- The **Minnesota State Colleges and Universities (MnSCU)** system has seven four-year universities and 30 two-year colleges located throughout Minnesota. MnSCU institutions provide occupational, general, baccalaureate, and graduate education. The MnSCU system office—the office of the chancellor—is in St. Paul.
- The **University of Minnesota** is a major research institution with four campuses providing undergraduate, graduate, and professional education. The main campus and central administration are in the Twin Cities.

The **Higher Education Services Office** is a state agency responsible for post-secondary financial aid and other assistance programs, data and information, and registration and licensing of private post-secondary institutions.

Governing the Minnesota State Colleges and Universities

Minnesota Law. MnSCU is established in Minnesota Statutes, chapter 136F. In 1991, the legislature created MnSCU through the merger of the state universities, the community colleges, and the technical colleges. Minnesota Statutes:

- establish a 15-member board of trustees to govern MnSCU
- specify the board's powers to manage MnSCU, its assets, and institutions;
- designate the specific colleges and universities in the MnSCU system;
- require legislation to create any new MnSCU institution or location;
- authorize the colleges and universities to operate specific enterprises; and
- require the board to recognize statewide student associations.

Board of Trustees. Under state law, the governor appoints 15 trustees with the advice and consent of the Senate. Eight members of the board must reside in the state's eight congressional districts, one in each district. Three members must be MnSCU students or recent graduates. Trustees serve staggered six-year terms. Trustee candidates are recruited and screened by the Trustee Advisory Council, established in state law. The council makes its recommendations to the governor.

Minnesota Statutes give the board of trustees all the power necessary to govern MnSCU, unless otherwise directed or prohibited in law. The board is responsible for appointing a chancellor with the authority to perform duties the board delegates. Minnesota law can put conditions on state appropriations for MnSCU.

Governing the University of Minnesota

University Charter, Minnesota Constitution. The territorial legislature established the University of Minnesota in 1851 with a 12-member board of regents to govern the university. The Minnesota Constitution incorporates the university charter by continuing all of the "rights, immunities, franchises and endowments" previously conferred to the university.

Board of Regents. As required by the constitution, the legislature elects 12 regents to staggered six-year terms. The governor may appoint a regent to fill a vacancy, including a vacancy created by the failure of the legislature to elect regents. A governor's appointment serves until the legislature elects a replacement. Regent candidates are recruited and screened by the Regent Advisory Council, established in state law. The council makes its recommendations to the legislature. The regents have the power to manage the university and all four of its campuses. The charter gives the board the responsibility to choose the head of the university.

Minnesota Law. Minnesota Statutes specify that eight regents must be elected to represent each of the congressional districts, one per district, and one at-large regent must be a student when elected. The statutes specifically provide authority for the regents to: exercise eminent domain, accept federal money, control the permanent university fund, and establish a nonresidential branch in Rochester. State law prohibits the regents from allowing expenditures for a purpose beyond the amount appropriated. State law also may put conditions on the university appropriations, if the conditions don't violate the university's constitutional autonomy.

Higher Education Services Office

Minnesota Law. Minnesota Statutes create the Higher Education Services Office (HESO). The governance structure of the office was changed by the 2003 Legislature. By December 30, 2003, the office will be under the administrative control of a director appointed by the governor with the advice and consent of the Senate. The statutes also establish two advisory councils.

Advisory Councils. The statutes direct the governor to appoint a nine-member higher education services council to advise the office, the governor, and the legislature. The governor must appoint one member who is a full-time post-secondary student in Minnesota and the governor must consider the geographic, gender, and ethnic diversity and political affiliation of the council. The statutes also establish a higher education advisory council (HEAC) consisting of a representative of the University of Minnesota, the Minnesota State Colleges and Universities, the Department of Education, the private colleges council, and the association of private post-secondary schools. The 2003 legislation added a representative of the governor to HEAC. HEAC reviews the recommendations of the advisory council and brings higher education matters to the attention of the council.

Director of HESO. The director serves at the pleasure of the governor and has administrative control over the office.

For more information: Contact legislative analyst Kathy Novak at 651-296-9253.

John Williams

August 2003

Charitable Gambling

Nonprofit organizations can conduct gambling to raise money for "lawful purposes" with a license from the Lawful Gambling Control Board.

Who may conduct gambling?

A charitable, religious, veterans, or other nonprofit organization may be licensed to conduct charitable gambling if it has at least 15 active members and has been in existence for at least three years. About 1,500 Minnesota organizations are licensed to conduct gambling at about 3,500 different locations.

What kinds of games are allowed?

Licensed organizations may conduct bingo, raffles, and tipboards, sell pull-tabs, and operate paddlewheels.

Who regulates charitable gambling?

Charitable gambling is regulated by the seven-member Lawful Gambling Control Board. It licenses organizations and gambling managers and makes rules for the conduct of gambling. It also regulates bingo halls and the distributors and manufacturers of gambling equipment.

What can gambling proceeds be spent for?

Gross gambling profits (gross receipts less prizes) can only be spent for *gambling expenses* and *lawful purposes*.

Gambling expenses are all expenses directly related to the conduct of gambling. Examples are gambling supplies, rent, license fees, and wages of gambling workers. Expenses are limited to 70 percent of gross profits for bingo and 55 percent for other gambling.

Gross profit not spent for expenses (net profit) can only be spent for *lawful purposes*:

▸ Expenditure by or contribution to a 501(c)(3) organization	▸ Contributions to or expenditures by a religious institution
▸ Contributions to relieve poverty, disability, or homelessness	▸ Snowmobiles and ATV trails and wildlife management projects
▸ Compulsive gambling treatment	▸ Up to one-half the cost of gambling audits
▸ Scholarships and contributions to educational institutions	▸ Food shelves and dining programs primarily for older persons
▸ Recognition of humanitarian or military service	▸ Community arts organizations and programs
▸ Recreational and athletic facilities primarily for young people	▸ Utilities for veterans' organization buildings
▸ Property taxes on gambling premises up to $35,000 annually	▸ Recognition dinners for veterans, up to $5,000 per organization annually
▸ Contributions to government	

Net profits can also be spent to pay state, federal, and local taxes on gambling.

What are the rules for charitable gambling?

The major rules that apply to all gambling are:

- Gambling must be supervised by a gambling manager appointed by the organization
- Players must be at least 18 years old
- Players can't use checks or play on credit (except checks for raffle tickets)
- Odds and house rules must be posted on the premises
- Gambling workers must be registered with the board and may not gamble on days they are working

Are there prize limits for charitable gambling?

Prize limits are:

- Bingo, $200 per game and $2,500 for most bingo occasions
- Single pull-tab, $599
- Raffles, maximum cash prize per day, $12,000
- Single paddlewheel prize, $70
- Largest tipboard prize, $500

What taxes apply to charitable gambling?

The state imposes taxes on charitable gambling in lieu of sales taxes:

- Bingo, paddlewheels, and raffles, 8.5 percent of gross profit
- Pull-tabs and tipboards, 1.7 percent of "ideal gross" (potential gross receipts from all tickets in a package, with a refund for unsold tickets)
- Pull-tabs and tipboards, additional "combined receipts tax" of 1.7 percent to 5.1 percent of gross receipts, depending on the organization's annual receipts

What gambling is exempt from licensing?

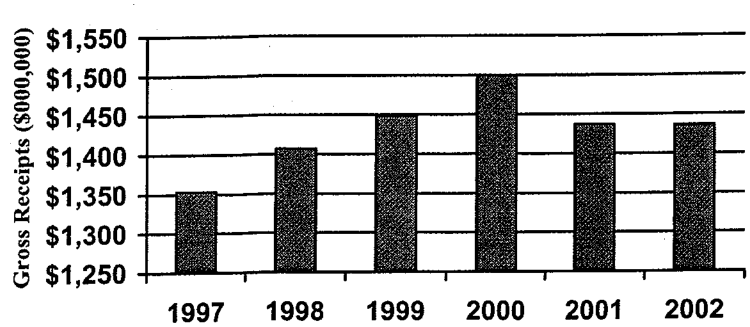
Organizations do not have to obtain a license for:

- Gambling conducted for five or fewer days a year with total prizes not exceeding $50,000
- Bingo conducted at fairs for up to 12 days a year
- Raffles with a prize of not more than $7,500

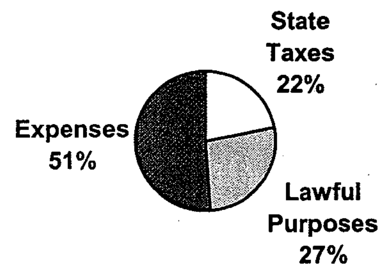
Exempt organizations must register with the board and follow state law on spending net profits.

Charitable Gambling Statistics

Charitable Gambling Gross Receipts 1997-2002



Spending of Gross Profit 2002 ($259 million)



For more information: Contact legislative analyst John Williams at 651-296-5045. Also see the House Research Publication *Charitable Gambling in Minnesota,* August 2003.

The Research Department of the Minnesota House of Representatives is a nonpartisan office providing legislative, legal, and information services to the entire House.

HOUSE RESEARCH | **Short Subjects**

Judie Zollar

August 2003

Minnesota's Probation Delivery and Funding System

What is probation?

Probation is a court-ordered sanction imposed upon an offender for a period of supervision no greater than that set by statute. It is imposed as an alternative to confinement or in conjunction with confinement or other sanctions. The purpose of probation is to deter further criminal behavior, punish the offender, help provide reparation to crime victims and their communities, and provide offenders with opportunities for rehabilitation. The court, with input from probation officers, establishes conditions the offender must obey while on probation. If those conditions are violated, the court may revoke probation and confine the person in a local or state correctional facility.

What is supervised release?

Supervised release is a period of mandatory community supervision following the end of the term of imprisonment for offenders committed to the custody of the Commissioner of Corrections for offenses occurring on or after May 1, 1980. For offenders committed to the commissioner's custody on or after August 1, 1993, the period of supervised release is one-third of the total executed sentence pronounced by the court, minus any disciplinary time imposed on the offender in prison. The Commissioner of Corrections establishes conditions, which the offender must obey during supervised release. If those conditions are violated, the commissioner may revoke the supervised release and return the offender to prison for a period of time not to exceed the length of time left on the sentence.

Since May 1, 1980, Minnesota no longer has a parole system where a parole board reviews each particular case to determine whether a particular offender should be released from prison. Under Minnesota law, the person is subject to a set imprisonment period, followed by supervised release.

What is conditional release?

The term "conditional release" is used in several places in Minnesota law and means different things in different places. Most commonly, conditional release is a period of community supervision imposed on sex offenders to ensure that the offender is under supervision for at least a minimum amount of time. In other contexts, the term "conditional release" is used to refer to all types of release, including probation, supervised release, and pretrial release. And, in some contexts, the term "conditional release" is used interchangeably with the term "pretrial release."

How are probation services provided and how are they funded?

Minnesota has three delivery systems for providing probation and supervised release services: Community Corrections Act (CCA) counties, Department of Corrections-County Probation Officer (DOC-CPO) counties, and Department of Corrections (DOC) counties (i.e., counties that contract with the DOC for services).

CCA Counties. Thirty-one counties participate in the Minnesota Community Corrections Act and provide probation and supervised release services to all of their adult and juvenile offenders. Together, these counties supervise 74 percent of the state's offenders. The DOC must approve a comprehensive CCA plan for counties to operate as CCA counties, but once it does, counties have considerable flexibility in deciding the types of services to provide. Counties participating in the CCA may develop, implement, and operate community-based corrections programs including preventive or diversionary correctional programs, conditional release programs, community corrections centers, and facilities for the detention or confinement and treatment of persons convicted of a crime or adjudicated delinquent. Employees of community-based corrections programs report to the chief executive officer or designee of the programs.

The funding for counties participating in the CCA varies by jurisdiction. Services are paid for through a combination of state appropriations allocated according to a predetermined formula and county and other funds.

DOC-CPO Counties. In 29 counties, supervision of offenders is split between the DOC and county probation officers. In these counties, the DOC supervises all felony-level offenders. These counties contract with the state for these services and reimburse the state for 100 percent of the supervision costs.

County probation officers supervise the remaining offenders, which are all misdemeanant and juvenile offenders. The state provides up to 50 percent of the funding for probation officer salary and benefits for supervision of these offenders. In general, the county board appoints county probation officers in these counties, but the court may appoint officers in some situations. The county board also may purchase additional services.

DOC-CPO counties supervise 13 percent of the state's offenders.

DOC Counties. The DOC provides all probation services (felony, misdemeanant, and juvenile) in 27 counties, pursuant to contracts with the counties. (Given that the DOC also supervises felons in 29 DOC-CPO counties, the DOC provides felony-level supervision in 56 of the state's 87 counties.) The DOC supervises 13 percent of offenders under this model.

In those counties where the DOC supervises all offenders, the entire amount is funded by a direct state appropriation, with the DOC receiving 100 percent reimbursement for supervising these offenders.

For more information: Contact legislative analyst Judie Zollar at 651-296-1554.

Deborah A. Dyson

Revised: August 2003

"60-Day Rule"
Time Deadline for Agency Action

What is the "60-day rule"?

In 1995, the legislature enacted Minnesota Statutes, section 15.99, commonly referred to as "the 60-day rule." The 60-day rule requires governmental entities to approve or deny a written request for certain actions within 60 days or the request is approved.

More specifically, "failure of an agency to deny a request within 60 days is approval of the request. If an agency denies the request, it must state in writing the reasons for the denial at the time that it denies the request." Minn. Stat. § 15.99, subd. 2.

Who does it apply to?

The law applies to the following, all defined as "agencies" (Minn. Stat. § 15.99, subd. 1):

- a department, agency, board, commission, or other group in the executive branch of state government;
- a statutory or home rule charter city, county, town, or school district;
- any metropolitan agency or regional entity; and
- any other political subdivision of the state.

What requests does it apply to?

It applies to "a written request relating to zoning, septic systems, or expansion of the metropolitan urban service area for a permit, license, or other governmental approval of an action." Minn. Stat. § 15.99, subd. 2.

A "request" is a written application on a form provided by the agency, if a form exists. A request not on an agency's form must include all information required by the agency and it must identify clearly on the first page the specific permit, license, or other governmental approval being sought.

Recently, the Minnesota Court of Appeals held that it does not apply to building permit requests. *Advantage Capital Mgmt. v. City of Northfield*, 664 N.W.2d 421 (Minn. App. 2003). The law does not apply to the subdivision regulation review process or the plat review process for requests made on or after June 1, 2003.

In an unpublished opinion (and therefore without precedential value), the Minnesota Court of Appeals determined that "other governmental action" did not apply to actions with a statewide effect, and therefore the 60-day rule did not apply. *In the matter of System Designation of Multi-Flo Wisconsin Aerobic Treatment Units*, CO-01-823, 2001 WL 1665410, 2001 Lexis 1425 (Minn. App., Dec. 21, 2001) (request for approval of a septic system as a standard under state agency rules).

When does the time begin to run?

The 60 days begins to run when the agency receives a complete application. The 60 days begins again upon receipt of a complete amended application. *Tollefson Dev. Co. v. City of Elk River*, 665 N.W.2d 554 (Minn. App. 2003). The application fee, if any, is one of the items that must be paid before an application is complete. The agency has 15 business days after receiving any part of an application to inform an applicant in writing that the application is missing some required element. Minn. Stat. § 15.99, subd. 3 (a). If more than one state agency in the executive branch must approve or deny the application, the 60 days runs beginning when the first one receives the complete application and it is up to that agency to make sure all other agencies get copies of the application. Minn. Stat. § 15.99, subd. 3 (b).

Are extensions allowed?

An agency may extend the review period by up to 60 days if it provides the applicant written notice of and reasons for the extension before the end of the initial 60 days. Minn. Stat. § 15.99, subd. (f). The notice of extension must be made after the complete application is submitted and the initial 60 days has begun to run. *American Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 313 (Minn. 2001). An agency does not have to have extenuating circumstances to extend the review time; it is enough that the agency needs more time. *Id.* at 314.

The law also takes into account other proceedings or federal law requirements that may delay the beginning of the 60-day period. Minn. Stat. § 15.99, subd. 3 (d), (e).

An applicant may request an extension of time in writing.

What constitutes approval or denial of a request?

Approval. A request can be approved by the agency in its customary manner or by failing to deny the request within the 60-day period.

Denial by an agency with a multimember governing body. For requests made on or after June 1, 2003, a multimember governing body may deny a request by:

- adoption of a resolution or motion to deny the request, or
- failure of a resolution or motion to approve a request.

The governing body must provide its reason for denial on the record at the time of the vote on the resolution or motion. It must also provide a written statement of reasons for the denial to the applicant before the expiration of the time allowed for a decision. The written statement must be consistent with the reasons stated at the time of decision.

Denial by other agencies. If an agency other than one with a multimember governing body denies a request, it must state in writing the reasons for the denial at the time it denies the request.

For more information: Contact legislative analyst Deborah A. Dyson at 651-296-8291.

Don Hirasuna

Updated: September 2003

MFIP Cases Reaching the 60-Month Time Limit

In 1996, the federal government reformed the welfare system with the Personal Responsibility and Work Opportunity Reconciliation Act. Included in the reform are 60-month time limited benefits. The first cases reached these limits last summer. This short subject summarizes data provided by the Minnesota Department of Human Services about the cases that have reached the time limit.

Cases reaching the 60-month time limit

As of July 2003, 3,785 Minnesota cases reached their 60-month time limit on or before that month.

- 1,787 were subsequently closed and ineligible for Minnesota Family Investment Program (MFIP) in July 2003
- 1,596 were granted an extension and received a cash portion of the grant.
- 402 were suspended cases, child-only cases, or cases receiving only the food portion of MFIP

Who they are

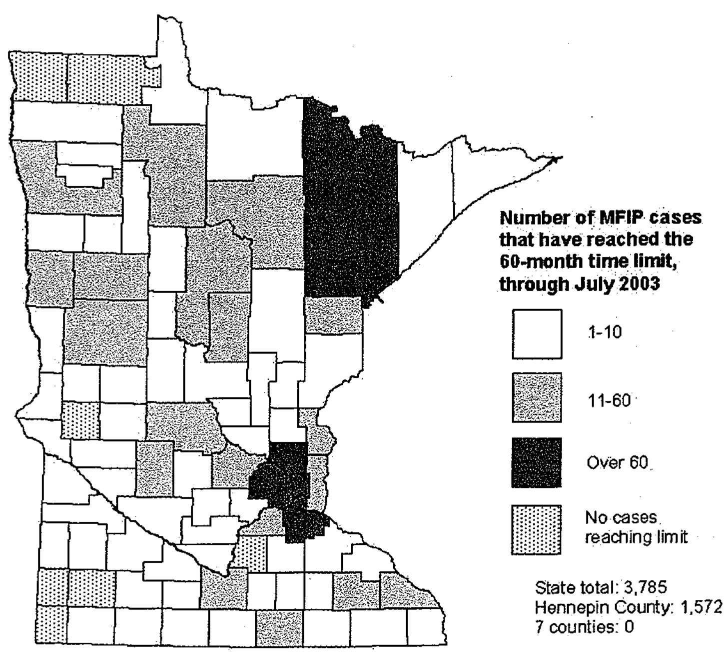
Families reaching the 60-month time limit are more likely to be:

- Nonwhite
- In larger families
- Older parents
- Less educated
- With children on Supplemental Security Income (SSI)

Where they live

Families living in Hennepin, Ramsey, and St. Louis counties make up 80.5 percent of all cases that reached their 60-month time limit and 77.3 percent of all closed cases as of July 2003.

MFIP Cases That Have Reached the 60-Month Time Limit Through July 2003

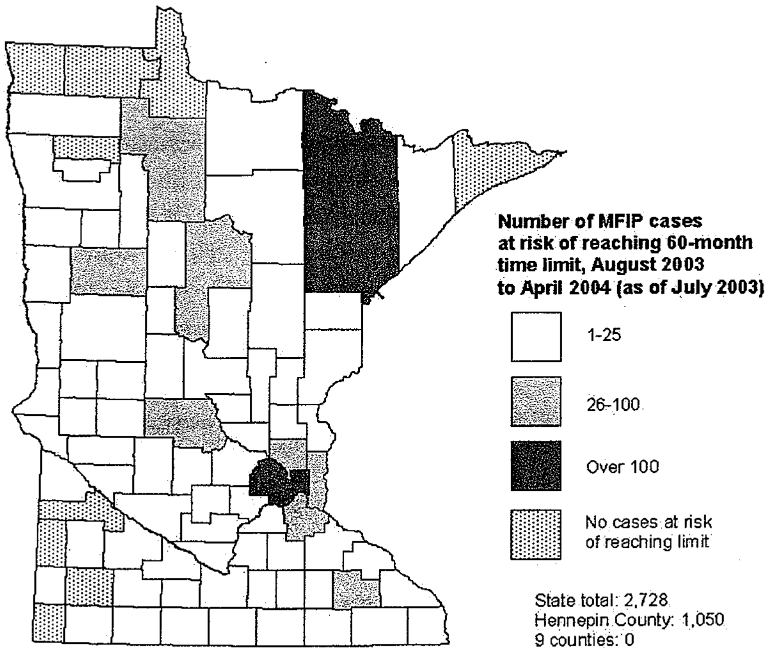


Cases at risk of reaching the 60-month time limit by April 2004

There are 2,728 cases at risk of reaching the 60-month time limit by April 2004 (data through July 2003).

- 76.0 percent live in five counties within the state: Hennepin, Ramsey, St. Louis, Anoka, and Dakota
- 64.2 percent currently live in Hennepin or Ramsey County

Additional MFIP Cases at Risk of Reaching the 60-month Time Limit by April 2004



The data is from the Minnesota Department of Human Services (DHS). Parents at risk of reaching the 60-month time limit include all cases eligible since August 1997. These are the number of cases that have used 51 or more months of their 60-month limit as of July 2003. This does not include any families that migrate into the state in future months with prior Temporary Assistance to Needy Families (TANF) months that will be counted toward the 60-month limit. The cases at risk of reaching the 60-month time limit are likely greater than the number of families that will reach the limit. Some of these families will leave welfare without using up all of their eligibility. Some parents may receive extensions. Still other parents will move into or leave the state. Parents entering the state may reach their welfare 60-month limit before April 2004. The numbers for July 2003 are estimates.

For more information: Contact legislative analyst Don Hirasuna at 651-296-8038. Also see the House Research publications *Identifying Who Might Be Subject to the 60-Month Time Limit*, November 1999; *TANF Background*, January 2001; *The 60-Month Time Limit on TANF Assistance*, January 2002; *Factors Contributing to Longer Stays on Welfare: A Literature Review*, March 2002. See also the Minnesota DHS report *Welfare and the 60-Month Time Limit in Minnesota*, June 2002 (http://www.dhs.state.mn.us/newsroom/facts/TimeLimit.htm).

HOUSE RESEARCH | Short Subjects

Linda Holmes

August 2003

Minnesota's Do Not Call List

What is the Do Not Call list?

The Do Not Call list was established by the legislature during the 2002 session. It is a list of residential telephone numbers submitted by consumers who do not want to receive telemarketing calls.

Consumers can sign up for the list by contacting the Minnesota Department of Commerce by telephone or on the department's web site. Anyone making or attempting to make a telemarketing call covered by the law to a Minnesota residential number is required to purchase an updated list once every three months, and may not make unsolicited sales calls to the numbers appearing on the list.

What calls will not be covered by the law?

The law has several exceptions. The most significant exceptions are:

- Calls made on behalf of nonprofit or political organizations;
- Calls made by businesses to customers with whom they have an existing business relationship; and
- Calls that are not intended to complete a sale, but only to arrange a face-to-face meeting where the sale will be completed.

How much do telemarketers pay for the list?

The price of each new list is $125 in 2003, and will be $90 in 2004, and $75 in 2005 and thereafter. Telemarketers must buy an updated list at least quarterly. Consumers pay nothing to have their numbers added to the list. The list is funded entirely by the cost to telemarketers of purchasing copies of the list.

What else is covered under the bill?

The bill also requires telemarketers to identify themselves to consumers at the beginning of call and prohibits them from disabling a consumer's use of Caller ID.

What is the relationship between the Minnesota list and the new federal list?

In the summer of 2003, the Federal Trade Commission established the National Do Not Call Registry, which operates similarly to the state list, but has somewhat fewer exceptions. Consumers can sign up for the federal list by calling 1-888-382-1222, or can do so online at donotcall.gov. In order to register online, a consumer must have a valid email address.

The federal list will be enforced beginning on October 1, 2003, at which point it will cover consumers who signed up by August 31, 2003. Consumers who sign up after September 1 will be covered by the list and should notice a reduction in calls within three months of the time they register.

Minnesota's list will be transmitted to the FTC, and all the numbers appearing on it will automatically be added to the federal list, so consumers whose numbers are already on the Minnesota list do not need to separately sign up for the federal list.

What are the penalties for a violation?

The state Do Not Call law is enforced by the Minnesota Department of Commerce, which has the authority to impose a civil penalty of up to $1,000 for each violation by a telemarketer. The law does not contain a private right of action that would allow an individual consumer to collect money from the telemarketer for a violation.

How does a consumer sign up?

Consumers can find additional information about signing up online on the Department of Commerce's web site, www.commerce.state.mn.us. Consumers can also sign up by calling the department at 1-800-921-4110.

How does a consumer whose name is on the list complain about continuing unsolicited calls?

Consumers can lodge complaints by calling the Department of Commerce at 651-282-5064 or e-mailing the department at market.assurance@state.mn.us.

For more information: Contact legislative analyst Linda Holmes at 651-296-5059.

Joel Michael and Nina Manzi Updated: September 2003

Revenue Recapture Program

Purpose of revenue recapture

Revenue recapture authorizes the Department of Revenue (DOR) to intercept or offset part or all of a state tax refund or other payment to collect a debt that the taxpayer owes to a government agency or other authorized creditor.

Agencies permitted to use revenue recapture

The following agencies may use the Revenue Recapture Program:
- State agencies
- University of Minnesota
- Minnesota district courts
- Counties
- Cities for public ambulance service and public library debts
- Government-owned hospitals and Regions Hospital
- Agencies responsible for child support enforcement
- Agencies that administer low-income housing programs
- Counties, on behalf of licensed ambulance services

Debts subject to recapture

The debt (minimum amount of $25) must be owed to or collectable by one of the qualifying governmental agencies. The debtor must be an individual; the law does not apply to corporations. The creditor does not need to obtain a court judgment or order to enforce the debt. Qualifying debts include:
- Unpaid taxes, interest, and penalties
- Contractual or statutory obligations
- Criminal fines
- Court-ordered restitution for a crime
- Child support obligations
- Overpayment of public assistance
- Unpaid MinnesotaCare insurance premiums

Obligations of low-income individuals (incomes between $9,370 and $17,710 in 2002, depending upon family size) to repay Medical Assistance cannot be recaptured. Debts barred by the statute of limitations also cannot be recaptured.

Types of refunds subject to recapture

Revenue recapture applies to:
- Individual income tax refunds
- Property tax refunds
- Sales tax rebates
- Sustainable forest tax payments
- Lottery prizes

Notice and other procedures

Under revenue recapture, a claimant (creditor) agency submits the claim (debt) to DOR for offset. Within five days after doing so, it must notify the debtor-taxpayer in writing of the debt(s) that will be subject to revenue recapture. The taxpayer then has 45 days to request a contested case hearing under the Administrative Procedures Act. The claimant agency conducts the hearing.

Priorities among types of debts

When more than one debt is submitted, the debts are applied in the following order of priority:

- DOR accounts receivable (e.g., unpaid taxes, interest, and penalties)
- Child support obligations
- Restitution obligations
- Other debts based on the order in which DOR received the claims

Administrative costs

In order to use revenue recapture, the creditor (government agency) must pay a fee of $15 per claim that is deducted from the amount recaptured. Of this $15, $4 is set aside in a dedicated, revolving fund to pay DOR's cost of operating the program; the rest goes to the state's general fund.

Amount of refunds recaptured and types of debts satisfied

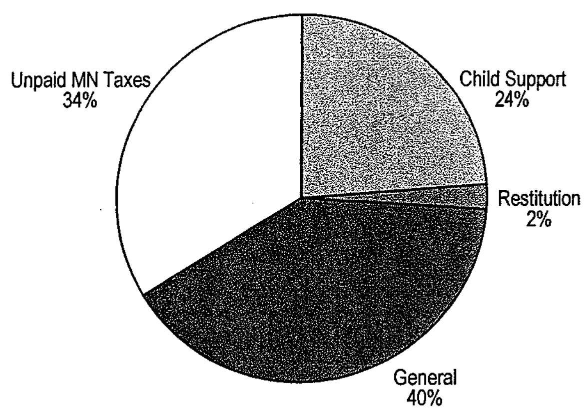
The table to the right shows the number of taxpayers subject to revenue recapture and amount of refunds offset by category for calendar years 1998 to 2002. The number of taxpayers increased significantly from 1999 to 2001 with the payment of sales tax rebates. The rebates generated tax refunds for many individuals who normally do not receive refunds. With the end of rebates, the amount of revenue recapture in calendar year 2002 declined significantly.

Revenue Recapture Amounts CY1998-2002

	Number of Taxpayers	Amount of Recapture
1998	136,726	$37,255,523
1999	270,466	81,543,352
2000	280,766	62,907,645
2001	300,093	70,471,518
2002	153,200	43,060,194

Excludes amounts offset on behalf of the IRS to satisfy debts for taxes owed to the federal government.
Source: DOR

The graph shows the percentage of revenue recapture amounts for calendar years 1998 to 2002 by the four major types of debts for which the law sets priorities.



For more information: Contact legislative analyst Joel Michael at 651-296-5057 or Nina Manzi at 651-296-5204.

HOUSE RESEARCH | Short Subjects

Linda Holmes September 2003

Child Labor

What is the minimum age for employment?

Both federal and state law generally prohibit the employment of minors under the age of 14, with limited exceptions for special jobs such as newspaper delivery (for which state law provides that the minor must be at least 11), work as a youth program referee, babysitting and home chores, acting, and modeling. There are also exceptions for some types of agricultural employment and for employment by a parent. State law provides that the Commissioner of Labor and Industry may grant an exemption for a particular minor if it appears to be in the minor's best interests.

What kinds of work are prohibited for minors under the age of 16?

Federal law generally prohibits employment of children under 16, unless (1) the employment is by a parent in a nonhazardous occupation, or (2) the occupation is one that the U. S. Secretary of Labor has determined not to constitute oppressive child labor. These occupations are specified by regulations that permit 14- and 15-year-olds to do many types of retail, food service, and clerical work, but limit their employment in occupations including (but not limited to) construction, communications, warehousing, and storage.

These minors are also, of course, subject to the limitations on employment of minors under 18, discussed below.

What kinds of work are prohibited for all minors under the age of 18?

Both federal and state law prohibit the employment of minors under 18 in any occupation that has been determined to be hazardous. In the case of the federal law, these determinations are made by the Department of Labor, and in Minnesota, they are made by the Department of Labor and Industry.

Many of the kinds of work prohibited for minors under 18 are not particularly surprising, and include work with explosives, work as a motor vehicle driver, certain coal mine and logging work, work with powerful cutting equipment, work that entails exposure to radiation, work with certain kinds of machinery such as bakery machines and paper products machines, and work in wrecking and demolition. Also, state law prohibits minors under 18 from serving alcohol, and limits their ability to work in places where alcohol is served. Again, this is not an exhaustive list of prohibitions, and the regulations or the agencies involved are the best source of information on any particular occupation.

How many hours may a minor under age 16 work?

Both state and federal law generally limit children under 16 to 40 hours of work in a week and eight hours of work in a day. Federal law further specifies that minors under 16 may not work more than 18 hours in a school week or three hours in a school day. The combined federal and state laws also limit these children to working only between 7:00 a.m. and 7:00 p.m. during the school year, with the evening limit extended to 9:00 p.m. over the summer. Finally, Minnesota law provides that a child under 16 cannot work on school days during school hours except in special situations in which the child obtains an employment certificate from the Commissioner of Labor and Industry. The certificate may only be issued with parental consent and with a finding by the commissioner that the child is capable of performing the job and that it serves his interests for him to do so.

How many hours may a minor at least 16 but under 18 work?

Minnesota law also provides that a child under 18 cannot work after 11:00 p.m. on any day before a school day or before 5:00 a.m. on any school day, unless employed by a parent, as a babysitter, or to do home chores. These limitations can be extended to 4:30 a.m. and 11:30 p.m. if the child presents the employer with a note signed by a parent giving permission.

Who enforces child labor laws?

Child labor laws are enforced by the Minnesota Department of Labor and Industry and the U.S. Department of Labor.

For more information: Contact legislative analyst Linda Holmes by e-mail: linda.holmes@house.mn .

HOUSE RESEARCH | **Short Subjects**

John Helland **September 2003**

The Dove Hunting Debate: Questions and Answers

Several times in the last three decades, legislative bills have been introduced and debated in Minnesota to establish a mourning dove hunting season. Minnesota last held a dove hunting season in 1946. This past session, a proposal to allow mourning dove hunting passed in the House, representing the most progress dove hunting has reached in the past 30 years. However, the provision allowing dove hunting did not emerge from the 2003 conference committee discussions.

Wisconsin is the latest state to enact a dove hunting season, which began this fall.

Several basic questions continually come up when mourning dove hunting is debated here. This short subject identifies these questions and attempts to answer them.

What is happening with dove hunting in Wisconsin?

Wisconsin's dove hunting season was authorized in 2001, first by its Natural Resources Board—a citizen board that can authorize hunting seasons—and then by its legislature. Before the Natural Resources Board authorization, the state conducted public hearings on the issue in every Wisconsin county, and the season had broad public support.

An animal rights group in the state filed suit to stop the hunting season from starting, which was upheld in circuit court. However, the decision was reversed by the Wisconsin Court of Appeals in March 2003. The Wisconsin Supreme Court is going to hear the case in October, with a decision expected in the spring of 2004.

The mourning dove season opened on September 1 and will run through October 30.

As in most states with a season, the bag limit is 15 birds per day and the possession limit is 30.

Wisconsin is the 39th state to authorize a mourning dove season. Wisconsin DNR officials predict that up to 30,000 hunters may hunt doves, with an annual harvest of five doves per hunter, and between 100,000 and 150,000 total doves harvested this fall.

What is the "bird of peace"?

Opinions vary greatly on this, depending on who is being asked. There are many species of doves. The turtledove, which is mostly white in color and is found in Europe and the Mediterranean, is more commonly called the bird of peace. Turtledoves are not found in the United States, and mourning doves are mostly brownish and grayish in color.

In Wisconsin, which just authorized the latest hunting season on mourning doves, the same dove also is the official state symbol of peace. Additionally, in Minnesota, there is another type of dove—Eurasian collared, an exotic species. They currently are found in 17 counties and appear very similar to mourning doves. The DNR may allow them to be hunted if a mourning dove season is enacted.

Does hunting doves decimate their population?

Not according to published information. The mourning dove is one of the most abundant birds in the United States, with an estimated fall population of 500 million birds. The Minnesota population is estimated at 12 million doves, which is three times the fall duck flight through the state.

Mourning doves are prolific breeders, raising between four to ten young doves per year. The natural mortality rate is high; approximately six out of ten doves do not survive from one year to the next. The U.S. Fish and Wildlife Service has studied and regulated mourning doves for 40 years, and data has shown that a hunting season on them has virtually no impact on their population.

According to the Humane Society of the United States, there is an unacceptably high wounding rate in dove hunting. Studies indicate a wounding rate that exceeds 20 percent in hunted areas, which means one in five doves is wounded and not retrieved after being shot.

What would a dove hunting season mean in Minnesota?

The following statements about dove hunting were made on behalf of the 2003 legislation proposing a season:

- According to the Minnesota DNR, a mourning dove season here would be similar to Wisconsin's in the number of hunters initially (30,000), the bag limits (15 per day, 30 in possession), the season length (60 days), and average harvest per hunter (five doves).
- The House bill called for a $5 dove stamp, in addition to the small game license. This would raise an additional $150,000 for DNR wildlife habitat activities. Over time, the DNR said there could be 50,000 Minnesota dove hunters, thus increasing the additional revenue stream.
- Additional sales and sale taxes will occur with new dove hunters in the form of hunting equipment, including shotgun ammunition, gas, food, and lodging. The range in sales is anywhere from $1,750,000 to $2,750,000 annually, according to dove hunting proponents.

Which other states do not permit dove hunting?

With Wisconsin becoming the 39th state to authorize a season, the Midwest states that do not permit dove hunting are Minnesota, Michigan, and Iowa (Iowa did approve legislation in 2002 for a season, but it was vetoed by the governor). The eight other states that do not allow dove hunting are in the northeast, including all of the New England states, New York, and New Jersey.

For more information: Contact legislative analyst John Helland at 651-296-5039.

Linda Holmes
September 2003

Unemployment Benefit Extensions

Current law limits most unemployment benefit applicants to 26 weeks of benefits. In some cases, legislation has provided additional benefits when there is concern that the workers' circumstances or economic factors create special difficulties. State and federal law allow for general extensions when certain circumstances are present, and both Congress and the state legislature have sometimes passed extensions targeted to particular workers or in response to economic downturns.

Temporary Extended Unemployment Compensation (TEUC)

In March 2002, Congress passed a federal Temporary Extended Unemployment Compensation (TEUC) program that provided up to 13 weeks of federally funded additional benefits for individuals who exhaust their regular benefits and remain unemployed. This program was available for anyone who exhausted benefits on or after the week of March 15, 2001, provided that the person had worked the equivalent of at least 20 weeks of full-time employment during their base period (the year of employment history that is used to calculate benefits).

Under current law, applications for TEUC benefits must be received by the end of the week beginning December 21, 2003. The TEUC program terminates absolutely after the week ending March 20, 2004. No benefits are payable after that time, meaning that individuals who have not yet exhausted state benefits or have received only a part of the 13 weeks of benefits by the end of December will not receive the full 13 weeks.

Congress has also provided for up to 39 weeks of extra benefits for some employees in airline and related industries who lose employment as a result of events related to September 11, 2001, or the war in Iraq. These benefits may run through early 2005, and any regular TEUC benefits the person has received are subtracted from them, meaning that the individual can only receive a total of 39 weeks through both the general and the airline-specific federal programs.

State Extended Temporary Unemployment Benefits

During the 2002 session, the Minnesota legislature passed a law that provided 13 weeks of state-funded benefits for workers who were not eligible for TEUC benefits because they did not meet the 20-week work requirement. This law provided benefits on the same terms as the federal extension and expired at the end of calendar year 2002.

State and federal general extension provisions

Both state and federal law include provisions that allow for additional unemployment benefits to be paid under some conditions. The federal program provides 13 weeks of extended benefits when the unemployment rate in a state meets a specific level that the state has the authority to set for itself. Minnesota's trigger unemployment rate is 6 percent of insured employment or 6.5 percent of total employment. Neither of these levels has been reached recently.

Under the state program, any worker can receive another 13 weeks of benefits if he or she resides in a county with a seasonally adjusted unemployment rate above 10 percent and is part of a large layoff. This provision has been invoked several times.

Specific state extensions

In addition to the general provisions available under state and federal law, the legislature has, at times, provided additional benefits for particular workers.

- In 1998, the legislature suspended the unemployment rate and mass layoff requirements to make 13 weeks of additional benefits available to employees laid off from Hibbing Taconite.

- In 2000, the legislature suspended the same requirements to offer 13 weeks of extra benefits to employees from Eveleth Taconite and 26 weeks of extra benefits available to employees from Hennepin Paper. The Hennepin Paper employees were required to be in training in order to receive benefits.

- In 2001, the legislature provided an additional 26 weeks of benefits to employees from LTV Steel, again requiring that applicants be in training.

- In 2002, the legislature provided additional benefits to several categories of workers. Employees laid off during specified periods from Farmland Foods; from Fingerhut in St. Cloud, Mora, or Eveleth; or from a list of named airlines were provided with an additional 13 weeks of benefits. Again, these individuals were required to be in training in order to continue collecting benefits.

Criteria for future extensions

During the 2001 session, the legislature included criteria for future benefit extensions in a section of legislative findings. They are that the employer has permanently ceased operations and declared bankruptcy, that the community where the employees live is disproportionately affected by the layoffs, that the community is in a remote area where opportunities to find work are limited, and that those receiving benefits receive training while they receive benefits. These criteria are not binding on the legislature and do not state that extensions are necessarily appropriate in all cases where the criteria are met.

When the legislature passed the 2002 extensions, it included findings stating that the extensions were appropriate under slightly different criteria, where the employer had ceased operations at the particular location (though not necessarily in all locations, and not necessarily accompanied by a declaration of bankruptcy), the county unemployment rate was higher than the state average, and the community met the criteria of remoteness and disproportionate effect. The legislature also referred to the fact that some layoffs were related to an act of terrorism or war.

For more information: Contact legislative analyst Linda Holmes by e-mail: linda.holmes@house.mn.

Joel Michael October 2003

TIF: Deficit Reduction Provisions

Property tax reforms in the late 1990s and 2001 reduced TIF revenues significantly

Property tax changes enacted by the legislature in 1997, 1998, and 2001 reduced the revenues of many tax increment financing (TIF) districts. This occurred because the changes generally reduced property taxes, and tax increments are ultimately property taxes. The effects on TIF districts were larger than on overall property taxes because:

- Each of the "reforms" were focused on reducing property taxes on commercial-industrial (C-I) and apartment properties, the main types of property in TIF districts; and
- The 2001 reform converted a portion of the general education tax, a tax imposed by school districts that contributed to TIF revenues, to a state-imposed tax on C-I properties, which did not contribute to TIF revenues.

The 2001 property tax changes reduced TIF revenues (between taxes payable in 2001 and in 2002) by approximately 30 percent. TIF revenues in 2003 increased significantly over 2002, but were still down 20 percent from 2001.

Reduced TIF revenues may impair the ability to pay TIF obligations or create deficits

These reductions in increments may cause "deficits" or the inability to pay debt with the pledged increments. Revenues of TIF districts are commonly pledged to pay debt; TIF authorities often borrow money to pay upfront development costs, such as a land acquisition and public improvements in the district. This debt can be a general obligation of the local government (i.e., supported also by a pledge to levy enough property taxes to pay the bonds, if necessary), a revenue bond, or a developer obligation (often called a "pay-as-you-go" note). The consequences of a deficit vary with the type of TIF obligation:

- For general obligations, the local government must make up the deficit by levying property taxes.
- For revenue bonds, the bondholders may suffer the loss, unless the authority or others have pledged other revenues. The authority or city may feel compelled to pay revenue bonds to maintain its creditworthiness.
- Developer obligations are usually limited to the amount of increment; thus, the developer or the holder of the obligations will suffer the loss.

The legislature has enacted a variety of tools to help reduce or eliminate deficits

The legislature anticipated this problem. In response, it enacted several mechanisms to help local governments offset deficits caused by property tax reforms. All of these mechanisms use one of three basic approaches:

- **Pooling**: allowing more flexibility to take increments from one of a city's TIF districts to pay obligations of another district
- **Increasing increments revenues**: allowing methods by which the authority or city could increase the total amount of increment revenues collected

- **State grants**: appropriating state money to pay grants to offset deficits

Pooling allows surplus increments from one district to offset a deficit in another district

The TIF law imposes legal restrictions (commonly called "pooling" limits) on using increments from one district to pay for activities outside of that district. Thus, extra increments from one district frequently cannot be used to pay the debt of another district. To give authorities and cities more flexibility to deal with deficits caused by property tax changes, the legislature allowed cities to use increments from one district to pay obligations of another district, if the shortfall was caused by property tax reform. Use of pooling originally was a prerequisite to using the other deficit reduction techniques. That is no longer required, except as a condition of using the authority to extend a district's duration limit.

Various mechanisms can increase increments to offset deficits

The second approach uses mechanisms that increase a TIF district's increments. These mechanisms all rely, directly or indirectly, on property tax increases to help pay the deficits. These techniques either convert existing property tax revenues of the city, county, or school into increments or capture tax base that would have paid regular taxes. Three basic mechanisms have been authorized:

- **"Unfreezing" the original tax capacity rate**: this is the local tax rate in effect when the district was certified. If local tax rates have risen since this certification, unfreezing the rate will increase the amount of increment.
- **Changing fiscal disparities options**: For TIF districts in the metropolitan area or the taconite tax relief area, the city can elect to have the fiscal disparities contribution paid by property taxpayers in the city, county, and school, rather than using the district's increment to do so.
- **Extending the duration of the district**: The city can elect to extend the duration limit for the TIF district under a formula based on the percentage drop in the district taxes caused by tax reform. The maximum extension is four years, although the commissioner of revenue can authorize an additional two years. To use this authority, the city must have fully used all of the other deficit reduction mechanisms. This authority was authorized in 2003.

The state grant fund was repealed as part of the 2002 budget cuts

TIF Grant Appropriations	
Session	Amount (millions)
1997	$2
1999	4
2001 one-time	91
2001 ongoing per year	38

The 1997, 1999, and 2001 legislatures made general fund appropriations to a state grant fund to help offset TIF deficits caused by property tax reform. The table shows the amounts. Two separate funds were established, one in response to the 1997-98 property tax changes, and one for the 2001 changes. Grants were paid out under the first fund, but the remainder of the money in that fund and all of the funding for the 2001 fund was repealed in response to the state's budget deficit in the 2002 legislative session. This means cities must deal with TIF deficits using mechanisms that shift TIF funds from other districts or that increase TIF revenues, as described above.

For more information: Contact legislative analyst Joel Michael at 651-296-5057. Also see the House Research publication *TIF Duration Extensions to Offset Deficits* (October 2003).

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HOUSE RESEARCH | **Short Subjects**

Joel Michael

October 2003

Tax Increment Financing

What is TIF?

Tax increment financing (TIF) uses the increased property taxes that a new real estate development generates to finance costs of the development. In Minnesota, TIF is used for two basic purposes:

- To induce or cause a development or redevelopment that otherwise would not occur—e.g., to convince a developer to build an office building, retail, industrial, or housing development that otherwise would not be constructed. To do so, the increased property taxes are used to pay for costs (e.g., land acquisition or site preparation) that the developer would normally pay.
- To finance public infrastructure (streets, sewer, water, or parking facilities) that are related to the development. In some cases, the developer would normally be required to pay for this infrastructure through special assessments or other charges. In other cases, all taxpayers would pay through general city taxes.

How does TIF work?

When a new TIF district is created, the county auditor certifies (1) the current net tax capacity (i.e., property tax base) of the TIF district and (2) the local property tax rates. As the net tax capacity of the district increases, the property taxes (i.e., the "tax increment") paid by this increase in value is dedicated and paid to the development authority. The tax increment is limited to the tax derived from the certified tax rate. Increases in value that generate increment may be caused by construction of the development or by general inflation in property values. The authority uses the increment to pay qualifying costs (e.g., land acquisition, site preparation, and public infrastructure) that it has incurred for the TIF project.

How is TIF used to pay "upfront" development costs?

There is a mismatch between when most TIF costs must be paid—at beginning of a development—and when increments are received—after the development is built and begins paying higher property taxes. Three basic financing techniques are used to finance these upfront costs:

- **Bonds.** The authority may issue its bonds to pay these upfront costs and use increment to pay the bonds back. Often, extra bonds are issued to pay interest on the bonds ("capitalizing" interest) until increments begin to be received.
- **Interfund loans.** In some cases, the authority may advance money from its own funds (e.g., a development fund or sewer and water fund) and use the increments to reimburse the fund.
- **Pay-as-you-go financing.** The developer may pay the costs with its own funds. The increments, then, are used to reimburse the developer for these costs. This type of developer financing is often called "pay-as-you-go" or "pay-go" financing.

What governmental units can use TIF?

Minnesota authorizes development authorities to use TIF. These authorities are primarily housing and redevelopment authorities (HRAs), economic development authorities (EDAs), port authorities, and cities. In addition, the "municipality" (usually the city) in which the district is located must approve the TIF plan and some key TIF decisions. TIF uses the property taxes imposed by all types of local governments. But the school district and county, the two other major entities imposing property taxes, are generally limited to providing comments to the development authority and city on proposed uses of TIF. The state-imposed tax on commercial-industrial and seasonal-recreational properties is not captured by TIF.

What is the but-for test?

Before an authority may create a TIF district, it and the city must make "but-for" findings that (1) the development would not occur without TIF assistance and (2) that the market value of the TIF development will be higher (after subtracting the value of the TIF assistance) than what would occur on the site, if TIF were not used.

What types of TIF districts may be created?

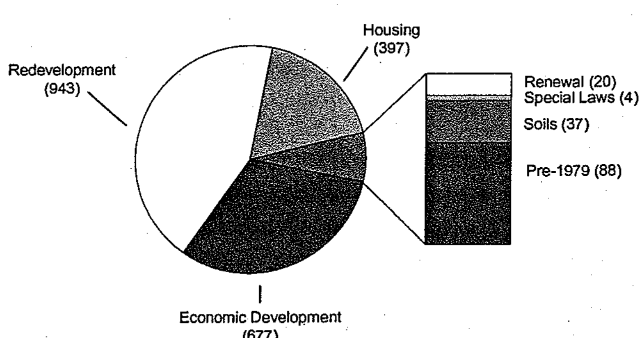
Minnesota allows several different types of TIF districts. The legal restrictions on how long increments may be collected, the sites that qualify, and the purposes for which increments may be used for vary with the type of district.

District type	**Use of Increment**	**Maximum duration**
Redevelopment	Redevelop blighted areas	25 years
Renewal and renovation	Redevelop areas with obsolete uses, not meeting blight test	15 years
Economic development	Encourage manufacturing and other footloose industries	8 years
Housing	Assist low and moderate income housing	25 years
Soils	Clean up contaminated sites	20 years

There were over 2,000 active TIF districts in 2002

According to the 2003 report of the Office of State Auditor, there were 2,166 active TIF districts in 2002. The graph shows the relative shares by type of district.

TIF Districts by Type in 2002
(2,166 districts)



Source: 2003 Report of the State Auditor

For more information: Contact legislative analyst Joel Michael at 651-296-5057. Also see the House Research web site for more information on TIF at www.house.mn/hrd/issinfo/tifmain.htm.

Deborah K. McKnight September 2003

Special Legislative Elections

What triggers a special legislative election?

A special election for a seat in the Minnesota Legislature is held if the legislature will be in session at some point between the time the vacancy occurs and the end of the term for the vacant seat. Minn. Stat. § 204D.17, subd. 1.

What is the timing for a special election?

A special election must be held in time for the newly elected person to begin serving during the current or next legislative session.

- If the legislature is in session when the vacancy occurs (or will be in session within 33 days of the vacancy), the election must be held within 33 days after the vacancy occurs. To accomplish this: (1) the governor must call for a special election within five days after the vacancy occurs; and (2) the special election must be held within 28 days after the governor calls for the election. (In practice, the election cannot be held sooner than 28 days after the governor calls for the election, given the time required for candidate filings, notices, and ballot and polling place preparation.) Minn. Stat. § 204D.19, subd. 2.
- For vacancies occurring at other times, the governor may set the special election date at any time that allows the individual elected to take office when the legislature reconvenes. But the special legislative primary and election must be held at the same time as the state primary and election (i.e., in September and November of the even-numbered year) if the vacancy occurs (1) more than 150 days before the next state general election; and (2) the legislature will not be in session before the state general election. Minn. Stat. §§ 204D.19, subds. 1 and 3; 204D.21, subd. 1.

Special rules apply to a vacancy that results from an election contest. If the body affected passes a resolution stating it will not review court findings, the governor must issue a writ within five days after the resolution passes. If the body does not pass a resolution, the governor must issue a writ within 22 days after the first day of the session. Minn. Stat. § 204D.19, subd. 4.

What does a governor's writ cover?

The writ states the office to be filled, the opening and closing dates for candidate filings, and the dates of the special primary and election. The statutes limit the governor's choices for these dates to some extent. For example, there must be at least a five-day candidate filing period and a seven-day notice period for the primary. Minn. Stat. § 204D.22, subds. 2 and 3. In addition, the special primary must be held at least 14 days before the special election. Minn. Stat. § 204D.21.

Finally, as noted above, the election must be set for not later than 28 days after the writ is issued if the legislature would be in session at that time. The governor immediately files the writ with the secretary of state, who sends a certified copy to county auditors in affected counties for posting. Minn. Stat. §§ 204D.21, 204D.22.

Is a public campaign subsidy available for special legislative elections?

A candidate in a special legislative election receives a subsidy in an amount equal to the general account money and the party account money that would have been available for a candidate for that office at the last general election, if two conditions are met. Minn. Stat. § 10A.315.

First, the candidate must file a spending limit agreement with the Campaign Finance and Public Disclosure Board. The agreement must be filed by the day after the candidate files for the office, if the special election is not being held at the state general election. If the special election is held at the state general election, the agreement must be filed by September 1. Minn. Stat. § 10A.322, subd. 1, para. (d).

Second, the candidate must raise the same amount of qualifying contributions required in a general election for the office ($1,500 in the House; $3,000 in the Senate). The affidavit of contributions must be filed within five days after filing the affidavit of candidacy, if the vacancy will not be filled at the state general election. If the special election is being held at the state general election, the affidavit must be filed by September 1. Minn. Stat. § 10A.323.

What other campaign finance provisions apply in special legislative elections?

The election cycle for a special legislative election begins the day the writ is issued and ends 60 days after the special election date. Minn. Stat. § 10A.01, subd. 16. A candidate at the special election must file principal campaign committee reports seven days before the special primary and ten days after the special election cycle ends. Minn. Stat. § 10A.20, subd. 2, para. (b).

The ban on regular session fundraising does not apply to a candidate at a special election from the time the person becomes a candidate until the day of the special election. Minn. Stat. § 10A.273, subd. 5. Expenditures by or on behalf of a candidate at a special election do not count as expenditures by or on behalf of the candidate in the general election. Minn. Stat. § 10A.25, subd. 2, para. (c).

For more information: Contact legislative analyst Deborah K. McKnight at 651-296-5056.

Joel Michael

October 2003

TIF Redevelopment Districts

TIF is often used to help redevelop real estate in blighted areas

The classic use of tax increment financing (TIF) is to foster redevelopment of "blighted" areas—i.e., areas with rundown, dilapidated, or obsolete buildings and structures. The increase in property taxes that results from redevelopment (the "increment") is used to help finance redevelopment costs, such as land assembly and removal of blighted structures. In Minnesota, TIF was initially promoted principally for redevelopment. (It has since grown to be used in the state for housing, economic development, and general infrastructure finance.) According to the 2003 Tax Increment Financing Report of the State Auditor, there were more active TIF redevelopment districts (943) than any other type, about 44 percent of all TIF districts.

What areas can be designated as redevelopment TIF districts?

Minnesota law allows redevelopment districts to be designated in areas that qualify under one of the following criteria:

- Meet a statutory "blight test"
- Are vacant or underused railyards
- Contain vacant or underused tank farms with a capacity of at least one million gallons
- Are qualified disaster areas

What areas qualify as "blighted"?

To qualify under the blight test:

- 70 percent of the area of the district must be occupied by buildings, streets, utilities, or other improvements, and
- More than 50 percent of the buildings must be structurally substandard.

Buildings are substandard if they have sufficient defects or other problems to justify substantial renovation or clearance, in the judgment of the authority. The authority must determine this after conducting an interior inspection of the property, unless the property owner refuses to permit an inspection.

The authority cannot find a building is substandard if it is in compliance with the building code for new buildings or could be brought into compliance for less than 15 percent of the cost of constructing a new building. Meeting this 15 percent test, however, does not itself qualify the building as substandard.

May districts be noncontiguous?

Yes, TIF districts generally may consist of separate, noncontiguous areas. However, each separate noncontiguous area of a redevelopment district must individually meet one of the qualifying tests: as blighted, a railyard, tank farm, or qualified disaster area.

What are qualified disaster areas?

To be a qualified disaster area, an area must meet three tests:

- 70 percent of the parcels must be occupied by buildings, streets, utilities, or other improvements;
- The area was a declared a disaster under federal or state law within 18 months before creation of the district; and
- 50 percent or more of the buildings suffered substantial damage as a result of the disaster.

For a qualified disaster area district, the original net tax capacity (i.e., the base value used to calculate increments) is the land value. The most recent assessment will generally include the full value of the buildings (i.e., it would not reflect the damage caused by the disaster). Absent a "write-down" of the original value to the land value, reconstruction following a disaster would not generate much or any increment, since it would largely restore the pre-existing value.

What are permitted uses of increments for redevelopment districts?

The law requires 90 percent of the increments from a redevelopment district to be spent for blight correction—i.e., to fix the conditions that allowed designation of the district. The statute lists qualifying expenditures:

- Site acquisition of blighted sites or sites requiring pollution clean-up
- Acquisition of an adjacent parcel or parcels to assemble a site large enough to redevelop
- Clean-up of hazardous substances, pollution, or contaminants
- Site preparation, such as clearing the land and installation of utilities, roads, sidewalks
- Providing parking facilities for the site

The law explicitly provides that this is not an exhaustive list. Administrative expenses of the authority that are allocated to these activities also meet the 90 percent test.

For more information: Contact legislative analyst Joel Michael at 651-296-5057. Also see the House Research short subject *Tax Increment Financing* (October 2003).

John Williams **October 2003**

Minnesota Speed Limits

Minnesota law sets speed limits on state and local highways and streets, and provides for the establishment of speed zones by the Department of Transportation (MnDOT).

Basic law

Minnesota's basic law on highway speeds is found in Minnesota Statutes, section 169.14, subdivision 1:

> *No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions. Every driver is responsible for becoming and remaining aware of the actual and potential hazards then existing on the highway and must use due care in operating a vehicle.*

Statutory limits

Minnesota law sets out the following speed limits:

- Streets and highways in urban areas, 30 m.p.h.
- Interstate highways outside urbanized areas of 50,000 or more, 70 m.p.h.
- Interstate highways within urbanized areas of 50,000 or more, 65 m.p.h.
- Noninterstate freeways and expressways, 65 m.p.h.
- Other highways outside urban districts, 55 m.p.h.
- Streets inside urban districts, 30 m.p.h.
- Town roads in rural residential districts, 30 m.p.h.
- Alleys, 10 m.p.h.

An "urban district" is any segment of street or highway that is built up with structures less than 100 feet apart for a distance of a quarter-mile. A "rural residential district" is a segment of a town road with structures less than 300 feet apart for a distance of a quarter-mile.

Speed limits within cities are absolute, meaning that any speed in excess of them is automatically illegal. Elsewhere speed limits are "prima facie limits," meaning that any speed in excess of them is prima facie evidence that the speed was illegal. This means that there is a presumption that the excess speed is illegal but the presumption may be rebutted by other evidence.

Speed zones

MnDOT has the authority to establish speed zones in which the speed limit is higher or lower than the limits set in law. Speed zones are established after MnDOT conducts an engineering and traffic investigation that includes a segment's design, physical characteristics, traffic volume, accident history, and actual speeds. Generally, MnDOT believes that a speed limit at or near the "85th percentile speed" (the speed at or below which 85 percent of vehicles are traveling) is most likely to be the safest maximum limit.

Speed limits in speed zones are effective as soon as signs are erected. Like statutory limits, they are absolute limits within a city and prima facie limits outside cities.

Local authority

The authority of a city, county, or town over speed limits, even on their own streets and highways is limited. A local road authority may ask MnDOT to conduct an engineering and traffic investigation on a segment of one of its local roads, but the department makes the final determination on the speed limit on that segment.

There are a few exceptions to this general rule:

- On a residential roadway, defined as a segment up to a quarter-mile that is functionally classified as local, a local resolution may reduce the speed limit from 30 m.p.h. to 25 m.p.h.

- In school zones, defined as a segment of street or highway that abuts school grounds where children have access to the roadway or where a school crossing is established, a local road authority may prescribe a lower speed limit that is not less than 15 m.p.h., or more than 30 m.p.h. below the surrounding limit.

- On a park road within a local park a local authority may prescribe a lower speed limit that is not less than 15 m.p.h., or more than 20 m.p.h. below the surrounding limit.

Both MnDOT and local road authorities can set speed limits within their own highway work zones, to be effective while highway workers are on the job. A work zone speed limit cannot be less than 20 m.p.h. or reduce the speed limit in the work zone by more than 15 m.p.h. The maximum work zone speed limit is 55 m.p.h. on divided highways and 40 m.p.h. on other highways.

Speed violations

Under most circumstances, speeding is a petty misdemeanor punishable by a maximum penalty of a $200 fine. However, if a speeding violation is committed in such a manner as to endanger persons or property it can be charged as a misdemeanor with maximum penalties of a $700 fine and 30 days imprisonment.

Minnesota does not have a point system on driver's licenses, but a third petty misdemeanor in a year can be charged as a misdemeanor, and a third misdemeanor in a year can result in a driver's license revocation.

Under a law enacted in 1986 and called the "Dimler amendment" after its author, former Rep. Chuck Dimler, a violation of a 55 m.p.h. speed limit by not more than 10 m.p.h. is not recorded on a motorist's driving record.

For more information: Contact legislative analyst John Williams at 651-296-5045.

Danyell Punelli October 2003

General Assistance

General Assistance (GA) is a state program that provides cash assistance to individuals or childless couples who are not eligible for federally funded assistance programs, but who are unable to provide for themselves (Minn. Stat. § 256D.01).

Eligibility

An applicant qualifies for GA if he or she meets the eligibility requirements and has income and assets below the limits established by the state legislature and the Department of Human Services (DHS). Assistance is available as long as the individual continues to meet eligibility requirements; there is no set time limit.

In addition to having financial need, a GA applicant must also:

- Be a resident of Minnesota
- Be ineligible for aid from any cash assistance program that uses federal funds (i.e., Minnesota Family Investment Program or Supplemental Security Income)
- Be a citizen of the United States
- Be unable to work because the person:

1. Has a professionally certified illness, injury, or incapacity expected to continue for more than 30 days and that prevents the person from getting or keeping a job
2. Has been diagnosed as having mental retardation or mental illness
3. Is age 55 or older
4. Is needed in the home to care for a person whose age or medical condition requires continuous care
5. Is placed in a licensed or certified facility for care or treatment under a plan approved by the local human services agency
6. Resides in a shelter for battered women
7. Has an application pending for or is appealing a termination of Social Security disability payments, so long as the person has a professionally certified illness or disability
8. Is assessed as not employable
9. Is under age 18 in specified circumstances and with consent of the local agency
10. Is eligible for displaced homemaker services and is enrolled as a full-time student
11. Lives more than four hours round-trip traveling time from any potential suitable employment

12. Is involved with protective or court-ordered services that prevent working at least four hours per day
13. Is over age 18 and whose primary language is not English and is attending high school at least part-time
14. Is learning disabled

GA is not provided to:

- Fugitive felons and parole and probation violators; or
- Persons who have fraudulently misrepresented residency to obtain assistance in two or more states; these people are not eligible to receive GA for ten years.

Benefits

GA recipients receive a monthly cash assistance payment, called a grant. The amount of a recipient's grant is determined by subtracting the recipient's net income from the applicable monthly GA assistance standard.

Monthly GA Standards for Single Persons and Childless Couples

Eligible Units	**Monthly Standard**
One adult	$203
Emancipated minor	203
One adult, living with parent(s) who have no minor children	203
Minor not living with parent, stepparent, or legal custodian (with social services plan approved)	250
Married couple with no children	260
One adult, living in a medical facility or in group residential housing	72

Unlike MFIP, the GA program does not include an employment and training component. GA recipients are not required to participate in any employment and training services as a condition of receiving benefits.

Funding and Expenditures

The state pays for the costs of GA benefits. In state fiscal year 2003 the state paid $19,795,416 in benefits to GA recipients.

Recipient Profile

Most GA recipients are single persons. Childless couples may also be eligible for GA. In state fiscal year 2003 the average monthly number of GA cases was 10,373. (Most GA cases consist of one person. However, GA data is available from DHS by cases only, not by the number of individual GA recipients.)

For more information: Contact legislative analyst Danyell Punelli at 651-296-5058. Also see the House Research publication *Minnesota Family Assistance*, January 2002.

Joel Michael

Updated: October 2003

Apportionment of Corporate Franchise Tax

Apportionment is constitutionally required

A state can constitutionally tax only the income of a multistate corporation that is "fairly apportioned" to the state. The reason for this requirement seems obvious: if a business operates in several states and each state could tax all of its income, the business could easily be subject to double taxation. Aside from being unfair, this would discourage a business from operating in multiple states; it would interfere with interstate commerce.

All states use formula apportionment

A state can apportion income using separate accounting or formula apportionment. Separate accounting traces income to the state where it was earned using standard accounting methods. Formula apportionment uses a proxy or rough measure to determine the in-state share of income (e.g., the percentage of the business's in-state sales to its total sales). All states use some type of formula apportionment. Using separate accounting would be expensive, difficult to do, and subject to manipulation.

Minnesota uses a weighted three-factor formula

Minnesota uses a weighted three-factor formula of sales (75 percent weight), property (12.5 percent), and payroll (12.5 percent). The Minnesota percentage for each factor is multiplied by the weight, and the three factors are added to determine the Minnesota percentage of the corporation's total income. Expressing this as a formula:

$$MN\ percent = \left(0.75 * \frac{MnSales}{TotalSales}\right) + \left(0.125 * \frac{MnProperty}{TotalProperty}\right) + \left(0.125 * \frac{MnPayroll}{TotalPayroll}\right)$$

Sales are defined on a destination basis, that is, the location of the buyer generally determines whether the sale is a Minnesota sale. The property factor is the value of real and tangible personal property in Minnesota. Leased property is included; its value equals the lease payments multiplied by eight. Payroll is the amount paid to employees. The apportionment factors are also used to calculate the add-on minimum fee.

Special formulas apply to some industries

Special apportionment rules apply to some industries. Mail-order companies that have substantially all of their operations in Minnesota use a sales-only formula. A separate formula is provided for financial institutions; this formula includes deposits and intangible property (e.g., receivables and loans), since these are important contributors to the profits of many financial institutions.

No throwback rule applies

The Uniform Division of Income for Tax Purposes Act (adopted by a group of states) provides that sales to buyers in a state in which the corporation cannot be taxed and sales to federal government are "thrown back." Under a throwback rule, these sales are assigned to the seller's location. Minnesota has not adopted a throwback rule. This favors businesses making sales from Minnesota to the federal government or to states where they can't be taxed, since it reduces their Minnesota tax. Minnesota's apportionment formula does not affect the tax owed to another state, in any case.

Minnesota uses combined reporting for "complex" corporations

Special rules apply to complex corporations (i.e., those with multiple corporations, such parent-subsidiary or brother-sister corporations). If these corporations are part of a "unitary business," Minnesota requires them to file a combined report. Under combined reporting, each corporation in the unitary group calculates its tax using the total income of the unitary group and using its own factors as the numerator and the total group's factors as the denominator. This method prevents most transactions among related corporations in the unitary group from affecting the tax liability of the group. In effect, the apportionment formula divides the unitary business's income among the states without regard to how the business allocates the income among its various corporate entities. State corporate taxes that do not use this method allow corporations to artificially shift income (e.g., through "transfer pricing" among the related corporations) to states in which income is lightly taxed or is not taxed at all.

Formula apportionment has important economic effects

Public finance economists generally agree that apportionment formulas are a very important feature of state corporate taxes. They essentially make the tax the same as a tax directly on the factors: for example, the tax on the portion of income assigned using the sales factor is the same, in economic effect, as a sales tax. This affects both:

- The incidence of the tax (i.e., who bears the real burden of the tax); and
- The incentive effects of the tax (i.e., the impact of the tax on behavior)

Incidence effects vary by factor weights

Following conventional economic theory, the portion of the tax that is apportioned by sales will be a tax on consumption or consumers, similar to a sales tax. The portion on payroll is a tax on labor income and the portion on property falls on capital. (Caveat: capital is mobile; it can move between states. In the long run, a state cannot increase the portion of the tax on capital much beyond the average imposed by other states. If it does, capital will flow to other states where higher rates of return are available.) Thus, increasing sales weighting makes the tax more like a sales tax.

Sales weighting will encourage in-state investment

Weighing sales more heavily will generally encourage export businesses. Since sales are assigned to the buyer's location and there is no throwback rule, export or non-Minnesota sales will reduce the amount of income taxable by Minnesota. Thus, increasing the weight for sales creates an incentive for companies to invest in Minnesota property or to hire more employees to sell products outside of Minnesota. The property and payroll factors, by contrast, would assign more income to Minnesota, increasing the tax, because the investment increases Minnesota property and payroll.

States have been moving to sales apportionment

After the U.S. Supreme Court ruled sales-only apportionment was valid in 1978, many states have increased their reliance on the sales factor because of these incentive effects. For example, Oregon and Wisconsin adopted laws in 2003 that move to apportionment using only sales. More information on sales weighted apportionment and other states' laws can be found in the House Research short subject, *Single Sales Apportionment of Corporate Franchise Tax* (October 2003).

For more information: Contact legislative analyst Joel Michael at 651-296-5057. Also see the House Research publications *Corporate Franchise Taxation* (October 2002).

HOUSE RESEARCH | Short Subjects

Linda Holmes **October 2003**

Statutory New Home Warranties

Basic warranty coverage

Minnesota law provides statutory warranties that apply to new homes for a certain period of time after they are built (Minn. Stat. ch. 327A). There are three different warranty periods covering three different types of defects when those defects are caused by failure to comply with the State Building Code.

- For one year, the home must be free of defects caused by faulty workmanship or materials.
- For two years, the home must be free of defects caused by faulty installation of heating, cooling, electrical, or plumbing systems.
- For ten years, the home must be free of "major construction defects."

Separate statutory warranties apply to certain home improvements, and those warranties are also found in chapter 327A.

What is the remedy if the warranty is breached?

The consumer has a cause of action in court against the vendor (usually the home builder) for the breach of the warranty, and can recover the difference between the home's value with and without the defect, or the amount needed to repair the defect.

What does a consumer do if there is a defect?

In order to protect the right to recover under the warranty, the consumer must first notify the vendor of the defect in writing within six months of discovering it or of the time when they should have discovered it, whichever is earlier.

The next step would be bringing an action in court. Under current law, the consumer can bring an action in court for breach of the warranty at any time within two years of when the consumer discovers the breach. The breach would still have had to occur during the warranty period in order for the remedy to be available, but the consumer can file the action outside the warranty period, provided the action is filed within two years of when the consumer discovers the breach. This is in addition to the requirement mentioned above that the homeowner notify the vendor within six months of discovering the breach.

Therefore, the homeowner has two separate time limits to deal with after discovering a defect: to notify the vendor within six months, and to bring any action in court within two years.

What obligations does the consumer have?

In addition to complying with the relevant time limits for giving notice and filing the action, the consumer must care for the home reasonably so as not to cause damage by negligence or by improper or inadequate maintenance, as these types of damage are not covered. The consumer must also act to minimize any damage that does occur.

What is a "major construction defect" that triggers the ten-year warranty period?

The statute defines a "major construction defect" as "actual damage to the load-bearing portion of the dwelling . . . , including damage due to subsidence, expansion or lateral movement of the soil, which affects the load-bearing function and which vitally affects or is imminently likely to vitally affect use of the dwelling or the home improvement for residential purposes." It excludes damage due to windstorms, hail, floods, and other natural disasters.

Do the statutory warranties override other warranty provisions?

No. The law provides that the statutory warranties are in addition to any other warranties that the parties may have agreed to or are provided by law in any particular contract.

Can the statutory warranties be waived by agreement?

The statutory warranties can be waived only where very specific requirements are followed and where, in essence, the vendor provides a substantially similar warranty by agreement. Therefore, the obligation to provide essentially the level of protection called for by statute cannot be waived.

In the case of a major construction defect that is known at the time the sale is made, the parties can waive the protection as to that specific defect, provided that it is first disclosed orally, it is conspicuously disclosed in the agreement, its impact on the value of the home has been appraised and agreed to by the parties, and a separate waiver is executed for each known major defect.

For more information: Contact legislative analyst Linda Holmes at 651-296-5059.

HOUSE RESEARCH | **Short Subjects**

Joel Michael

October 2003

Single Sales Apportionment of Corporate Franchise Tax

The issue

Minnesota apportions income under its corporate franchise tax using a three-factor, weighted formula (75 percent sales, 12.5 percent payroll, and 12.5 percent property). A group of businesses have supported a proposal to adopt 100 percent sales apportionment during recent legislative sessions. A number of other states—most recently Oregon and Wisconsin—have adopted single sales apportionment.

Apportionment is a key feature of corporate taxes

Apportionment formulas are very important features of state corporate income taxes. They determine how much of a business's income is taxable in a state and determine the incidence and competitiveness effects of the tax. For more background on Minnesota's apportionment issues, *see* House Research, *Apportionment of Corporate Franchise Tax* (October 2003).

Effects vary by type of business

The effects of adopting single sales apportionment will vary by business. The crucial variables are the business's Minnesota apportionment factors:

- The taxes of 100 percent Minnesota businesses (those with all of their property, payroll, and sales in Minnesota) will be unaffected.
- Minnesota businesses whose Minnesota sales factor is lower than the average of their Minnesota property and payroll factors will receive a tax cut. The larger the disparity, the bigger the benefit. A classic example would be a business which has most of its operations (headquarters, plants, and so forth) in Minnesota, but which makes most of its sales nationwide.
- Businesses who have higher Minnesota sales factors than their average Minnesota property and payroll factors will have tax increases. The classic example is a national manufacturer of consumer products with few facilities in Minnesota.

Arguments for: enhance Minnesota's competitiveness

The principal rationale for single sales apportionment is an economic development argument: it will make Minnesota more competitive in attracting investment in plant and equipment. Sales are defined based on the buyer's location. All other things being equal, increasing non-Minnesota sales will reduce the amount of Minnesota taxable income, since more income will be attributed to or apportioned outside of Minnesota. Thus, increasing the weight for sales creates an incentive for companies to invest in Minnesota property or to hire more employees (or reduces the tax's disincentive to do so) to sell products outside of Minnesota. If property and payroll are used to apportion income, increasing in-state property or payroll would assign more income to Minnesota and increase the tax. Empirical studies have found support for the idea that single sales apportionment encourages in-state investment.

Arguments against: reduce equity and competitiveness effects may be unclear

Opponents of single sales apportionment argue that it shifts the burden of the tax from capital (the property factor) to consumption, reducing the progressivity of the tax. Some also question as an empirical matter whether it has much of the desired effects on competitiveness. Single sales apportionment may discourage a national business that sells in Minnesota, but that has no facilities in Minnesota, from locating facilities in Minnesota, such as a warehouse, sales office, or plant. Doing so would subject it to Minnesota tax (nexus). If the business makes substantial Minnesota sales, the tax could be substantial. Thus, sales apportionment may discourage national companies (without nexus) from locating branch plants or distribution facilities in Minnesota. For companies with nexus, it has a positive effect on the incentive to locate facilities in Minnesota, regardless of their factors.

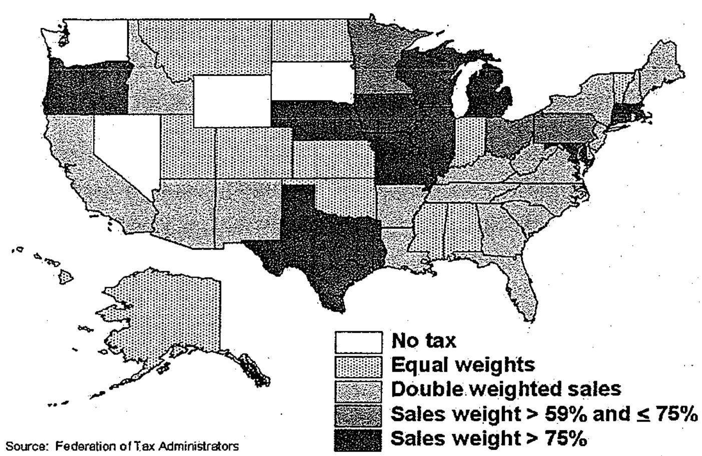
Cost is about $40 million per year

Adopting single sales apportionment will reduce overall state revenues somewhat. The Minnesota Department of Revenue has estimated it would cost $40 million in state revenue for per year, based on the February 2003 forecast.

Trend in other states to heavier sales weighting

The U.S. Supreme Court upheld single sales apportionment in 1978. Since that decision, states have increasingly shifted their apportionment formulas to more heavily weight sales. Seven states (including Iowa, Illinois, Missouri, and Nebraska) now use single sales as their general apportionment formula. Michigan weights sales at 90 percent. In 2003, Wisconsin and Oregon enacted laws phasing in single sales apportionment by tax year 2008. The map below shows the apportionment formulas used by other states for manufacturers, when all of the laws (e.g., in Wisconsin and Oregon) are fully phased in.

Apportionment of Corporate Income
Applicable to Manufacturers



For more information: Contact legislative analyst Joel Michael at 651-296-5057. Also see the House Research publication *Apportionment of Corporate Franchise Tax* (October 2003).

Joel Michael

October 2003

TIF Duration Extensions to Offset Deficits

Tax reform reduced increments, making some districts unable to pay their debt in full

The 2001 property tax reform reduced the increments of tax increment financing (TIF) districts. In some cases, these reductions were sufficiently large that some TIF districts no longer generated enough increments to pay their obligations (bonds or development contracts). The 2001-02 legislature provided a variety of tools to help address these deficits or shortfalls. *See* House Research, *TIF: Deficit Reduction Provisions* (October 2003) for the general description of these mechanisms.

The 2003 Legislature authorized extensions to offset deficits

In 2003, the legislature authorized development authorities and cities to extend the duration of TIF districts beyond the normally applicable legal duration limits. This will permit the development authority (e.g., an HRA or EDA) to collect increments for a longer period of time, providing more increment to pay the TIF obligations. This additional increment, of course, will not be received until after the end of the normal duration of the district and, thus, cannot help to pay current debt service obligations. But if an extension can be combined with a refinancing of the TIF debt, it may enable current debt obligations to be met.

Which districts qualify to be extended?

To qualify for an extension, a district must meet three tests:

- Certification of the district must have been requested before August 1, 2001 (i.e., before enactment of the 2001 property tax reform).
- The district's increments must be pledged to pay bonds, interfund loans (i.e., loans made by the city or authority from one of its non-TIF funds), or developer agreements that were entered before August 1, 2001.
- The authority must have used all of the other available deficit reduction measures to eliminate the deficit including:
    - Uncapping the original tax rate
    - Switching fiscal disparities options
    - Transferring (or pooling) available increments from other districts.

How long is the permitted extension?

The length of the permitted duration extension is determined under a formula that is an estimate of the reduction in the increment that was caused by the 2001 property tax reform. The formula extension is computed by comparing the tax paid by the district's original net tax capacity in 2001 with its average tax paid in 2002 and 2003. (The state general tax and market value taxes are ignored in these computations, since they do not affect increment computations.) The percentage reduction is multiplied by the remaining duration of the district (as of

December 31, 2001) to determine the permitted extension (rounded up to the nearest whole number of years for fractional amounts greater than one-third). For example, a district with nine years remaining that experienced a 25 percent drop in taxes on its original net tax capacity would qualify for a two-year extension (9 years * 25% = 2.25 years or rounded to 2 years). The maximum extension cannot exceed four years, in any case.

DOR may grant an additional extension

If the city estimates that the formula extension will not provide enough additional increment to pay the obligations in full, it may apply to the Department of Revenue (DOR) for an additional extension of up to two years.

Special rules for developer or "pay-as-you-go" obligations

The extension authority was primarily intended to help the development authority or municipality to pay its own obligations—i.e., the reduction created a shortfall, relative to the authority's legal obligation to pay. This situation generally does not occur with developer obligations (commonly referred to as "pay-as-you-go" obligations). Under pay-as-you-go contracts, the authority's obligation is limited to the amount of its available increment. Thus, from the authority's perspective, even though increments may have dropped substantially, there isn't a deficit; the authority is only obligated to pay over whatever increments it receives. However, the developer expected to receive higher payments based on the pre-2001 property tax system and, thus, often will not receive payments that are large enough to cover the costs identified in the agreements with the city or authority. In some instances, these obligations or notes were sold to third-party investors who now suffer the loss. To provide some relief for these developers and investors, the extension law allows the authority to treat a pay-as-you-go obligation as a qualified obligation. If it does so, the maximum extension is one-half the regular formula amount (e.g., it cannot exceed two years). Also, application may not be made to DOR for an additional two-year extension.

Restrictions applicable to extended districts

If an authority elects to extend the duration of a district, after approval of the extension it can only use increments from the district to pay pre-existing obligations (i.e., those issued before August 1, 2001). The purpose of this restriction is to prevent the use of increments from the extension to fund new costs. During the extension period, increments may only be used to pay qualifying obligations (i.e., pre-2001 bonds, interfund loans, and pay-as-you-go notes). If increments from multiple districts are pledged to pay the qualifying obligations, then all of these districts (even if their terms have not been extended) are subject to this limit on the use of increments.

For more information: Contact legislative analyst Joel Michael at 651-296-5057. Also see the House Research publication *TIF Deficit Reduction Provisions* (October 2003).

HOUSE RESEARCH | Short Subjects

Mark Shepard October 2003

Rulemaking: Process for Adopting Rules

State agencies must follow certain procedures when they adopt administrative rules. These procedures are contained in the Administrative Procedure Act (often known as the APA) in Minnesota Statutes, chapter 14. For a more detailed description of these procedures, see "Rulemaking in Minnesota: A Guide" on the Revisor of Statutes web site (www.revisor.leg.state.mn.us).

An agency must follow required procedures when adopting a "rule"

A "rule" is an agency statement of general applicability and future effect, made to implement a law. In most cases an agency must follow APA rulemaking procedures when it issues a statement that comes within the definition of a "rule." Courts may invalidate agency attempts to set policy without following rulemaking procedures.

An agency must take certain actions before formally proposing rules

Rulemaking docket: An agency must maintain a rulemaking docket. This docket must contain information on rules that the agency is thinking about proposing and on rules that are in the middle of the rulemaking process. Minn. Stat. § 14.366.

Solicitation of comments: An agency must solicit comments from the public on the subject matter of the possible rules at least 60 days before publishing a notice of proposed rules. Minn. Stat. § 14.101.

Statement of need and reasonableness: An agency must prepare a statement of the need for and reasonableness of the proposed rules. The statement must be available to the public. The statement must contain a summary of evidence and arguments that the agency intends to use to support the proposed rules. The statement must also:

(1) determine if there are less costly or less intrusive methods for achieving the purpose of the proposed rule;

(2) describe alternative methods for achieving the purposes of the proposed rule that were seriously considered and give reasons why these alternatives were rejected; and

(3) assess the probable costs of complying with the proposed rule and the costs or consequences of not adopting the proposed rule.

Minn. Stat. §§ 14.131 and 14.23.

An agency must give notice of proposed rules and provide opportunity for a public hearing

Notice: An agency must publish notice of proposed rules in the State Register. It must mail this notice to people who have requested to be notified and must make other reasonable efforts to notify people who may be significantly affected by the proposed rules. Minn. Stat. §§ 14.14, subd. 1a, and 14.22.

Public hearing: An agency must conduct a public hearing on proposed rules if 25 or more people submit a written request for a hearing. Most agency rules are adopted without a public hearing. Minn. Stat. § 14.25.

If no public hearing is required, the agency presents its own evidence into the record and accepts material from the public. If a public hearing is held, it is conducted by an independent administrative law judge (ALJ). At the hearing, the agency must make an affirmative presentation demonstrating the need for and reasonableness of the proposed rules. The public may testify and may question agency representatives. Minn. Stat. § 14.14.

An ALJ reviews the proposed rules

If the ALJ determines that the agency has not met all of the legal and procedural requirements, the rules are submitted to the chief ALJ. If the chief supports the ALJ, the agency may not adopt the rule until the defects are corrected. Once the ALJ or the chief ALJ approves the rules, the agency may submit them to the governor and take other procedural steps necessary for final adoption.

If the ALJ and the chief ALJ determine that the agency has not established the need for or reasonableness of the rules, the rules are submitted to the Legislative Coordinating Commission (LCC) and to the House and Senate governmental operations committees for comment. After seeking these comments, an agency may adopt the rules.

The governor may veto proposed rules

The governor may veto all or a severable portion of a proposed administrative rule at the end of the rulemaking process, before the rule takes effect. To veto a rule, the governor must submit notice of the veto to the State Register within 14 days of receiving a copy of the rule from the secretary of state. Minn. Stat. § 14.05, subd. 6.

For more information: Contact legislative analyst Mark Shepard at 651-296-5051. For information on related topics, see the House Research short subjects: *Rulemaking: Review of Adopted Rules* and *Rulemaking: Expedited Process and Exemptions*.

Mark Shepard

October 2003

Rulemaking: Review of Adopted Rules

All three branches of state government have authority to review administrative rules. The legislature also has established processes under which a person can petition an agency for adoption, amendment, or repeal of a rule, or can petition to stop improper enforcement of a policy that an agency has not adopted as a rule.

Executive review

An agency that adopts a rule may amend or repeal the rule. An amendment or repeal is itself considered a "rule" and can be done only after following the usual rulemaking procedures. The governor may veto a proposed rule, but cannot veto or otherwise change an adopted rule, unless the agency follows the rulemaking process.

Legislative review

Amendment or repeal. The legislature can pass a bill repealing or amending a rule, or changing the permissible scope of the rule. If the legislature removes the statutory authority for rulemaking, rules adopted under that authority are automatically repealed. Minn. Stat. § 14.05, subd. 1.

Investigation and objection. The legislature has authorized the Legislative Coordinating Commission (LCC) to investigate complaints about rules. Upon written request of two or more LCC members, or any five legislators, the LCC must review a rule, either by holding LCC meetings or by establishing another group to review the rules. Minn. Stat. § 3.305, subd. 8.

The LCC or the House or Senate governmental operations committees may also formally object to rules. An objection shifts the burden of proof to the agency to show that the rule is valid if the rule is challenged in court. Minn. Stat. § 3.842, subd. 4a.

Review of rules. The legislature has scheduled a comprehensive review of rules of cabinet-level agencies from the 2002 through the 2005 legislative sessions. Minn. Stat. § 14.3691.

Delayed effect. The House and Senate standing committees with jurisdiction over the subject mater of a rule may vote to delay the effect of a proposed rule until the legislature adjourns the annual legislative session that begins after the vote of the committees. Minn. Stat. § 14.126.

Judicial review

An agency rule may be challenged in court. The court must declare a rule invalid if it finds the rule:

- is unconstitutional
- exceeds the statutory authority or
- was adopted without complying with statutory requirements.

Minn. Stat. § 14.45.

Local government petitions for amending or repealing a rule

A city, county, or sanitary district may petition an agency to amend or repeal a rule. A petition must show that since the rule was adopted, there is significant new evidence relating to the need for or reasonableness of the rule, or a less costly or intrusive method of achieving the purpose of the rule. If an agency does not take the action requested by a petition, an administrative law judge (ALJ) holds a hearing on the continued need for and reasonableness of the rule. If the agency does not demonstrate the continued need for and reasonableness of the rule, the rule does not have the force of law after 90 days. An agency can amend the rule so this does not happen. Minn. Stat. § 14.091.

Other petitions for changes in rules

Any person may petition an agency for adoption, amendment, or repeal of a rule. An agency receiving such a petition must respond within 60 days, giving reasons for its response. However, unlike a petition from a unit of local government, there is no hearing process or other remedy if the agency decides not to take the requested action. Minn. Stat. § 14.09.

Petitions alleging improper enforcement of a policy

Any person may petition an ALJ, alleging that an agency is improperly enforcing a policy without going through rulemaking. If the ALJ determines that the agency is improperly enforcing a policy as if it were a duly adopted rule, the ALJ must direct the agency to cease this enforcement. However, when an agency enforces a law or rule by applying the law or rule to specific facts on a case-by-case basis, this does not constitute improper rulemaking. Minn. Stat. § 14.381.

For more information: Contact legislative analyst Mark Shepard at 651-296-5051.

HOUSE RESEARCH | **Short Subjects**

Mark Shepard

October 2003

Rulemaking: Expedited Process and Exemptions

The legislature sometimes authorizes state agencies to adopt administrative rules without following the usual rulemaking procedures. This is done by allowing agencies to use an expedited process or by exempting certain rules from rulemaking.

Expedited rulemaking process

The legislature has created an expedited process for adopting rules. An agency may use this process *only* when specifically authorized by law. Under the expedited process, an agency publishes notice of its proposed rule in the State Register and mails notices to those who have requested notice. The agency must then allow at least 30 days for comment. At the end of the comment period, and after an administrative law judge approves the form and legality, the agency may adopt the rule. Unlike the customary rulemaking process, there is no opportunity for public hearing under the expedited process, unless the legislature specifically provides for this opportunity. Minn. Stat. § 14.389. The legislature seldom has authorized use of this expedited process, which was first enacted in 1997.

There is a separate expedited process for repealing obsolete rules. Minn. Stat. § 14.3895. This process may be used to repeal rules that an agency identifies in a required annual report on obsolete rules.

Specific exemptions

The legislature has enacted numerous laws providing that specific agency policies that come within the definition of a "rule" may be adopted without complying with the usual rulemaking procedures. But the law requires an agency to follow certain minimal requirements even if the rules are exempt from the usual rulemaking procedures. These requirements are:

- The Revisor of Statutes must approve the form of the rule.
- The Office of Administrative Hearings must approve the rule's legality.
- A copy of the rule must be published in the State Register.

These so-called exempt rules are effective only for two years. Minn. Stat. § 14.386.

Sometimes the legislature provides that the two-year effective period and the minimal procedural requirements specified above do not apply to a set of rules.

"Good cause" exemptions

The legislature has provided limited circumstances under which an agency may omit rulemaking procedures. This can be done only if rulemaking procedures are unnecessary, impracticable, or contrary to the public interest, and if the rule:

(1) addresses a serious and immediate threat to public health, safety, or welfare;
(2) complies with a court order or federal law in a manner that does not allow for compliance with rulemaking procedures;
(3) incorporates changes in law when no interpretation of law is required; or
(4) makes changes that do no alter the meaning or effect of a rule.

An agency using the good cause exemption must give notice of its proposed rule, including an explanation of why use of the good cause exemption is justified. The Office of Administrative Hearings reviews the legality of the proposed rules, including the justification for use of the good cause exemption.

Rules adopted under clauses (1) and (2) are effective only for two years.

Minn. Stat. §14.388.

For more information: Contact legislative analyst Mark Shepard at 651-296-5051. For information on the customary rulemaking process, see the House Research short subject *Rulemaking: Process for Adopting Rules*.

HOUSE RESEARCH | **Short Subjects**

Lisa Larson

October 2003

Minnesota's New K-12 Academic Standards

2003 Legislature repeals the profile of learning and replaces it with required academic standards

The Minnesota Legislature repealed the profile of learning portion of the high school graduation rule for the 2003-04 school year and later. Laws 2003, chapter 129, replaces the profile of learning with required academic standards in five subject areas that public high school students must complete to graduate: language arts; mathematics, science; social studies, including U. S. and world history, geography, economics, and government and citizenship; and the arts. The federal No Child Left Behind Act makes state academic standards in language arts, mathematics, and science applicable to all public school students (except the very few disabled students for whom an individualized education plan team determines alternative standards and assessments are appropriate).

Students entering ninth grade in the 2004-05 school year or later must complete four language arts credits, three mathematics credits, three science credits, three and one-half social studies credits, and eight elective course credits (including at least one arts credit). Districts may apply state or locally developed academic standards for the arts. Districts decide whether students meet course credit requirements by satisfactorily completing an academic year of study or by satisfactorily demonstrating mastery of the applicable subject matter.

In addition to meeting course requirements, public school students must also satisfy existing state basic skills requirements in reading, math, and writing in order to graduate. A district must adopt the new graduation requirements no later than the 2007-08 school year; a district that adopts the new graduation requirements earlier must allow students who enter ninth grade by the 2003-2004 school year to graduate based on requirements in effect when the students become ninth graders.

Published benchmarks specify the academic knowledge and skills used to implement state academic standards

The Commissioner of Education must supplement the required academic standards with published grade-level benchmarks that specify the academic knowledge and skills that schools must offer and students must achieve to satisfy the standards. Benchmarks provide information about the content of academic standards and are used to develop tests. The commissioner must implement a four-year cycle beginning in the 2006-07 school year to review required academic standards, related benchmarks, and elective standards. The commissioner may change benchmarks only with specific legislative authorization.

Districts use state language arts, math, and science assessments aligned with state academic standards

As they become available, districts must use state assessments aligned with state-required academic standards in language arts, mathematics, and science to measure student progress in achieving those standards and to determine whether students have satisfied state basic skills requirements in reading, math, and writing. The commissioner must not develop statewide social studies and arts assessments. An eleven-member assessment advisory committee reviews statewide assessments before they are finalized. Beginning in the 2005-06 school year, students in grades 3 through 8 and at the high school level take annual language arts and mathematics assessments. Beginning in the 2007-08 school year, students take science assessments one time in each grade span 3-5, 6-9, and 10-12. Districts administer alternative assessments to students with disabilities or limited English proficiency only when appropriate. The state and local districts must publicly report student, school, district, and state assessment results. By the 2006-07 school year, the commissioner must include in the assessment results a value-added component that measures students' growth in achievement over time. Public schools and districts may use students' assessment performance to promote or retain students or as a percentage of students' final course grade, or may record the performance on student transcripts.

Districts establish and assess local elective standards

Districts must establish local elective standards for and offer courses in health and physical education, vocational and technical education, and world languages. Districts use locally selected assessments to determine whether students achieve these standards.

Commissioner must adopt rules for language arts, mathematics, and arts standards

The Education Commissioner must adopt rules for the academic standards in language arts, mathematics, and the arts, to implement in the 2003-04 school year, which must be the same as those referenced in the 2003 legislation. After adopting these rules, the commissioner cannot amend or repeal the rules nor adopt new rules on the same topic without specific legislative authorization. After considering stakeholders' advice, the commissioner must propose academic standards in science and social studies to the legislature by February 1, 2004.

Commissioner annually identifies high and low performing schools

The commissioner must use objective criteria, including student academic performance, school safety, staff characteristics, and by the 2006-07 school year, a value-added component, to identify four to six designations of high and low performing public schools. Annually, beginning in November 2003, the commissioner must post performance report cards that show each school's designation on the Education Department's school web site. A school or district may appeal its designation to the commissioner; the commissioner's decision to uphold or deny an appeal is final.

Timeline for Implementing New Standards

School Year	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008
Requirements	Profile of learning repealed and replaced with standards in 5 subjects; schools' report cards and high or low performing designations are posted on web; commissioner must propose science and social studies standards to the legislature	Students entering ninth grade must complete credit requirements in 5 subjects in order to graduate	Students in grades 3-8 and high school must take annual language arts and math assessments	Commissioner must include a value-added component when designating high and low performing schools; commissioner must implement a four-year cycle to review required standards, related benchmarks, and elective standards	All high school students are subject to new graduation requirements; students must take science assessments one time in each grade span 3-5, 6-9, 10-12

For more information: Contact legislative analyst Lisa Larson at 651-296-8036.

Lisa Larson

October 2003

Internet Filters and the Children's Internet Protection Act

CIPA imposes Internet filtering on public schools and libraries

Congress passed the Children's Internet Protection Act (CIPA) in 2000 to protect children from sexually explicit material on the Internet. CIPA requires public schools and libraries that receive federal E-rate discounts for Internet access or obtain federal grants to provide electronic information services to install software filters that prevent library users from gaining Internet access to obscene, pornographic, or visually harmful material. (In fiscal year 2002, E-rate discounts totaled $58.5 million, and grants for information services totaled $149 million.)

CIPA allows, but does not require, librarians to disable software filters or unblock specific Internet sites at the request of an adult library user or for research or other lawful purposes. CIPA gives librarians no procedures or standards for deciding whether or not to disable filters or unblock sites when requested, or to require adult library users making such requests to identify themselves. CIPA also does not specify what filtering systems libraries might use—whether keyword or site blocking—with the consequence that libraries implement CIPA differently.

Unlike earlier federal legislation, CIPA is constitutionally defensible

CIPA is the third law since 1996 that Congress passed to address parents' concerns about children's access to harmful Internet materials. The U.S. Supreme Court struck down the 1996 Communications Decency Act (CDA), which made it a crime to put on the Internet sexually explicit material accessible to children, because the law burdened protected speech and failed to protect children.

The Supreme Court prohibited enforcement of the 1998 Child Online Protection Act (COPA), which made it a crime for commercial websites to disseminate Internet communications harmful to children without restricting children's access to the communications; the Court will rule a second time in 2004 on COPA restrictions. The Supreme Court found that several provisions distinguished CIPA from the CDA and COPA and made CIPA constitutionally defensible.

Federal district court found CIPA unconstitutional because it forced public libraries to censor, violate the First Amendment

The American Library Association (*American Library Association v. U.S.*) and the American Civil Liberties Union (*Multnomah County Public Library v. U.S.*) challenged CIPA in federal district court in Pennsylvania, arguing that the law forced public libraries to choose between censoring Internet resources to the detriment of the library users who need Internet access most (10 percent of the 143 million Americans who regularly use the Internet rely on access at a public library) or foregoing much needed federal funds. The cases were consolidated and a three-judge panel ruled CIPA unconstitutional in 2002 because libraries that comply with CIPA's filtering requirement block access to constitutionally protected material. The court reasoned that CIPA imposes an overly broad content-based restriction on libraries that, as a designated public forum, provide library users with Internet access to information from millions of speakers worldwide.

The court found that there were less restrictive alternatives available to further the government's compelling interest in preventing children's access to obscene, pornographic, or visually harmful material. There alternatives included requiring children to use computers in direct view of library staff, placing unfiltered monitors in remote locations, and installing privacy screens or recessed monitors.

Supreme Court finds CIPA constitutionally permissible if adult patrons can ask libraries to unblock sites, remove filters

The U.S. Justice Department appealed the federal district court decision to the U.S. Supreme Court under a CIPA provision for expedited review. In a 6-to-3 decision, the Supreme Court reversed the lower court, holding that CIPA does not violate the First Amendment rights of library users, exceed Congress' power to spend, or impose unconstitutional requirements on libraries seeking federal assistance (*U.S. v. American Library Association (2003)*). The decision allows Congress to require public libraries to install pornography filters on all computers with Internet access as a condition of receiving E-rate funding or grants for computer-related purchases.

The Supreme Court may review its decision if libraries are unable to quickly disable filters or unblock sites at the request of adult library users and thereby restrict users' right to view constitutionally protected material.

Decision appears to narrow the definition of a public forum

Perhaps the greatest significance of this decision lies in Chief Justice Rehnquist's plurality opinion that public libraries are not a public forum for Web publishers (or book authors) to speak and are not surrogates for their users' First Amendment interests. Instead, libraries facilitate users' access to research and educational materials. The Court characterized libraries' decisions to install filters as a decision about collecting suitable and worthwhile materials, and not a decision about removing materials. Continuing the parallel with traditional library activities, Rehnquist wrote that "public libraries have traditionally excluded pornographic materials from their other collections [and] Congress could reasonably impose a parallel limitation on its Internet assistance programs."

The Court found that by allowing libraries to disable filters or unblock sites at users' request, CIPA protects the First Amendment rights of adult library users and neutralizes filter-related problems of blocking protected speech. As a result, strict scrutiny under the First Amendment, which requires government to show that a limitation serves a compelling state interest, and the limitation is narrowly drawn to achieve that interest, does not apply. This decision appears to narrow the definition of public forum, leaving fewer circumstances where the government must demonstrate a compelling interest before it restricts individuals' speech.

For more information: Contact legislative analyst Lisa Larson at 651-296-8036.

Lisa Larson

November 2003

Adequate Yearly Progress Under the No Child Left Behind Act

Federal No Child Left Behind Act requires schools to make adequate yearly progress toward having students become proficient in English and math

A goal of Title I of the No Child Left Behind Act of 2001 "is to ensure that all children have a fair, equal and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging state academic achievement standards and state academic assessments." States must align academic content with student performance standards and annually assess students' progress in achieving those standards. Schools, school districts, and each state must use a statewide educational accountability system to determine whether all students in a school are making adequate yearly progress (AYP) toward having 100 percent of students perform proficiently in English and math by the 2013-2014 school year.

Each state must define proficiency and set its own starting point for measuring AYP, which is based on the performance of the lowest performing demographic subgroup of students or lowest achieving schools. Schools that receive Title I funds suffer increasingly severe consequences each year they do not make AYP. The consequences range from bussing students to different schools within a district and providing before and after school tutoring programs to reassigning or dismissing staff, a state taking over a school, and closing schools. Although the timeline is based on improving student performance in "equal" increments, some states require less of students during an initial two- or three-year period and leave large annual improvements for later years.

No Child Left Behind Act prescribes local accountability measures and timelines for student progress

Historically, school districts have developed school accountability measures locally while implementing federal and state education requirements. In contrast, the No Child Left Behind Act prescribes school and district-level accountability measures and timelines. The federal law:

- requires schools and districts to improve students' performance and achieve specific performance targets
- mandates that all students participate in large-scale statewide assessments
- requires public reporting of school and district-level test scores
- attaches consequences to schools and school districts that fail to achieve AYP

Schools must meet and sustain performance levels to make adequate yearly progress

The federal law requires schools to determine whether all students and specific subgroups of students (limited English proficiency students, students with disabilities, students eligible for free and reduced price meals, and white, black, Asian Pacific Islander, American Indian, and Hispanic students) are making AYP. The fewer student subgroups identified and counted within a school, the fewer chances for the school to fail to make AYP. Schools fail to make AYP if they fail to meet or sustain specific levels of performance for all students and for each identified student subgroup. Schools also fail to make AYP if fewer than 95 percent of students in each identified subgroup are tested.

Minnesota identified fewer schools as not making adequate yearly progress than did other states

There is a wide range in state-by-state percentages of schools identified as not making adequate yearly progress. The federal law allows each state to establish its own academic goals, use state-developed tests to assess students' mastery of those goals, and define what is proficient on state tests. Under its Title I plan, Minnesota defines as proficient those students who achieve a score of 1,420 or higher on the Minnesota Comprehensive Assessments (MCAs). Although data for a number of Minnesota's smallest schools remain to be analyzed, at the end of summer 2003, the Minnesota Department of Education identified 8 percent, or 144 schools throughout the state, as not making AYP toward 100 percent student proficiency in English and math.

The number of students in a subgroup needed to yield statistically reliable information varies by state. Each state decides how many students must be in a particular student subgroup before the performance of that subgroup is included in calculating a school's AYP. Minnesota identified relatively fewer schools as not making AYP than did many other states. This is, in part, because Minnesota elected to require a minimum of 40 disabled students, instead of 20, to establish the statistical reliability of the subgroup.

Adequate yearly progress indicators include student performance, student attendance, and graduation rates

Federal and state accountability systems also use high school graduation rates and student attendance rates in elementary and middle school to sanction low-performing schools, recognize high-performing schools, and target teacher improvement efforts. To satisfy federal AYP requirements for graduation in Minnesota, high schools and school districts must have, or show acceptable improvement toward an average graduation rate of 80 percent. To satisfy federal AYP requirements for attendance in Minnesota, elementary and middle schools and school districts must have, or show acceptable improvement toward a daily attendance rate of 90 percent. Both attendance and graduation rates are calculated for all students in a school. Satisfactory scores on attendance and graduation rates do not cancel out a school's failure to make AYP as measured by students' test results.

For more information: Contact legislative analyst Lisa Larson at 651-296-8036.

HOUSE RESEARCH | Short Subjects

Tom Todd

November 2003

Special Sessions of the Minnesota Legislature

The governor may call the legislature into special session on extraordinary occasions

Besides requiring the legislature to meet in *regular* session during a part of each biennium (two-year period), the Minnesota Constitution permits the legislature to meet in *special* session "on extraordinary occasions."

Some state legislatures are allowed to call themselves into special session. The Minnesota Constitution does not permit this: only the governor can call the legislature into special session. (Statutory law purports to allow the legislature to call itself into special session, under certain circumstances, when the state is under attack by enemies of the United States.)

Statutory law directs the governor to call a special session by means of a proclamation, to notify all legislators of the time of the meeting, and to inform the legislature of the purpose of the session. The governor's proclamation is filed with the secretary of state and is printed in the journal of each house and in the *Laws of Minnesota* (a compilation of legislative actions published each year).

Special sessions permit legislative action at any time of the year

Special sessions permit legislative action, if necessary, at times when the legislature is not meeting, or allowed by the constitution to meet, in regular session (generally, the summer and autumn months). Typically governors call special sessions for two reasons:

- The legislature does not complete work on vital legislation during the time allowed for the regular session.
- Changed circumstances require urgent legislative action after the regular session ends.

It is possible for a special session to run concurrently with a regular session—either because a special session continues after the start of a regular session, or because the governor chooses to call a special session during a regular session. This overlapping of special and regular sessions has occurred only once, in 1981.

Special sessions have become more frequent in recent decades

Special sessions once were rare but have become more frequent. According to information complied by the Legislative Reference Library, governors called three special sessions during the first half century of statehood (1857-1906), ten in the succeeding half century (1907-1956), and 29 in the nearly 50 years since 1957. As many as six special sessions have been called during a single legislative biennium (in 1981-82).

Each special session is discrete

Each special session is a separate, free-standing meeting of the legislature, independent of the regular legislative session and any other special session. All legislation to be considered must be introduced as new bills. The legislature may not act on bills from the regular session or another special session.

The legislature determines the length and scope of a special session

Legislators decide what issues and legislation to consider in a special session and how long to meet. Governors initiate special sessions but have no authority to limit their scope or duration. Nor does the constitution regulate the length of special sessions, as it does regular sessions. Once they are called into a special session, legislators could decide to take up a large agenda and meet for a lengthy period—even, in theory, until legislative terms of office end and a new legislature convenes in regular session, in January of the next odd-numbered year.

Most special sessions are quite concentrated and short

Despite the legislature's unbridled authority to determine the scope and length of special sessions, long rambling ones are rare. The length of most is best measured in hours or days. Seldom does one extend beyond a single week. The longest in history—by far—occurred in 1971, when a special session convened in late May and did not adjourn finally until the end of October.

Two common practices contribute to the brevity of most special sessions.

First, the governor and legislative leaders seek agreement on the business of the session before the governor calls it. Some agreement on the general scope of the session usually is possible. This is announced publicly before the session and reflected in a general way in the language of the governor's proclamation. A typical proclamation these days recites the need for essential laws in specified subjects and calls for the prompt conclusion of legislative business, with a limited agenda and as much prior agreement as possible.

Besides seeking agreement on the general scope of the session, the leaders also may attempt to reach more detailed agreements about the content of legislation. Sometimes this is possible—to the point even that bills drafted before the special session begins may pass into law without any amendment whatever. Other times, important matters remain unsettled when the session begins, because the issues are so complex or contentious that the leaders cannot agree, or their agreements do not hold once all legislators are assembled.

Second, the legislature usually uses expedited procedures to pass legislation. During special sessions, the House and the Senate often pass bills shortly after they are introduced. This is accomplished by declaring an "urgency" and suspending both the constitutional requirement that each bill be considered on three different days in each house and the requirement of legislative rules that each bill be referred to a committee when it is introduced. The two-thirds vote required in each house to expedite passage in this way usually is forthcoming, because legislators generally wish to curb the length of the session.

For more information: Contact Tom Todd at 651-296-5048.

HOUSE RESEARCH | Short Subjects

Joe Cox   November 2003

Schools and Firearms

General

It is generally a crime to possess a dangerous weapon, including a firearm, while knowingly on school property (felony). Minn. Stat. § 609.66, subd. 1d. It is also a crime to possess (gross misdemeanor) or "brandish" (felony) a replica firearm or a BB gun while knowingly on school property. There are many important exceptions and definitions to note, which are set out below.

School property

For purposes of school-related firearm possession crimes, school property includes:

- the improved grounds of either a public or private school;
- the area inside a school bus when the bus is being used for school activities;
- any other building under the temporary, exclusive control of a school or association of schools if conspicuous signs are posted at each entrance giving notice of the school-related use; and
- a licensed child care center when children are present.

Definition of a child care center

A child care center is a facility that operates a child care program that is required to be licensed, but does not include family or group family day care housed in a private residence. A child care program is a system of activities to promote the development of a child for part of a day. In-home day care is not a child care center.

Possession by students

It is generally a crime for students to possess firearms on school property—a felony-level offense in most cases. A student who brings a firearm to school is subject to a juvenile delinquency petition or possibly adult criminal charges, depending on the circumstances. Minn. Stat. § 609.66, subd. 1d. Additionally, students have an additional consequence of a mandatory one-year minimum expulsion. The school board is authorized to modify the expulsion on a case-by-case basis. Minn. Stat. § 121A.44. School boards must have policies to notify law enforcement officials when a pupil unlawfully brings a firearm to school. Minn. Stat. § 121A.05.

Police and the courts: sharing information with schools

A law enforcement agency must notify a juvenile's school when the agency has probable cause to believe the juvenile committed an offense involving a dangerous weapon (including a firearm). A juvenile's probation officer must give a copy of the juvenile's disposition order to the school if the juvenile is adjudicated delinquent for an act involving a dangerous weapon (including a firearm). Minn. Stat. § 260B.171.

Persons with permits to carry pistols in public

A person with a pistol permit is not allowed to carry a firearm on school property (misdemeanor). Minn. Stat. § 609.66, subd. 1d. However, there is an exception for permit holders while in a motor vehicle or while placing a firearm in the trunk (or rear area of the vehicle).

Exceptions

The prohibition against carrying a firearm on school property does not apply to:

- on-duty peace officers;
- on-duty military personnel or students participating in military training;
- a person with the written permission of the principal (or director of a child care center);
- firearms legally stored in a motor vehicle (generally meaning they are unloaded and cased);
- a ceremonial color guard;
- firearm safety courses;
- gun shows held on school property; or
- a person on unimproved property owned by a school (unless the person knows children are present for school activities). Minn. Stat. § 609.66, subd. 1d.

Preemption

A school district may not regulate firearm possession by nonstudents or nonemployees in a manner that is more restrictive or less restrictive than the statute that establishes the general rule and the exceptions listed above. Minn. Stat. § 609.66, subd. 1d.

For more information: Contact legislative analyst Joe Cox at 651-296-5044.

Randall Chun

Revised: November 2003

Medical Assistance

Medical Assistance (MA), the state's Medicaid program, is a jointly funded, federal-state program that pays for health care services for low-income individuals. The program is administered locally by counties, under the supervision of the state Department of Human Services (DHS). The program is governed by Minnesota Statutes, chapter 256B, and by federal Medicaid law, which allows states considerable flexibility in designing their Medicaid programs.

Eligibility

To be eligible for MA, an individual must:

- Be a member of a group for which MA coverage is mandatory under federal law, or a member of an optional group that the state has chosen to cover. Covered groups include families, children, pregnant women, the elderly, and persons with disabilities.

- Meet program income and asset limits. Different limits apply to different categories of individuals. Certain types of income and specified assets are excluded when determining eligibility. Income and asset limits for selected groups are:

Eligibility group	Net income limit, as % of federal poverty guidelines (FPG)*	Asset limit**
Children < age 2	280	None
Children 2 through 18	170	None
Children 19 through 20	100	None
Pregnant women	275	None
Parents	100	$10,000 for one/$20,000 for two or more persons
Aged, blind, or disabled	100	$3,000 for one/$6,000 for two/$200 each additional

* The income limit for children 2 through 18 is scheduled to be reduced to 150 percent of FPG, and the income limit for pregnant women reduced to 200 percent of FPG, effective July 1, 2004.
** The homestead, household goods, a vehicle, a burial plot and certain assets for burial expenses, and other specified items are not counted as assets.

Individuals with incomes over these limits can also qualify for MA through a spenddown. Under a spenddown, an individual must incur medical bills in an amount that is equal to or greater than the amount by which the individual's income exceeds the spenddown limit of 100 percent of FPG for families and children and 75 percent of FPG for individuals who are aged, blind, or disabled.

Eligibility (cont.)

- Be a U.S. citizen or a noncitizen who meets specified immigration criteria.
- Be a resident of Minnesota.
- Meet other program eligibility requirements.

Covered services

Minnesota provides all federally mandated services and most services designated by the federal Medicaid program as optional. These services include, but are not limited to: physician, hospital, therapy and rehabilitative, dental, medical equipment and supplies, home health care, health clinic, mental health, prescription drugs, medical transportation, nursing home, and intermediate care facility for persons with mental retardation and related conditions (ICF/MR) services. Beginning October 1, 2003, adult enrollees who are not pregnant will be subject to copayments for certain services.

The state has also received federal approval to provide services not normally covered by Medicaid. These home and community-based "waivered services" are intended to make it possible for individuals to remain in the community, rather than reside in a hospital, nursing home, or ICF/MR.

Provider reimbursement

The MA program reimburses providers under both a fee-for-service system and a managed care system (comprised of the Prepaid Medical Assistance Program or PMAP and county-based purchasing initiatives). Under the fee-for-service system, health care providers bill DHS and are reimbursed at rates specified by state law. Under managed care, prepaid health plans (or counties in the case of county-based purchasing) receive a monthly capitation payment for each enrollee. The state does not set provider reimbursement rates; these rates are instead the product of negotiation between the health care providers and the prepaid health plan or county.

Funding and expenditures

The federal share of MA costs is determined by a formula that is based on state per capita income. In fiscal year 2002, the federal government paid 50 percent of the cost of MA services, and the state was responsible for the remaining 50 percent. In fiscal year 2003, total state and federal MA expenditures for services were $4.758 billion.

Recipients

As of May 2003, 453,242 individuals were eligible for MA services. As of July 1, 2003, 262,453 MA recipients in 80 counties received services under PMAP or a county-based purchasing initiative.

Application procedure

Individuals interested in applying for MA should contact their county human services agency.

For more information: Contact legislative analyst Randall Chun at 651-296-8639. Also see the House Research information brief *Medical Assistance*.

Lisa Larson **November 2003**

2003 On-Line Learning Option Act

Minnesota school districts and charter schools may offer K-12 students on-line courses and earn additional revenue

The 2003 Minnesota Legislature passed the On-Line Learning Option Act (Minn. Stat. § 124D.095) to allow Minnesota school districts and charter schools to offer various on-line courses for credit to Minnesota K-12 public school students and some nonpublic K-12 students. Schools offering on-line courses can earn additional revenue for the on-line courses taken by students not enrolled in the district or charter school. Districts that provide on-line learning courses to their enrolled students do not receive on-line learning aid for those students. On-line learning providers may limit student enrollment based on locally adopted acceptance standards. Out-of-state and nonschool district vendors cannot be on-line learning providers but may help providers design on-line courses.

On-line learning providers must offer rigorous courses aligned with academic standards and provide actual teacher contact time

On-line learning providers must be certified by the Minnesota Department of Education and must pay a $250 fee. Certified providers must offer:

- rigorous courses aligned with state academic standards that enable students to progress in a subject
- on-line courses with standards or instruction, curriculum, and assessment requirements equivalent to other courses
- actual teacher contact time or other student-to-teacher communication

Once certified, providers may receive payment for all on-line courses they offer unless challenged by a district or the department.

All previously enrolled public school students may apply to take up to 12 on-line learning courses in a single school year

All Minnesota K-12 public school students enrolled in a public school for at least one school year may apply to enroll in an on-line learning course; minor students may apply with their parents' written permission. Interested students do not need the permission of their enrolling district or charter school to take on-line learning courses provided by another district or charter school. Students who take on-line learning courses in another district or charter school must give their district or charter school at least a 30-day notice.

Students taking on-line learning courses may:

- take up to 12 semester-long courses in a single year
- complete course work at a grade level commensurate with their ability
- enroll in additional on-line courses under a separate fee agreement

Students with disabilities may enroll in on-line courses consistent with their individualized education plan. Aid paid to a district or charter school enrolling a student is reduced and paid to another district or charter school providing on-line learning courses outside the enrolling district or charter school.

Districts and charter schools cannot discriminate against students taking on-line courses and must provide such students with the same access to computer hardware and education software as all other students. On-line learning providers must help participating students whose families qualify for the education tax credit to acquire computer hardware and educational software.

Participation in on-line learning by public school students not enrolled in public school throughout the preceding school year and by nonpublic and home school students is limited by available revenue and order of application.

Licensed Minnesota teachers deliver on-line learning

Licensed Minnesota teachers must assemble and deliver instruction to students taking on-line learning courses. Teachers providing on-line learning instruction are limited to 40 students per course unless the commissioner of education waives this requirement. Actual teacher contact time or other similar communication is an expected on-line learning component.

School districts and charter schools receive on-line learning aid from other districts or a state aid pool

Students taking on-line learning courses in another district or charter school generate on-line learning aid that comes either from the district or charter school enrolling the participating student or a state on-line learning aid pool. Districts and charter schools that enroll students who take on-line learning courses from another district or charter school may proportionately reduce the students' teacher contact or classroom instruction time.

A semester-long on-line learning course equals 1/12 of a pupil unit and courses of other lengths generate proportionate funding amounts. On-line learning providers receive 88 percent of the on-line learning aid participating students generate, and the district or charter school enrolling the participating students keeps 12 percent for administrative and other nonacademic costs.

The state on-line learning aid pool has limited funds for public school students not enrolled in public school throughout the preceding school year and for nonpublic and home school students to take on-line learning courses. The 2003 Legislature appropriated $1,000,000 in fiscal year 2004 and $1,250,000 in fiscal year 2005 for on-line learning.

For more information: Contact legislative analyst Lisa Larson at 651-296-8036.

Randall Chun

Revised: November 2003

Prescription Drug Program

The Prescription Drug Program is a state program that provides prescription drug coverage for low-income Minnesotans who are elderly or disabled and enrolled in Medicare. The program is administered locally by counties, under the supervision of the Department of Human Services (DHS). The program is governed by Minnesota Statutes, section 256.955, and was first implemented in 1999.

Eligibility

To be eligible for the Prescription Drug Program, an individual must:

- Be a Medicare enrollee who is either age 65 or over, or under age 65 with a disability;
- Be enrolled as either a Qualified Medicare Beneficiary (QMB) or a Service Limited Medicare Beneficiary (SLMB) (see below);
- Not have prescription drug coverage through a private sector health insurance plan or through a Medicare supplement plan, and not have had this coverage in the four months prior to approval;
- Be ineligible for Medical Assistance (MA) or General Assistance Medical Care (GAMC) without a spenddown, and not be enrolled in MinnesotaCare;
- Have an income that does not exceed 120 percent of the federal poverty guidelines, after the income exclusions of the MA program and a $20 disregard per individual or couple are applied;
- Have assets whose value does not exceed $10,000 for one individual and $18,000 for a household of two or more, after the homestead, household goods, a vehicle, and other specified assets are excluded;
- Have lived in Minnesota for at least 180 days.

The program income and asset limits result from the requirement that enrollees be eligible as QMBs or SLMBs. QMBs are eligible for MA payment of Medicare Part A and B premiums and cost-sharing, and SLMBs are eligible for MA payment of Medicare Part B premiums.

Covered services

Enrollees have coverage for most prescription drugs. The program covers prescription drugs that are covered under MA, for which the manufacturer has agreed to pay a rebate to DHS. Enrollees can obtain these prescription drugs at pharmacies that participate in state health care programs.

The program does not cover, for a specific enrollee, prescription drugs that are covered under an assistance program offered by a pharmaceutical manufacturer.

(This provision is effective 90 days after the Minnesota Board on Aging implements the Prescription Drug Assistance Program. This program was authorized by Laws 2003, first special session, chapter 14, article 12, section 11, and is intended to assist individuals in accessing programs offered by pharmaceutical manufacturers that provide free or discounted prescription drugs or provide prescription drug coverage.)

Pharmacy reimbursement Pharmacies are reimbursed for prescription drugs provided to program enrollees at the MA reimbursement level, minus any deductible paid by an enrollee.

Funding and expenditures Enrollees must satisfy a $35 monthly deductible. The Prescription Drug Program is funded by the state. In fiscal year 2003, after accounting for prescription drug rebates, the state paid $8.2 million for prescription drugs provided to program enrollees.

Recipients In fiscal year 2003, average monthly enrollment in the program was 6,246. As of September 2, 2003, enrollment in the program was 6,801.

Application procedure Individuals interested in applying for the Prescription Drug Program should contact their county human services agency. More information about the program can be obtained from the Senior LinkAge Line (1-800-333-2433).

For more information: Contact legislative analyst Randall Chun at 651-296-8639.

Randall Chun

Revised: November 2003

MinnesotaCare

MinnesotaCare is a state program that provides subsidized health care coverage to low- and moderate-income families and individuals. The program is administered by the Department of Human Services; counties have the option of processing applications and determining eligibility. The program is governed by Minnesota Statutes, chapter 256L.

Eligibility

To be eligible for MinnesotaCare, an individual must:

- Have gross income that does not exceed 275 percent of the federal poverty guidelines (FPG) for families and children ($50,604 for a household of four), and 175 percent of FPG for single adults and households without children ($15,720 for a household of one and $21,216 for a household of two). Parents with annual gross incomes over $50,000 are ineligible; this income cap does not apply to pregnant women and minor parents.
- Have assets that do not exceed $10,000 for a household of one and $20,000 for a household of two or more, after certain exclusions. This asset standard does not apply to pregnant women and children.
- Not have access to employer-subsidized health care coverage, and not have had access to this coverage through the current employer for 18 months prior to application or renewal. This requirement does not apply to children with incomes that do not exceed 150 percent of FPG and certain other children.
- Have no health care coverage at the time of application and for four months prior to application or renewal. Children with incomes that do not exceed 150 percent of FPG and certain other children considered to be "underinsured" are exempt from this requirement.
- Be a resident of Minnesota. Pregnant women, families, and children must meet the residency requirements of the Medical Assistance (MA) program; adults without children must satisfy a 180-day residency requirement.

Covered services

Pregnant women and children have access to a broader range of covered services than adults who are not pregnant. Pregnant women and children receive coverage for all health care services provided under MA. MA covers physician, hospital, prescription drug, nursing home, and a wide range of other health care and long-term care services.

Parents and, through September 30, 2003, all eligible single adults and households without children, are covered for most, but not all MA services.

Services not covered include personal care attendant, private duty nursing, nursing home, ICF/MR (intermediate care facility for persons with mental retardation and related conditions), and special transportation services. Adults who are not pregnant are also subject to certain benefit limitations that do not apply to pregnant women or children.

Effective October 1, 2003, single adults and households without children, with incomes greater than 75 percent but not exceeding 175 percent of FPG, are covered under a limited benefit set that includes inpatient hospital, physician, and other specified services, subject to a $5,000 annual cap on outpatient services. Single adults and households without children with incomes not exceeding 75 percent of FPG will continue to receive coverage, along with parents, for most MA services.

Premiums and cost-sharing

Enrollees must pay premiums based on a sliding scale. Children with incomes that do not exceed 150 percent of FPG pay a reduced annual premium of $48. Adult enrollees who are not pregnant are subject to coinsurance and copayments for specified services.

Provider reimbursement

All enrollees receive health care services through prepaid health plans. The MinnesotaCare program pays prepaid health plans a monthly capitation payment for each MinnesotaCare enrollee. MinnesotaCare does not set provider reimbursement rates; these rates are instead the result of negotiation between health care providers and the prepaid health plan.

Funding and expenditures

In fiscal year 2003, the state paid $435 million for medical services provided to MinnesotaCare enrollees. Fifty-eight percent of this cost was paid for by the state, 32 percent by the federal government, and 10 percent by enrollees through premium payments.

State funding for MinnesotaCare and other health care access initiatives is provided by a tax of 1.5 percent on the gross revenues of health care providers (the tax rate will increase to 2 percent beginning January 1, 2004). A 1 percent tax on the premiums of nonprofit health plan companies will take effect January 1, 2004.

The state receives federal funding at the MA match rate for health care services provided to enrollees who are children, parents, or pregnant women. The state receives federal funding at an enhanced match rate (under the State Children's Health Insurance Program) for parents and relative caretakers with incomes between 100 percent and 200 percent of FPG.

Recipients

As of October 1, 2003, 154,790 individuals were enrolled in the MinnesotaCare program. Just under one-half of these enrollees were children.

Application procedure

MinnesotaCare applications can be obtained by calling 1-800-657-3672. Applications are also available at county human services agencies.

For more information: Contact legislative analyst Randall Chun at 651-296-8639. Also see the House Research information brief *MinnesotaCare.*

Randall Chun

Revised: November 2003

General Assistance Medical Care

General Assistance Medical Care (GAMC) is a state-funded program that pays for certain health care services for low-income Minnesota residents who are not eligible for other health care programs. Most GAMC enrollees are low-income adults between the ages of 21 and 64 who do not have dependent children. The program is administered locally by the counties, under the supervision of the Department of Human Services (DHS), and is governed by Minnesota Statutes, section 256D.03.

Eligibility

To be eligible for GAMC, an individual must:

- Receive General Assistance (GA) or meet the GAMC income and asset limits (see table below)
- Not be eligible for Medical Assistance (MA)
- Be a Minnesota resident; GAMC has a 30-day durational residency requirement
- Meet other program eligibility requirements

Eligibility Group	Income Limit	Asset Limit*	Covered Services	Cost-Sharing
1. GA recipients	GA limit applies ($203/month for one person; $260 for married couple)	GA limit applies ($1,000 per assistance unit)	All covered services	Copayments
2. GAMC full coverage	75 percent of FPG	$1,000 per household	All covered services	Copayments
3. GAMC hospital-only coverage	Greater than 75 percent but not exceeding 175 percent of FPG	$10,000 per household of one/$20,000 per household of two or more	Inpatient hospital services and physician services provided during inpatient stay	$1,000 deductible for each hospitalization

* The homestead, household goods, a vehicle, and other specified items are not counted as assets.

Covered services

GAMC covers a range of medical services for individuals with incomes not exceeding 75 percent of federal poverty guidelines (FPG). These include, but are not limited to: physician, hospital, rehabilitative, dental, medical equipment and supplies, mental health, prescription drugs, and medical transportation.

Services not covered include: home health care services, nursing home services, therapy services provided by independently enrolled providers, pregnancy and related services (GAMC enrollees who are pregnant qualify for coverage of these services under MA and/or Emergency MA), and services in an intermediate care facility for persons with mental retardation and related conditions (ICF/MR).

Effective October 1, 2003, covered services for enrollees with incomes greater than 75 percent but not exceeding 175 percent of FPG are limited to inpatient hospital services and physician services provided during an inpatient stay.

Cost-sharing

Effective October 1, 2003, enrollees with incomes at or below 75 percent of FPG are subject to the following copayments:

- $3 per nonpreventive visit (does not apply to visits to mental health professionals, physical therapists, occupational therapists, and speech therapists)
- $25 for eyeglasses
- $25 for nonemergency visits to an emergency room
- $3 per brand-name prescription and $1 per generic, subject to a $20 per month limit (antipsychotic drugs are exempt from copayments), and
- 50 percent coinsurance for basic restorative dental services

Effective October 1, 2003, enrollees with incomes greater than 75 percent but not exceeding 175 percent of FPG are subject to a $1,000 deductible for each inpatient hospitalization.

Provider reimbursement

The GAMC program reimburses providers under both a fee-for-service system and a managed care system (composed of prepaid GAMC and county-based purchasing initiatives). Under the fee-for-service system, health care providers bill DHS and are reimbursed at rates specified by state law. Under managed care, prepaid health plans (or counties in the case of county-based purchasing) receive a monthly capitation payment for each enrollee. The state does not set provider reimbursement rates; these rates are instead the result of negotiation between the health care providers and the prepaid health plan or county.

Funding and expenditures

GAMC is completely state funded; there is no federal funding. During fiscal year 2003, the state spent $241.2 million in payments to medical providers for GAMC services.

Recipients

As of June 2003, 42,893 persons were eligible for GAMC services. As of July 1, 2003, 22,855 GAMC recipients in 80 counties were enrolled in prepaid GAMC or a county-based purchasing initiative.

Application procedure

Individuals interested in applying for GAMC should contact their county human services agency.

For more information: Contact legislative analyst Randall Chun at 651-296-8639. Also see the House Research information brief *General Assistance Medical Care.*

Nina Manzi December 2003

The Federal Earned Income Tax Credit and Minnesota Working Family Credit

What are the credits?

The federal earned income tax credit (EITC) and Minnesota working family credit (WFC) equal a percentage of the earnings of low-income individuals. The credits are refundable; if the credit exceeds a filer's tax liability, the rest is paid as a refund. Since these credits increase their recipients' earnings, they act as wage supplements and are thought to provide a work incentive.

Who is eligible for the credits?

Anyone with wages or self-employment income may be eligible to claim the EITC and the WFC. Individuals with more than $2,650 in interest income, dividends, rental and royalty income, and capital gain income do not qualify.

How are the credits calculated?

The credits equal a percentage of earned income, up to a maximum credit amount, and are phased out when the claimant's total income exceeds a threshold. The maximum credit amounts and income levels at which the credits are phased out vary depending on the number of children in the household and whether the claimants are married. Both the maximum credit and the phaseout threshold are adjusted annually for inflation. In tax year 2004, the maximum credits, phaseout threshold, and income level at which the credits are no longer allowed are:

	Maximum credit		Phaseout threshold		Income at which credit fully phased out	
	EITC	WFC	EITC	WFC	EITC	WFC
Unmarried claimants						
No children	$390	$98	$6,390	$6,390	$11,490	$11,500
1 child	$2,604	$779	$14,040	$16,690	$30,338	$30,293
2 or more children	$4,300	$1,506	$14,040	$19,800	$34,458	$34,421
Married claimants						
No children	$390	$98	$7,390	$7,390	$12,490	$12,500
1 child	$2,604	$779	$15,040	$17,690	$31,338	$31,293
2 or more children	$4,300	$1,506	$15,040	$20,800	$35,458	$35,421

How do filers claim the credits?

Filers claim the credits when they file their federal and state income tax returns, by completing a schedule or worksheet.

How many Minnesotans claim the credits?

In tax year 2001, 218,063 Minnesotans claimed the EITC and 212,709 claimed the WFC. These claims represent 9.1 percent of all federal returns filed by Minnesotans, and 9.2 percent of all state returns filed.

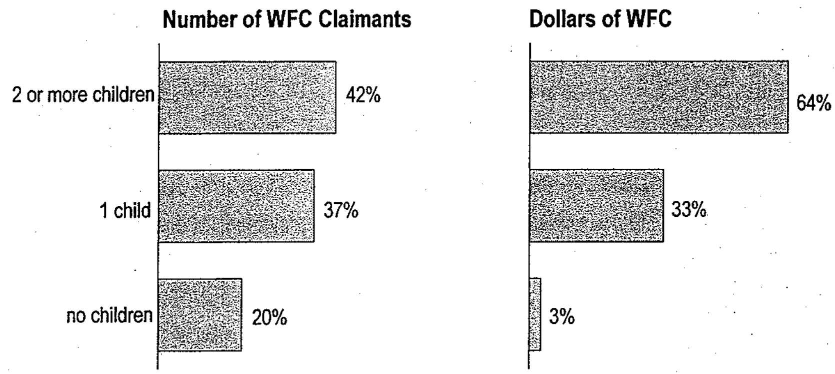
How much is paid out in credits?

In tax year 2001, Minnesotans claimed $321 million in EITC, of which $50 million offset tax liability and the remaining $271 million was paid as a refund. The average EITC was $1,472.

Minnesotans claimed an additional $107 million in WFC, of which $21 million offset tax liability and the remaining $86 million was paid as a refund. The average WFC was $505.

How are the credits distributed among different types of families?

Eighty percent of all earned income credits and working family credits went to families with one or more children. These families received about 97 percent of the total amount of credits paid in 2001. Individuals without children filed 20 percent of returns claiming credits, but received only 3 percent of the total amount credits. Claimants with children received most of the total amount of credits because these families qualify for a higher maximum credit than do claimants without children.



How are the credits distributed geographically?

While over 47 percent of the returns claiming credits came from the Twin Cities metropolitan area, these seven counties generated about 55 percent of all returns filed. Put another way, in 2001 nonmetro filers were more likely to claim the credit than were metro area filers.

How does Minnesota compare with other states?

Nationwide, 15 percent of all income tax returns claimed the EITC, compared to 9.1 percent in Minnesota. The average EITC nationwide in 2001 was $1,691; it was $1,472 in Minnesota. Minnesota's number of recipients and credit amounts are lower than the national averages because state residents have above average incomes.

Fifteen other states provide a state version of the EITC, with a 16th scheduled to take effect in 2003. In most cases the state credit equals a percentage of the federal EITC.

For more information: Contact legislative analyst Nina Manzi at 651-296-5204. Also see the House Research information brief *The Federal Earned Income Tax Credit and the Minnesota Working Family Credit,* December 2003.

The Research Department of the Minnesota House of Representatives is a nonpartisan office providing legislative, legal, and information services to the entire House.

HOUSE RESEARCH | Short Subjects

Karen Baker and Steve Hinze

Updated: December 2003

Limited Market Value

What is limited market value?

Limited Market Value (LMV) is a limitation on the amount that a property's market value may grow from one year to the next for purposes of property taxation. It was enacted to help mitigate rising property taxes resulting from rapidly inflating property values.

What property does LMV apply to?

The following classes of property qualify for LMV:

- agricultural homestead and nonhomestead;
- residential homestead and nonhomestead;
- seasonal recreational residential property (i.e., cabins); and
- timberland (beginning with the 2001 assessment).

Is it permanent?

LMV provisions were in effect from 1973-1979, and again from 1993 to the present. The 2001 Legislature enacted a law to phase out LMV over a six-year time period—from assessment years 2002-2007. Beginning in assessment year 2007 (for taxes payable in 2008), all property will be valued at its estimated full market value for property tax purposes.

Does the assessor continue valuing the property?

The assessor continues to determine the property's fair market value. This value is called the "estimated market value" (EMV). However, property that qualifies for treatment under LMV may not be taxed at the full value of the property if its growth exceeds the limits.

How does it work?

For qualifying property in assessment year 2003 (taxes payable in 2004), the increase in market value shall not exceed the **greater** of:

- 12 percent of the LMV in the preceding assessment year or
- 20 percent of the difference between the current year's EMV and the previous year's LMV.

How does the phaseout work?

For each year, the maximum valuation increase is determined by calculating the increase allowed under columns (1) and (2), and choosing whichever is higher.

Assessment Year	(1) Percentage of previous year's LMV	(2) Percentage of difference between previous year's LMV and current year's EMV
2002	10%	15%
2003	12	20
2004	15	25
2005	15	33
2006	15	50

Example calculations

Assessment year 2003/payable year 2004.
The LMV of a home is $100,000 for assessment year 2002. For assessment year 2003, the assessor determines that the EMV of the home is $130,000. The maximum market value increase for tax purposes is the greater of:

- 12 percent increase over the previous year, which is $12,000, or
- 20 percent of the $30,000 difference in value, which is $6,000.

Therefore, the home's LMV is $100,000 plus $12,000, or $112,000 for assessment year 2003.

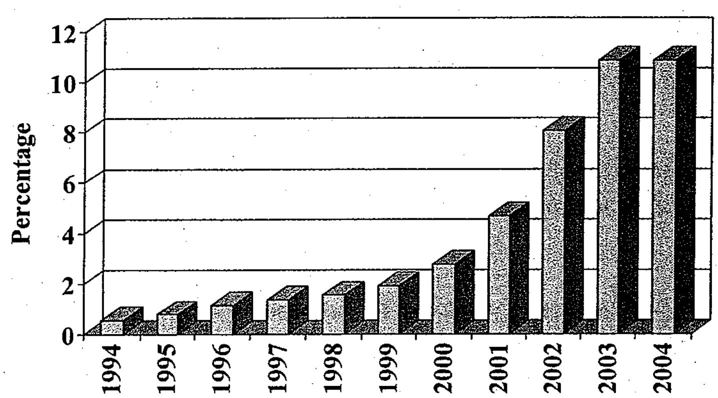
How much has limited market value grown?

For taxes payable year 2004, almost $35 billion of market value was excluded from the tax rolls due to LMV. The table shows the amounts for 1994-2004.

Taxes Payable Year	EMV*	LMV*	Excluded Value* Amount	Excluded Value* Percentage
1994	$124.1	$123.5	$0.7	0.5%
1995	132.0	131.0	1.0	0.8
1996	142.1	140.4	1.6	1.1
1997	152.1	150.0	2.0	1.3
1998	163.6	161.1	2.5	1.5
1999	176.6	173.3	3.4	1.9
2000	202.6	197.0	5.6	2.8
2001	226.4	215.8	10.6	4.7
2002	260.4	239.4	21.0	8.1
2003	284.8	253.9	30.9	10.8
2004	321.6	286.7	34.9	10.8

* Affected property classes only. All amounts in billions.

Statewide Percentage of Tax Base Excluded due to LMV (affected classes only)



For more information: Contact legislative analyst Karen Baker at 651-296-8959 or Steve Hinze at 651-296-8956.

HOUSE RESEARCH | **Short Subjects**

Nina Manzi

December 2003

The Minnesota and Federal Dependent Care Tax Credits

What are the credits?

The Minnesota and federal dependent care credits partially offset the cost of child care for certain workers. The maximum Minnesota credit is $720 for one child, and $1,440 for two or more children. The maximum federal credit is $1,050 for one child, and $2,100 for two or more children.

Are the credits refundable?

The Minnesota credit is fully refundable. If an individual qualifies for a credit that is greater than his or her tax liability, the excess is paid as a refund. The federal credit is not refundable, and may only be used to offset federal income tax liability.

Who is eligible for the credits?

Anyone who incurs expenses related to the care of a dependent and related household expenses may be eligible to claim the credits. The claimant must:

- maintain a household that includes the dependent
- pay for care for a dependent under age 13, or a disabled spouse or adult dependent; and
- pay for care in order to work or look for work

How are the credits calculated?

The *federal credit* equals 35 percent of up to $3,000 of qualifying expenses for one child ($6,000 of qualifying expenses for two or more children). The maximum federal credit is $1,050 for one child, and $2,100 for two or more children. The federal credit begins to phase down when income exceeds $15,000, with the credit percentage decreasing as income increases. Claimants with incomes over $43,000 qualify for the minimum federal credit equal to 20 percent of qualifying expenses, or up to $600 for one child, and $1,200 for two or more children, depending on actual child care costs. For example, a claimant with $50,000 of income and $1,000 of expenses will qualify for a credit of $200 (20 percent of $1,000).

The *state credit* equals the lesser of the federal credit, or $720 for one child ($1,440 for two or more children). The state credit is calculated by reference to the federal credit for which the claimant is eligible, not the amount actually used to offset federal liability. For example, an individual with expenses of $2,000 and income below $15,000 is eligible for a federal credit of $700 (35% of $2,000). While this individual will probably not have any federal tax liability and thus will not benefit from the nonrefundable federal credit, he/she will still be eligible for a refundable state credit of $700.

The state credit is subject to a separate phaseout than the federal credit. The state phaseout begins when income exceeds $19,960. The income threshold for the phaseout is adjusted each year for inflation. In tax year 2004, the state credit is fully phased out when income exceeds $33,610.

How do filers claim the credits?

Filers claim the credits when they file their federal and state income tax returns, by completing a separate schedule—Form 2441 for the federal credit, and schedule M-1CD for the state credit.

How many Minnesotans claim the credits?

In tax year 2001, 131,299 Minnesotans claimed the federal dependent care credit, and 37,669 claimed the state credit. These claims represent 5.5 percent of all federal returns filed by Minnesotans, and 1.6 percent of all state returns filed.

Because the federal credit is nonrefundable, and can only be used to offset tax liability, most of the federal credits are claimed by middle- and upper-income filers who have income over $43,000 and qualify for the minimum credit amount.

Because the state credit is refundable, and only available to filers with incomes below $33,590, most of the state credits are claimed by low-income filers.

How much is paid out in credits?

In tax year 2001, Minnesotans claimed $50.9 million of federal dependent care credits. The average federal dependent care credit was $387.

In tax year 2001, Minnesotans claimed $12.1 million of state dependent care credits. The average state dependent care credit was $321.

How are the credits distributed geographically?

While over 44 percent of the returns claiming state credits came from the Twin Cities metropolitan area, these seven counties generated about 55 percent of all returns filed. Put another way, in 2001 nonmetro filers were more likely to claim the credit than were metro area filers.

How does Minnesota compare with other states?

Nationwide, 4.6 percent of all income tax returns claimed the federal dependent care credit, compared to 5.5 percent in Minnesota. Maryland had the highest percentage of returns claiming the federal credit, at 6.5 percent, and West Virginia had the lowest, at 2.2 percent. Minnesota's percentage of returns claiming the credit may be higher than national figures because Minnesota has a high proportion of two-worker households.

The average dependent care credit nationwide in 2001 was $444; it was $387 in Minnesota. The District of Columbia had the highest average credit, at $526, and Montana had the lowest, at $334. Minnesota's average credit amount may be lower than the national averages because state residents have above average incomes.

For more information: Contact legislative analyst Nina Manzi at 651-296-5204. Also see the House Research information brief *The Minnesota and Federal Dependent Care Tax Credits*, December 2001.

HOUSE RESEARCH | **Short Subjects**

Lisa Larson, Jim Cleary **December 2003**

States' Analysis of Student Performance Under No Child Left Behind Act

Law requires schools to focus on all students but leads to significant variations in states' progress reports

The goal of the federal 2001 No Child Left Behind Act to make all schools, school districts, and states accountable for meeting high standards for student performance has generated both accolades and controversy. While applauded as a means to increase achievement for all students including the most historically disadvantaged students, the law also is criticized because it leads to statistical differences that result in significant state variations in the proportion of schools demonstrating academic progress under the law.

States generally use longitudinal and cohort comparisons to measure students' academic growth

States currently compare school or student academic progress by:

- comparing the test scores of different students in the same grade over time using cohort comparisons (the 4th grade in 2000-2001, the 4th grade in 2001-2002, the 4th grade in 2002-2003, etc.);
- tracking grades using annual test scores from the same group of students over time to make quasi-longitudinal comparisons (the 4th grade in 2000-2001, the 5th grade in 2001-2002, the 6th grade in 2002-2003, etc.);
- tracking individual students using annual test scores over time to make longitudinal comparisons (for example, each student's academic growth over a school year may be compared to the state's average growth over that year).

Experts generally prefer longitudinal comparisons to cohort comparisons. Longitudinal data provide more accurate information about student growth over time, may account for student mobility by basing school performance on students continuously enrolled in the school, and, by following student progress statewide, match and verify district records about student transfers and dropouts, among other data. The No Child Left Behind Act obligates states to use schoolwide averages of student performance to measure progress. It does not obligate states to measure the progress of individual students over time.

Law requires states to demonstrate ongoing student progress toward state-defined reading and math proficiency or suffer increasingly severe consequences

The No Child Left Behind Act requires states to generate data from annual English and math tests administered to all students in grades 3 through 8 and high school. States must use the data to demonstrate that adequate yearly progress (AYP) is being made toward having 100 percent of all students by the 2013-2014 school year perform proficiently in English and math. States, schools, and school districts must disaggregate the data for students by racial and ethnic minority, economic disadvantage, limited English proficiency, disability, gender, and migrant status. The data must allow educators to compare the academic achievement of different student groups, identify academic achievement gaps between student groups, and examine schools that "beat the odds" in improving the achievement of particular student groups. Unlike other accountability systems, AYP does not measure average student performance or the rate at which student performance improves. Schools suffer increasingly severe consequences, ranging from payment of bussing and tutoring costs to school closure and a state takeover, for each succeeding year they fail to make AYP.

Percent of schools failing to make adequate yearly progress varies significantly between states due to statistical differences

The proportion of schools that fail to make AYP varies significantly between states, from a low of 0.8 percent in Iowa to a high of 87 percent in Florida. These statistical variations arise in part because the law allows states to establish their own academic goals, use state-developed tests to assess students' mastery of those goals, and define what is proficient on those state tests. Statistical variations also arise because of the following factors:

- state standards vary in content and rigor
- the test scores students must earn to be "proficient" vary by state, causing differences in the percent of students categorized as proficient even if students have exactly the same skills
- some states' timelines for achieving proficiency based on increments of improvement demand less of students initially (at a minimum, student proficiency must increase within two years and subsequent increases must occur within three years, a structure that some compare to a balloon mortgage)
- some states use larger numbers of students to establish the statistical reliability of identified student subgroups whose scores are included in AYP calculations (fewer student subgroups identified and counted within a school mean fewer chances for the school to fail to make AYP)
- schools do not make AYP when fewer than 95 percent of all students and all students in each identified student subgroup are tested
- particular demographic clusters of students (e.g., students with disabilities, limited English proficiency) disproportionately fail to demonstrate adequate progress
- states' practices on reporting students' test scores vary depending on whether states measure average proficiency levels across student groups or the progress of individual students (states may monitor schoolwide student performance averages across grades or the performance averages for all student subgroups in each grade using "value-added" analytical methods that measure the impact of a school on individual student progress over time)
- states' use of confidence intervals—to establish student performance expectations, accommodate variability in state test results, and sanction only those schools unequivocally below standards— makes it difficult to predict what pass rates actually satisfy AYP requirements.

For more information: Contact legislative analyst Lisa Larson at 651-296-8036 or Jim Cleary at 651-296-5053. Also see the House Research publication *Adequate Yearly Progress Under the No Child Left Behind Act*, November 2003.

Nina Manzi and Lisa Larson **December 2003**

The K-12 Education Deduction and Credit: An Overview

What is the K-12 deduction?

A state income tax deduction is allowed for K-12 education-related expenses. The deduction is for up to $2,500 for each dependent in grades 7-12, and up to $1,625 for each dependent in grades K-6.

What expenses qualify for the deduction?

Qualifying expenses are:

- Tuition, including nonpublic school, after school enrichment, academic summer camps, music lessons, and tutoring
- Textbooks, including instructional materials and supplies, musical instrument rental and purchase, and up to $200 of computer hardware and educational software
- Transportation (paid to others for transporting children to school)

What is the tax benefit of the deduction?

A deduction reduces an individual's taxable income. The tax benefit depends on the taxpayer's marginal tax rate and the total amount deducted. Minnesota has three marginal tax rates: 5.35 percent, 7.05 percent, and 7.85 percent. A taxpayer in the 5.35 percent bracket who claims a $2,500 deduction will pay $133.75 less in state income taxes (5.35% x $2,500). A taxpayer in the 7.85 percent bracket with the same deduction will pay $196.25 less in taxes. A taxpayer with too little income to have tax liability will not benefit from the deduction. In tax year 2004, a typical married couple with two dependents would need to have $22,100 of gross income before owing any state income tax.

How many people claim the deduction, and how much does it cost?

An estimated 200,000 taxpayers claim the deduction each year. In tax year 2001 it cost the state $16.7 million.

What is the K-12 education credit?

A state income tax credit is allowed for K-12 education-related expenses. The credit is for up $1,000 per child and $2,000 per family. The credit is subject to an income-based phaseout. It begins to phase out when income exceeds $33,500, and is not available to families with incomes over $37,500.

What expenses qualify for the credit?

The same expenses qualify for the credit as for the deduction, except nonpublic school tuition does not qualify for the credit.

What are the tax benefits of the credit?

The K-12 credit directly reduces tax liability and is fully refundable. If an individual qualifies for a credit that is greater than his or her tax liability, the excess is paid as a refund.

Can parents obtain loans to pay for educational services that qualify for the credit?

Parents may assign payment of their credits to participating financial institutions and tax-exempt foundations. In exchange, parents receive a loan that is paid directly to a third-party provider of educational services and programs. This allows very low-income families to purchase educational products and services in anticipation of receiving a credit when they file their tax return the following year, with the credit paid directly to the financial institution or foundation that accepted the assignment.

How many people claim the credit, and how much does it cost?

In tax year 2001, 56,471 taxpayers claimed a total of $19.4 million in K-12 education credits.

How do taxpayers claim the deduction and credit?

Taxpayers claim the deduction on form M-1, the Minnesota income tax return. Taxpayers claiming the credit must complete form M1ED and attach it to their state tax return.

Have the deduction and credit been subject to legal challenge?

The constitutionality of the dependent education expense deduction was challenged in *Mueller v. Allen* in 1983. The U.S. Supreme Court upheld the statute authorizing the deduction in a 5-4 decision. The Court found that the deduction did the following:

- offset parents' educational expenses and helped ensure an educated populace
- helped ensure the financial health of nonpublic schools and relieved the financial burden on public schools
- promoted "wholesome competition" between public and nonpublic schools and provided a high-quality education for all children

Minnesota's current K-12 education credit has not been subject to legal challenge.

What do other states provide in terms of income tax credits for education-related expenses?

To date, five states in addition to Minnesota provide income tax credits for education-related expenses: Arizona, Florida, Illinois, Iowa, and Pennsylvania. **Arizona** gives taxpayers tax credits for contributions to school tuition organizations that operate like charities and for extracurricular public school fees. **Florida** allows individual and corporate taxpayers to claim a nonrefundable tax credit for contributions to nonprofit scholarship funding organizations. **Illinois** gives taxpayers a nonrefundable tax credit for qualified education expenses. **Iowa** gives taxpayers a tax credit for tuition, secular textbooks and extracurricular activities for children attending accredited not-for-profit K-12 schools. **Pennsylvania** allows corporations to claim a nonrefundable tax credit for contributions to nonprofit scholarship funding organizations and innovative public school programs. Courts in Arizona, Illinois, and Iowa have upheld the permissibility of these education credits in their respective states.

For more information: Contact legislative analyst Nina Manzi at 651-296-5204 or Lisa Larson at 651-296-8036. Also see the House Research publication *Income Tax Deductions and Credits for Public and Nonpublic Education in Minnesota*, December 2003.

HOUSE RESEARCH | **Short Subjects**

John Helland

November 2003

Conservation Easements: A Chronology of Recent Law

Governor Pawlenty recently announced his intention to ask for state bonding dollars to match available federal dollars under the Conservation Reserve Enhancement Program (CREP) to acquire conservation easements of 100,000 acres in three targeted watershed areas. This chronology summarizes Minnesota law enacted since 1990 that has affected conservation easement acquisition.

1990	*Chapter 473, sec. 2 (Minn. Stat. § 40.46, subd. 2):* Provides that any authority selling state land must delineate marginal land and wetlands to be reserved by a conservation easement. Within six days of the delineation, and before the land is sold, the commissioner of the Department of Natural Resources (DNR) or the Board of Water and Soil Resources (BOWSR) may disapprove of the delineation.
1991	*Chapter 254, art. 2, sec. 8 (Minn. Stat. § 84.96, subd. 5):* In acquiring easements for native prairies, the DNR must pay 65 percent of the permanent marginal agricultural land payment rate established by BOWSR.
1994	*Chapter 627, sec. 2 (Minn. Stat. § 103F.516, subd. 1):* Allows BOWSR to acquire permanent easements on type 6 wetlands, as well as types 1, 2, and 3.
1996	*Chapter 449, sec. 3 (Minn. Stat. § 103F.515, subd. 6):* Authorizes BOWSR for native species restoration, in acquiring a conservation easement, to pay up to $150 per acre for 20-year easements and up to $200 per acre for perpetual easements.
	Chapter 471, art. 3, sec. 11 (Minn. Stat. § 273.13, subd. 23): Amends property tax laws to include land enrolled in conservation programs consisting of at least ten contiguous acres as "agricultural land."
1998	*Chapter 404, sec.10, subds. 2 and 5:* Appropriates $250,000 to BOWSR for acquiring flood storage easements within two local government areas. Another $250,000 was appropriated to BOWSR to acquire conservation easements for sensitive shoreland on lakes.
1999	*Chapter 243, sec. 35 (Minn. Stat. § 375.18, subd. 12):* Allows a county board to acquire development rights in the form of a conservation easement under chapter 84C. *Secs. 39-41 (Minn. Stat. 475.52, subd. 103):* Additionally allows cities, counties, and towns to issue bonds for acquiring development rights in the form of conservation easements.
2000	*Chapter 375 (Minn. Stat. § 944, subd. 2):* Establishes a heritage forest area program within certain southern counties. Allows conservation easements by the DNR or a political subdivision to acquire heritage forest land from private landowners in exchange for implementing a stewardship plan with certain forest protection elements.

Chapter 490, art. 6, sec. 11 (Minn. Stat. § 477A.12): Authorizes an annual inflation adjustment to counties and towns for payments in lieu of taxes for natural resources lands within their jurisdiction.

Chapter 492, art. 1, sec. 9, subd. 3: Appropriates $20 million to BOWSR as a match to federal dollars under the CREP to acquire easements and implement conservation practices on frequently flooded cropland in the Minnesota river basin.

2001 *Chapter 99, sec. 2 (Minn. Stat. § 103F.515, subd. 6):* Increases the payment amount for conservation easements on marginal agricultural land under the RIM program as follows:

a) up to $125 an acre for 20-year easements and up to $150 an acre for perpetual easements to provide perennial cover;

b) up to $200 an acre for 20-year easements and $300 an acre for perpetual easements to restore native species;

c) up to $600 an acre for wetland restoration; and

d) up to $250 an acre for 20-year easements and $400 an acre for perpetual easements for the cost of planting trees in the easement agreement.

Chapter 146, secs. 1-2 (Minn. Stat. § 103F.46, subd. 1): Adds types 4 and 5 wetlands that BOWSR may acquire easements on in order to preserve or restore them. A permanent easement may include four adjacent upland acres for each acre of wetland.

Chapter 2, First Special Session, sec. 14, subd. 4(e): Appropriates $2,650,000 to the DNR for cooperative agreements with nonprofit conservation organizations and certain federal agencies for conservation easements to restore and acquire fragmented landscape corridors that connect quality habitat areas to sustain fish, wildlife, and plants.

2002 *Chapter 366, sec. 1, subd. 2 (Minn. Stat. § 84.0272):* Authorizes the DNR to acquire permanent stream easements for angler access, fish management, and habitat work for a one-time payment based on (a) the per linear foot of stream within the easement corridor times $5, plus (b) the easement corridor acres times the established market value.

For more information: Contact legislative analyst John Helland at 651-296-5039.