Short Subjects

Minnesota House of Representatives, House Research

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HOUSE RESEARCH | Short Subjects

Jim Cleary

January 2004

DWI and the B-Card: A Type of Restricted Driver's License for Repeat Offenders

What is a B-Card?

Minnesota Statutes, section 171.09, authorizes the Department of Public Safety (DPS) to issue a driver's license contingent upon the applicant's written agreement to certain restrictions deemed appropriate for public safety. Such a license is referred to as a "restricted driver's license." When a restricted driver's license is issued to a rehabilitated repeat DWI offender, it includes a restriction that the person absolutely abstain from alcohol and illicit drugs indefinitely—this license is commonly referred to as a "B-Card."

What are the restrictions of a B-Card?

Following a repeat DWI violation, a person must successfully complete chemical dependency treatment, as well as rehabilitation (following a third or subsequent violation), before the person can be validly relicensed to drive—that is, get a B-Card. However, that B-Card license is contingent upon the person maintaining complete abstinence from alcohol and illegal drugs. The revoked driver must agree in writing to that restriction before being issued the B-Card.

The "no alcohol/drugs" restriction of a B-Card applies continuously for the remainder of the person's life, and even prohibits small amounts of alcohol as would be consumed at holy communion with wine, in certain cough medicine, in low-alcohol "near-beer," and so on. Furthermore, that restriction applies whether or not the person is or has been driving a motor vehicle. The restriction is quite absolute and exact: when a person agrees to the condition of a B-Card license, he or she is informed that the license is immediately canceled at the moment he or she takes a single sip of alcohol or consumes any amount of an illicit drug.

What are the consequences for cancellation of a B-Card?

The consequences of a B-Card cancellation are quite severe, since before the person can again become validly licensed with a B-Card, he or she must again successfully complete chemical dependency treatment and rehabilitation. According to DPS rules, the rehabilitation process requires documented proof of alcohol/drug abstinence for a minimum period of:

- one year, for a person's first rehabilitation;
- three years, for the person's second rehabilitation; and
- six years, for the person's third or subsequent rehabilitation.

The law also provides for criminal penalties for a violation of the no-alcohol/drug restriction of the B-Card license. If the violation involves driving a motor vehicle of any type, it constitutes a gross misdemeanor crime. If it does not involve driving, the violation is a misdemeanor crime.

To summarize, a "restricted driver's license" with a no-alcohol/drug restriction—a B-Card—provides the repeat DWI offender with an opportunity to become validly relicensed to drive, following chemical dependency treatment and rehabilitation. However, any violation of that no-alcohol/drug restriction, irrespective of whether the violation involved driving, carries very stiff consequences for the violator, including both administrative sanctions and criminal penalties. Thus with the B-Card, Minnesota gives the repeat DWI offender another chance to legally drive, but only if he or she vows to remain chemical-free forever; any violation of that promise carries serious consequences.

For more information: Contact legislative analyst Jim Cleary at 651-296-5053. Also see the House Research publication *Minnesota DWI Laws and Practices*, January 2001.

HOUSE RESEARCH | Short Subjects

John Helland

January 2004

Straight Pipe Septic Systems

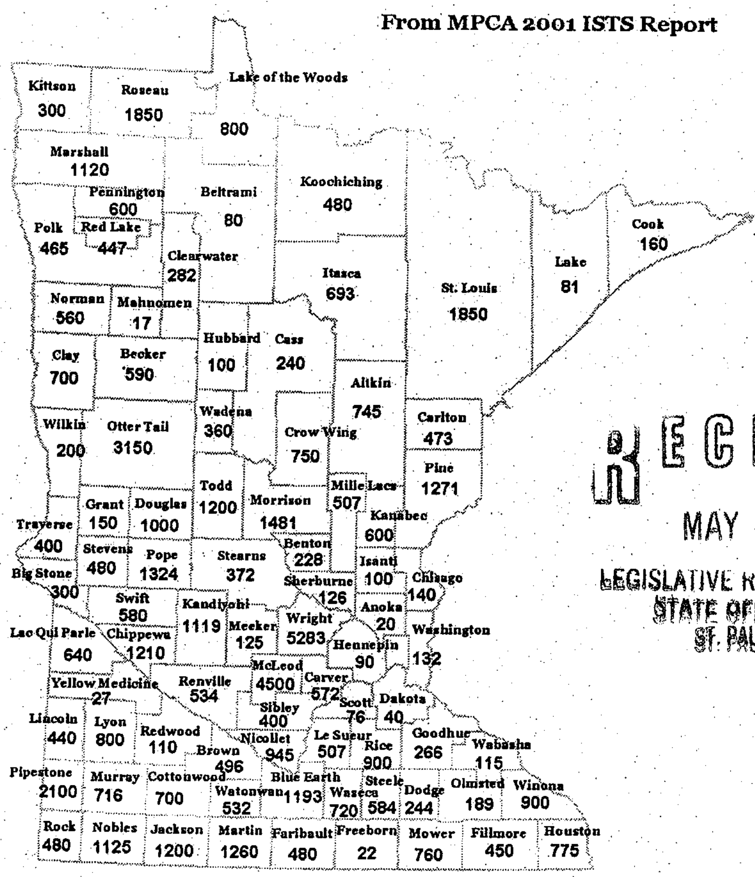
What are straight pipe septic systems?

Straight pipe septic systems are septic systems that do not treat the raw sewage deposited in them; the untreated sewage is ultimately sent directly to rivers, lakes, drain tiles, and ditches. Properly functioning individual sewage treatment systems (ISTSs) typically treat sewage with a chemical, physical, and biological process, commonly using a septic tank and a soil treatment system.

How many straight pipe septic systems does the state have?

There are an estimated 60,000 straight pipe septic systems all over Minnesota. There is no statewide inventory of these straight pipe systems, but the number can be estimated based on county reporting to the Minnesota Pollution Control Agency (MPCA) (see map below). Although many are located in communities with less then 1,000 in population, there are some located in larger communities, such as Cross Lake in Crow Wing County, Ham Lake and East Bethel in Anoka County, Corcoran in Hennepin County, and Afton and Lakeland in Washington County.

Straight Pipe Septic Systems by County



What are the consequences for discharging raw sewage?

Sewage is wastewater from domestic activity such as cleaning, bathing, and cooking. Exposure to sewage through ingestion or bodily contact can cause disease, severe illness, and sometimes death. Sewage also contains small amounts of chemicals and phosphorous, which, if discharged to lakes, can cause excessive algae growth.

Straight pipe systems discharge an estimated 6.75 million gallons of raw sewage per day into Minnesota water bodies. This amount of raw sewage has about 5,000 times the concentration of fecal coliform bacteria as treated municipal waste (fecal coliform bacteria makes waters unsafe for swimming).

Are these systems legal?

These systems are not technically legal under either state or federal law. Minnesota Statutes, sections 115.55 and 115.56, say that straight pipe discharge that has no soil treatment is an "imminent threat to public health" and when discovered, must be upgraded to acceptable standards within ten months.

The issue has not been addressed because (1) the state doesn't know where these systems are and (2) state and federal funding hasn't been adequate to address the overall problem. Some are concerned that homeowners will bear the main responsibility for fixing the problem and don't have the necessary financial resources to do so.

What might it cost to fix the straight pipes?

A fully functioning septic tank system with adequate soil treatment can range from $4,000 to as much as $12,000, depending on design and location. An average of $7,000 for each residential straight pipe fix would cost about $420,000,000 total.

Homeowners with straight pipe systems do not pay anything for sewage treatment, while those that have adequate treatment systems pay an average annual cost of $180.

What about sewage treatment systems that are failing?

In addition to the straight pipe pollution problem, the Pollution Control Agency (PCA) estimates there may be up to 140,000 ISTSs that are failing to function properly and need to be upgraded. The total cost to upgrade these systems to existing environmental and health standards could total close to a billion dollars ($980,000,000).

Based on two requirements in Laws 2003, chapter 128, article 1, sections 164 and 165, the PCA will submit a legislative report, including funding options, in February 2004 on a ten-year plan to (1) locate ISTSs that are imminent threats to public health and safety; (2) upgrade these systems; and (3) develop a process for ISTS maintenance compliance. The other part of the 2003 law establishes a pilot program with three cooperating counties that are impaired with fecal coliform bacteria. The program will attempt to remove ISTSs in the counties where they pose an imminent threat to public health and safety.

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

HOUSE RESEARCH | Short Subjects

Joel Michael

Updated: January 2004

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.

Phaseout 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 2003.

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

Twenty states that impose only pickup taxes are automatically linked to federal law (AL, AK, AZ, CA, CO, DE, FL, GA, HA, ID, 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.

Three states imposing only pickup taxes (AR, SC, and SD) legislatively adopted EGTRRA's changes.

Nine states with stand-alone taxes have pickup taxes that are automatically linked to federal law (CT, IN, IA, KY, LA, NH, OK, PA, and TN) and have not decoupled from EGTRRA. The pickup taxes will be reduced with the phaseout 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 (2002-04), North Carolina (2002 – 7/1/2005), and Wisconsin (10/1/2002 - 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 expire.

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

Illinois, Maine, Maryland, North Carolina, and Vermont adopted at least two of EGTRRA's increases in the exemption amounts, but not the reductions in the federal credit for state death taxes. Maine and North Carolina, as noted above, delayed full conformity by three or three and one-half years. Vermont's tax will expire when the federal tax is repealed. Illinois did not adopt the final increase (to $3.5 million) in the federal exemption.

Eleven 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). Four 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, and RI) or by enacting an estate tax not explicitly tied to federal law (NE).

Changes in stand-alone taxes

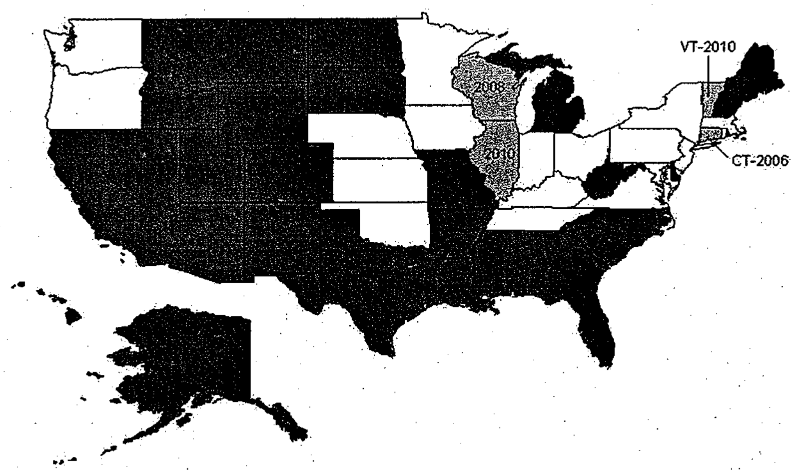
New Hampshire repealed its stand-alone succession tax, effective January 1, 2003. Kansas enacted a successions tax in 2002, but repealed it in 2003 and refunded any taxes paid.

Thirty-five states are scheduled to have no death tax

When the federal credit for state death taxes is fully repealed in 2005, 31 states are now scheduled to have no state death tax. Four additional states will have their taxes expire in later years. These states are shown in the map below.

States Scheduled to Have No Tax

(2005 unless otherwise noted)



For more information: Contact legislative analyst Joel Michael at joel.michael@house.mn. Also see the House Research publications *The Minnesota Estate Tax after the 2001 Federal Tax Act*, January 2003, and *State Responses to 2001 Federal Estate Tax Changes*, February 2004.

Joe Cox, Jim Cleary

February 2004

Minors and Firearms

General

Children 13 years old and younger must be supervised when handling a firearm. At age 14 and 15, a minor may possess a shotgun or rifle without supervision if the minor has a firearms safety certificate. At age 16 and 17, a minor may possess a shotgun or rifle without supervision or a certificate. Anyone under age 18 generally may not possess a *pistol or assault weapon* unless supervised (some exceptions apply–see below).

Hunting

The majority of firearms use by youth involves hunting. A minor aged 13 and younger must be accompanied by a parent or guardian when hunting. Youth are permitted to hunt alone beginning at age 14. Youth age 13 to 15 must possess a firearms safety certificate to hunt whether they are required to be accompanied by a parent (age 13) or not (14 and 15).

Possession of shotgun or rifle; nonhunting

Hunting aside, a minor under age 16 generally may not possess a shotgun or rifle under other circumstances without being accompanied by a parent or guardian. The primary exception is again for a 14- or 15-year-old who has a firearms safety certificate. Other exceptions include: when the minor is on a parent or guardian's residential property; when participating in supervised target shooting; and when participating in a firearms safety program.

Possession of a pistol or assault weapon

A minor under age 18 generally may not possess a pistol or assault weapon. The primary exception is for minors under the supervision of a parent or guardian. Other exceptions include: while engaged in military drill; during supervised practice; and while participating in a state-approved marksmanship and safety program.

Adult charges for firearms offenses

There is a presumption that a juvenile age 16 or 17 will be tried as an adult if there is probable cause to believe the juvenile used a firearm to commit a felony offense. A juvenile may rebut the presumption by clearly and convincingly demonstrating that retaining juvenile court jurisdiction serves public safety.

Committing a delinquent act with a firearm or dangerous weapon

If a juvenile possesses a firearm when committing an offense and is adjudicated delinquent, the court must order seizure of the firearm. The court must also order the child to perform 100 hours of community service unless the court places the juvenile in a residential treatment program or a juvenile correctional facility. If a juvenile possesses a dangerous weapon, including a firearm, when committing an offense on school property or in a school bus, the juvenile loses driving privileges until age 18.

If a juvenile under age 16 illegally possesses a firearm (such as a 14- or 15-year-old who does *not* have a firearms safety certificate), it will be seized by law enforcement and is subject to forfeiture. A juvenile can reclaim a rifle or shotgun by obtaining a firearms safety certificate within 90 days of the start of the next available firearms safety course in the county.

Crimes relating to allowing minors to obtain firearms or ammunition

Negligent Storage. It is generally a crime to negligently or recklessly allow a child to have access to a loaded firearm.

Furnishing. It is a misdemeanor for a person to furnish a child under age 14 with a firearm or ammunition *outside of a municipality* without consent of a parent or guardian. The sentence is enhanced to a gross misdemeanor if the act occurs at or near a school, a park, or public housing property. *Within a municipality*, it is a felony to furnish a minor with a firearm or ammunition without the consent of a parent, guardian, or the local police.

Display of Handgun Ammunition. Ammunition retailers may not display handgun ammunition in a manner that is directly accessible to minors. A violation is a petty misdemeanor. Ammunition in an enclosed display case or behind a counter is deemed inaccessible. There are exceptions for ammunition accessible to juvenile employees, ammunition under observation by employees, and ammunition displayed in an area where the store takes reasonable steps to exclude minors.

Possession at school

A pupil who brings a firearm to school must be suspended for at least one year. A school board can modify this expulsion requirement on a case-by-case basis. School boards must have policies to notify law enforcement officials when a pupil unlawfully brings a firearm to school. A pupil who brings a firearm to school will also generally be subject to a juvenile delinquency petition, or adult criminal charges, depending on the circumstances.

Sharing law enforcement and court information on minors 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).

Firearms-related deaths among Minnesotans aged 17 and under (year 2000)

Shooter's Intent	Age Group: 0 to 9	10 to 14	15 to 17	Total
Unintentional	0	0	1	1
Suicide	0	2	11	13
Homicide	2	1	4	7
Legal Intervention	0	0	0	0
Undetermined	0	0	0	0
Total	2	3	16	21

Data Source: US/CDC National Center for Injury Prevention and Control

According to the 2000 U. S. Census, there were 1,268,372 Minnesotans aged 17 and under in year 2000.

For more information: Contact legislative analyst Jim Cleary at 651-296-5053.

Pat Dalton and Steve Hinze **February 2004**

County Program Aid

County program aid replaces several county aid programs

Prior to calendar year 2004, counties received property tax aid under a number of different programs. Beginning in 2004, the aid programs are consolidated into one general aid program, called county program aid. The county aid programs that were consolidated include the following:

- attached machinery aid (Minn. Stat. § 273.138)
- homestead and agricultural credit aid (HACA) (Minn. Stat. § 273.1398, subd. 2)
- manufactured home homestead and agricultural credit aid (Minn. Stat. § 273.166)
- county criminal justice aid (CCJA) (Minn. Stat. § 477A.0121)
- family preservation aid (FPA) (Minn. Stat. § 477A.0122)

A county's CY 2004 program aid is based on its aid under the old programs in the previous year

Counties were certified to receive $226 million in total under the old county aid programs in CY 2003. The actual payments were reduced to $161 million in response to the state budget shortfall. Each county's 2004 county program aid was calculated by taking the sum of its 2003 *certified* amounts under the old county aid programs and subtracting 5.689 percent of the county's certified pay 2003 levy plus aid amount. The total amount of county program aid for 2004 is $112 million. Beginning in CY 2005, the appropriation for county program aid is permanently increased to $205 million annually.

Beginning in 2005, county program aid consists of a "need" part and a "tax-base equalization" part

Beginning with CY 2005 county program aid consists of two parts: need aid and tax-base equalization aid. $100.5 million will be distributed under the need aid formula and an additional $105 million will be distributed under the equalization aid formula. The total annual appropriation for county program aid does not grow but stays at $205 million annually. The table on the next page shows the calculation of a county's aid under each formula.

Transition aid will be paid for three years

In CY 2005, a county is eligible to receive an additional transition aid payment if its relative *share* of the total county program aid appropriation in CY 2005 is significantly less then its share of the 2004 program aid appropriation. Transition aid is equal to (1) the difference between what a county is certified to receive and the amount it would have received if its share of the total appropriation had remained constant, minus (2) 3 percent of its adjusted net tax capacity. A county's transition aid is phased out by one-third in each of the following years and no transition aid will be paid after CY 2007. The following seven counties are projected to qualify for a total of $1.3 million of transition aid in CY 2005:

- Aitkin
- Chippewa
- Cook
- Kanabec
- Kittson
- Traverse
- Wilkin

Calculation of County Program Aid
Beginning in CY 2005

Need Aid	Tax-base Equalization Aid
Share of Appropriation: $100.5 million	**Share of Appropriation:** $105 million
Reductions from the appropriation: $500,000 annually for court-ordered counsel and public defense costs	**Reduction from the appropriation:** up to $312,000 annually to pay for the preparation of local impact notes
Factors used in the formula: • **age-adjusted population** which ranges from 80% to 180% of the county's actual population based on the percentage of the county's population over 65 years, compared to the statewide average. • **average monthly number of households receiving food stamps** in the county over the last three years • **average number of Part I crimes** reported in the county over the last three years. These are the most serious crimes.	**Tax-base equalization factor used in the formula:** **Factor** = **Z** times ($185 x population – 9.45% of the county adjusted net tax capacity) **where Z equals** • 3 if the county population is less than 10,000; • 2 if the county's population is at least 10,000 but less than 12,500; • 1 if the county's population is at least 12,500 but less than 500,000; and 0.25 if the county's population is 500,000 or more
The formula: • 40% of the appropriation is distributed to each county based on its relative share of the total age adjusted population in the state; • 40% of the appropriation is distributed to each county based on its relative share of the total average monthly number of households receiving food stamps in the state; and • 20% of the appropriation is distributed to each county based on its relative share of the average number of Part I crimes reported in the state.	**The formula:** • 100% of the appropriation is distributed based on each county's relative share of the sum of the tax-base equalization factors for all the counties in the state.

For more information: Contact legislative analyst Pat Dalton at 651-296-7434 or Steve Hinze at 651-296-8956. Also see the House Research publication *Aid Cuts to Local Governments in CY 2003 and 2004*, February 2004.

HOUSE RESEARCH | Short Subjects

Pat Dalton

February 2004

The New City LGA Program

City LGA underwent major changes in 2003

In 2003 the governor proposed revising the city local government aid (LGA) program. Most of his proposal was adopted. The goal of the proposal was to distribute more LGA based on a city's "need" and "ability to raise revenue locally" rather than the amount received in a prior year ("grandfather"); virtually all aspects of the old formula were modified, as shown in the table on the back. The biggest changes were a reduction in the program funding level and the elimination of the most of the "grandfathered" aid portion of the old LGA.

The appropriation is reduced to $437 million annually

The reduction in city LGA was done in two stages. City LGA was reduced to $465 million in calendar year (CY) 2003 from the originally certified appropriation of $587 million. The city LGA was further reduced to $429 million in CY 2004 with an additional $8 million paid in transition aid for one year. Beginning in 2005, the LGA appropriation is set at $437 million annually, and the automatic appropriation increase for inflation, which existed under the old law, is eliminated.

Most of the LGA "grandfather" is eliminated

Under the old law, the distribution of about $367 million of the total LGA appropriation was "grandfathered" to cities, based on LGA distribution in previous years, and special distribution provisions. Beginning in CY 2004, virtually all of the LGA appropriation is distributed via the need and ability to raise revenue formula. Only $26.5 million will continue to be grandfathered. The majority of the grandfathered money goes to large cities in outstate Minnesota based on a special provision that was part of the 2001 property tax reform.

New measures of city "need" were enacted

The League of Minnesota Cities (LMC) developed the old measures of city "need" in 1992. The new need formula for large cities, which contains different factors than the old formula, was developed using the same methodology as used in the LMC study. The coefficients for the factors in the small city need measure were updated through regression analysis on current city spending.

Taconite aid is included in calculating LGA

The measure of a city's "ability to raise revenue" under the old law was the city's tax base multiplied by an average city tax rate. Under the new law, ability to raise revenue also includes each city's taconite aid payment. The inclusion of taconite aid is phased in over a four-year period beginning with aids payable in 2005.

There are limits on increases and decreases to individual cities

Beginning in CY 2005, the new law limits increases in LGA payments to any city to an amount equal to 10 percent of the city's levy in the previous year. Decreases for large cities are limited to 10 percent of the city's levy in the previous year, while decreases for smaller cities are limited to 5 percent of the city's *certified* 2003 LGA amount (before 2003 aid reductions).

CY 2004 City LGA Formula – Old Law vs. Current Law

Characteristic	Old Law	New Law
Funding	$608 million in CY 2004 Automatic increases between 2.5% and 5.0% annually	$429 million in CY 2004 plus transition aid $437 million in CY 2005 and future years
City aid base (grandfathered aid)	$367 million with about $321 million based on 1993 aid payments	$26.5 million to certain cities based on specific criteria
Transition amount	---	$8 million in CY 2004
City formula aid	$241 million distributed based on a percentage of "need" minus "ability to raise revenue" in CY 2004	$402.5 million distributed based on a percentage of "need" minus "ability to raise revenue" in CY 2004
Large city need per capita measure (New formula with some new factors)	=152.041 + 3.462312 x pre-1940 housing % + 2.093826 x Comm/Ind. % + 6.862552 x pop. decline % + 0.0026 x population	= 355.0547 + 5.0734908 x pre-1940 housing % + 19.141678 x pop. decline % + 2504.06334 x road accident factor - 49.10638 x household size - 35.20915 if in metro area
Small city need per capita measure (Updated coefficients of old formula)	= 1.795919 x pre-1940 housing % + 1.562138 x Comm/Ind. % + 4.177568 x pop. decline % + 1.04013 x transformed pop. – 107.475	= 2.387 x pre-1940 housing % + 2.67591 x Comm/Ind. % + 3.16042 x pop. decline % + 1.206 x transformed pop. – 62.772
Ability to pay measure	= Average city tax rate x adjusted city tax capacity (tax base)	= Average city tax rate x adjusted city tax capacity (tax base) (Inclusion of taconite aids in ability to raise revenue will be phased in at 25% per year beginning with Pay 2005)
Limits on increases and decreases	No city's aid can increase by more than 10% of its levy from the previous year No city can receive less aid than its city aid base (grandfathered aid) amount	In 2004 no city's LGA can exceed its 2003 LGA after the 2003 reductions. Maximum aid loss (from CY 2003 certified amount) cannot exceed 13% or 14% of each city's revenue base. Beginning in 2005, no city's aid can increase by more than 10% of its levy from the previous year. Beginning in 2005 no large city's aid loss can exceed 10% of its levy in the previous year and no small city's loss in any year can exceed 5% of its certified 2003 LGA.

For more information: Contact legislative analyst Pat Dalton at 651-296-7434. Also see the House Research publication *Aid Cuts to Local Governments in CY 2003 and 2004*, February 2004.

HOUSE RESEARCH | **Short Subjects**

Nina Manzi, Alicia Medici Huguelet **Updated: March 2004**

Long-term Care Insurance Income Tax Credit

What is the credit?

The Minnesota long-term care insurance credit offsets the cost of long-term care insurance premiums by providing a credit against state income tax liability. The maximum Minnesota credit is equal to the lesser of $100 or 25 percent of the amount paid for each beneficiary. The maximum total credit is $200 annually on a joint return or $100 for individual filers.

This credit was enacted in 1997 and took effect in tax year 1999.

What is the rationale for this tax credit?

The Minnesota long-term care tax credit provides an incentive for Minnesotans to purchase long-term care insurance coverage. If more Minnesota residents purchase long-term care insurance, there may be a decrease in the cost to the state in providing for the long-term care of residents who are unable to afford long-term care services.

Is the credit refundable?

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

Who is eligible for the credit?

A Minnesota taxpayer who purchases insurance to provide long-term care coverage, such as nursing home or home care coverage, for the taxpayer or spouse is eligible for the credit. To qualify for the credit, the long-term care policy must:

- qualify for the federal itemized deduction for medical expenses, disregarding the 7.5 percent income test; and
- have a lifetime long-term care benefit limit of $100,000 or more.

How is the credit calculated?

The Minnesota credit equals 25 percent of qualifying long-term care insurance premiums for one beneficiary, up to a maximum of $100 for individuals and up to $200 for married couples filing jointly who both have coverage. A taxpayer may claim only one policy for each qualified beneficiary. It is *not* necessary that the taxpayers filing jointly have separate policies or premiums. The amount of premiums used to calculate the credit must be reduced by any premiums claimed as a medical expense deduction on the taxpayer's federal return.

Filers claim the credit on their Minnesota income tax return using Schedule M1LTI.

How many Minnesotans claim the credit?

For tax year 2002 returns processed to date, 42,700 Minnesota returns have claimed the credit. These claims represent about 2 percent of all state returns filed (2,387,000) to date by Minnesotans.

How much is paid out in credits?

In tax year 2002 to date, Minnesotans claimed $5.8 million of long-term care insurance credits. The average long-term care tax credit was $135 in tax year 2002 and $133 in tax year 2001.

How does Minnesota compare with other states?

This table includes all states that offer a long-term care insurance tax credit, but not those states that offer a long-term care insurance tax deduction. All of the credits are nonrefundable.

	Maximum Credit	Credit Rate*	How many returns claimed the credit?	What is the cost to the state for the tax credit?
Colorado	$150	25%	32,900 (estimate)	$4.6 million (estimate)
Minnesota	$100	25%	42,700	$5.8 million
Maryland	Varies by age: $220-500	100%	8,998	$5.1 million
New York	No maximum	10%	55,470	$16.6 million
North Carolina	$350	15%	27,516	$5.6 million
North Dakota	$100	25%	741 (Processed by 10/03)	$12,874 (Processed by 10/03)
Oregon	$500	15%	200 (estimate)	$100,000 (estimate)

*Percentage of premiums, usually the amount not deducted under the itemized deduction, but not always.

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

Deborah McKnight, Brenda van Dyck April 2004

Recall of Elected Officials

What is recall?

Recall is a method for Minnesota residents to recall or remove elected officials from office before the end of their term. Minnesotans approved a constitutional amendment in 1996 that enables recall.

Recall is one of four ways that elected officials can be removed from office. The other methods are impeachment for constitutional officers and judges, removal for judges, and expulsion or exclusion from office for legislators. Recall is detailed in Minnesota Statutes, chapter 211C, and article 8, section 6 of the Minnesota Constitution.

Since the inception of recall, no elected official has been recalled in Minnesota. Recall petitions have been filed, but the Minnesota Supreme Court found that they didn't meet the statutory requirements for recall.

Who can be recalled?

State representatives, state senators, the governor, the lieutenant governor, the secretary of state, the state auditor, the attorney general, supreme court judges, court of appeals judges, and district judges are all subject to recall.

What can they be recalled for?

State officers can be recalled for "malfeasance," "nonfeasance," and "serious crime."

- **Malfeasance** means intentionally doing something unlawful or wrong while performing duties of the office; the act must be substantially outside of the scope of the officer's duties and substantially infringe upon another's rights.
- **Nonfeasance** means intentionally and repeatedly not performing required duties of the office.
- **Serious crime** means a crime that is a gross misdemeanor and involves assault, intentional injury, threat of injury, dishonesty, stalking, aggravated driving while intoxicated, coercion, obstruction of justice, or the sale or possession of controlled substances. Serious crime also means a misdemeanor crime that involves assault, intentional injury or threat of injury, dishonesty, coercion, obstruction of justice, or the sale or possession of controlled substances. An individual who is convicted of a felony is automatically removed from office, so a felony conviction is not specified as grounds for recall.

Grounds for recall for state officers, except for judges, are defined in Minnesota Statutes section 211C.01. Section 211C.02 says that the Minnesota Supreme Court must establish the grounds for recalling judges. The supreme court subsequently adopted the same standards for grounds for recall as were established for state officers in section 211C.01.

What is the process for recalling an elected official?

1) The petitioner submits a "proposed recall petition" to the secretary of state. The petition must name the grounds for recall and be signed by 25 eligible voters in the district the elected official represents.

2) The secretary of state verifies the petition's validity and sends it to the Minnesota Supreme Court.

3) The chief justice of the supreme court determines if the grounds for recall meet the statutory requirements within 10 days.

4) If the grounds for recall meet the statutory requirements, the chief justice appoints a special master to handle the recall.

5) The special master, an active or retired judge, must hold a public hearing on the recall petition within 21 days. The special master must decide if the person proposing the petition has shown that the allegations in the petition are true, and, if they are, whether the facts are sufficient grounds for recall.

6) After the public hearing, the special master has seven days to report his or her findings to the supreme court.

7) The supreme court has 20 days to decide if the grounds for recall have been met and order a recall petition. If the court finds that the grounds for recall have not been met, the process ends. If the court finds that there are grounds for recall, it will order the secretary of state to issue a recall petition.

8) After the secretary of state's office issues the recall petition, it must be signed within 90 days by 25 percent of the number of voters who voted in the last election. If the required number of signatures is not acquired within 90 days, the process ends.

9) Once the signatures are verified and certified by the secretary of state, the governor sets an election date.

10) If a majority of voters vote for the removal of a state official, that person is removed from office and the office is vacant.

A person can't falsely allege wrongdoing by a state officer in the recall petition. That person also can't threaten, intimidate, coerce, or bribe eligible voters to sign or not sign a recall petition. If the supreme court finds that the person proposing the petition has violated the law in these ways, it can dismiss the petition.

How many other states have recall laws?

There are 18 states that permit recall. In addition to Minnesota, they are Alaska, Arizona, California, Colorado, Georgia, Idaho, Kansas, Louisiana, Michigan, Montana, Nevada, New Jersey, North Dakota, Oregon, Rhode Island, Washington, and Wisconsin. The District of Columbia also allows recall. Virginia allows for a recall trial rather than an election.

Minnesota was the most recent state to adopt a procedure for recall. Michigan and Oregon were the first, adopting recall procedures in 1908.

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

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

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John Williams

Updated: May 2004

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 as follows:

- 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 as follows:

- Bingo, $200 per game and $2,800 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?

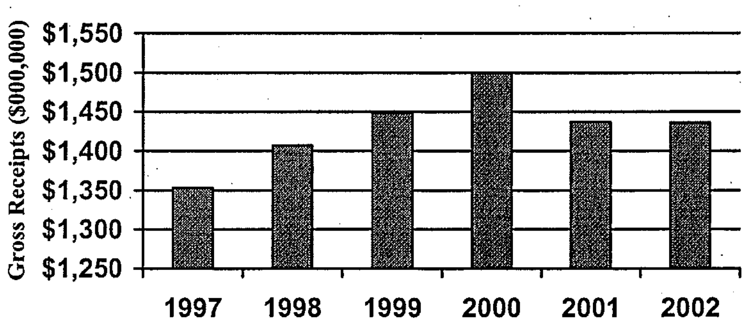
Organizations do not have to obtain a license for the following:

- 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

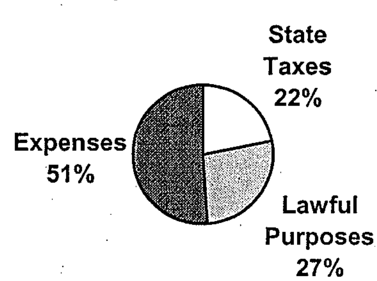
Exempt organizations must register with the board and follow state law on spending net profits.

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,* May 2004.

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**

Joel Michael

May 2004

Corporate Franchise Tax: Foreign Operating Corporations

What is an FOC?

Foreign operating corporations (FOCs) are corporations that qualify for special tax treatment under the corporate franchise tax. To be an FOC, a corporation must:

- Be a domestic corporation that is part of a unitary group, one member of which is taxable in Minnesota.
- Have less than 20 percent of its average property and payroll in the United States (excluding Puerto Rico or possessions) or be a "936 corporation." 936 corporations qualify under special federal tax rules that provide an incentive for operating in Puerto Rico and other U.S. possessions.
- Not be a Foreign Sales Corporation (FSC). FSCs were formed under a now obsolete federal tax provision that provided export incentives. Minn. Stat. § 290.01, subd. 6b (2002).

What are the tax benefits of FOCs?

- In broad terms, 80 percent of an FOC's income is sheltered from tax as "deemed dividends"—the income of the FOC is allocated to its shareholders and is "deemed" to be a dividend that qualifies for the dividend deduction. Minn. Stat. § 290.17, subd. 4(g) (2002). The law allows corporations to deduct 80 percent of dividends in computing Minnesota taxable income. Minn. Stat. § 290.21, subd. 4 (2002).
- In addition, when an FOC pays royalties and fees, the receiving corporation may subtract 80 percent of these amounts if the FOC is part of its unitary business. Minn. Stat. § 290.01, subd. 19d(11) (2003 Suppl.).

Thus, a unitary business's income that flows through an FOC is taxed at one-fifth of the regular rate (i.e., 80 percent of the income is not taxed).

How much do FOCs reduce corporate tax receipts?

The Department of Revenue's *Tax Expenditure Budget* (2003) estimates that FOC and related provisions reduce corporate franchise tax collections by between $72.2 million (fiscal year 2004) and $76.6 million (fiscal year 2005). Total corporate tax revenues are about $700 million per year, based on the February 2004 forecast. The *Tax Expenditure Budget* estimates are now 18 months or so old, and Department of Revenue (DOR) staff have indicated that the cost of FOCs is growing rapidly. Thus, the total cost may be higher. In fact, Department of Finance and Revenue staffers have speculated FOCs may be partly responsible for the recent unexpected drop in corporate tax receipts.

When were the FOC provisions adopted?

The basic FOC provisions were adopted by the 1988 Legislature. Subsequent legislatures have made minor modifications, but the basic structure has remained the same since 1988.

What is the policy rationale for FOCs?

The FOC provisions were enacted in response to Minnesota's adoption of the combined reporting method of apportioning corporate income tax in the early 1980s. Supporters of the FOC provisions argued that they were necessary to offset the heavy taxation of foreign operations that resulted from Minnesota's version of combined reporting.

Minnesota's combined reporting is "water's edge"—i.e., it excludes companies incorporated in foreign countries from the unitary group. The foreign operations of domestic corporations were fully taxable, but all of their factors (sales, property, and payroll) are taken into account in determining how much of the foreign income is taxable in Minnesota. But when a foreign corporation (subsidiary or other affiliated company) pays dividends, royalties, or other income to the U.S. business, this income is fully taxable; the foreign sales, payroll, and property that, in part, generated that income is not accounted for by the apportionment formula. The foreign corporations' factors are not in the formula. Thus, the FOC provisions exclude 80 percent of this income as a way to adjust for the absence of these factors in the apportionment. This justification is often called providing "factor relief."

How do taxpayers "abuse" the FOC provisions?

Recent legislative attention (since 2001 when Governor Ventura proposed repealing FOCs) has focused on alleged abuses of the FOC provisions. The abuses (or flaws in the qualifying criteria) appear to take two basic forms:

- **Sheltering domestic source income.** Although the provisions were clearly intended to apply to foreign operations and income, corporations can create an FOC and funnel domestic source income through the FOC, qualifying for an 80 percent discount in tax. The law requires the FOC to have no more than 20 percent of its property and payroll located in the United States. But it does not require any of its income to actually be from foreign sources. As a result, a unitary business can assign its "intangibles" (e.g., patents, copyrights, trademarks, and trade names) to an FOC, which satisfies the payroll and property tests, but derives most of its income from charging domestic members of its unitary group for use of the intangibles. This mechanism (if legal) reduces the tax on this income by 80 percent.
- **Transfer pricing.** The FOC mechanism also relies upon prices set by the unitary business internally (not by market forces) in determining how much income is assigned to the FOC. These prices don't matter to the unitary business, since the business is doing little more than shifting money from one of its pockets to another. However, by maximizing the amount of income in the FOC, overall tax is minimized.

As a separate matter, the FOC law was written in a way that may permit a pure "shell" corporation (i.e., one with no property or employees) to qualify. The Minnesota Tax Court reached this result in *Hutchison Technology, Inc. v. Commissioner of Revenue*, Docket No. 7398-R (Jan. 2, 2003). This may not be a cause for concern or be an "abuse" *per se*, if the income in the shell corporation is all from foreign sources and reflects accurate transfer prices.

For more information: Contact legislative analyst Joel Michael at 651-296-5057.

HOUSE RESEARCH | Short Subjects

Nina Manzi

Updated: June 2004

Minnesota Taxable Income

What is Minnesota taxable income?

Minnesota taxable income (MTI) 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 2004-2007*. Revenue estimates made during the 2005 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**
  Federal law prohibits state taxation of these three types of income:
  - **U.S. bond interest**
  - **Railroad retirement benefits**
  - **On-reservation earnings of enrolled tribal members**
- **K-12 dependent education expenses** ($13.8 million in fiscal year 2005). 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 2005). 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** ($1.1 million in fiscal year 2005). 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.
- **Gain on sale of farm property for insolvent taxpayers** ($100,000 in fiscal year 2005). 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.

John Williams

Updated: June 2004

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.

Any local government that sets on-sale hours that differ from state law must apply those hours 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.

Nina Manzi **Updated: June 2004**

Minnesota's Individual Income Tax

How much are income tax revenues?

Minnesota's income tax revenues are projected to equal $6.0 billion in fiscal year 2005, approximately 41 percent of state tax collections and 26 percent of all state revenues.

What is the tax base used to calculate Minnesota's income tax?

Minnesota's income tax applies to a base of Minnesota taxable income (MTI). The starting point for calculating MTI is federal taxable income (FTI), which is the income measure used in determining federal income tax liability.

The calculation of MTI requires taxpayers to add the following to federal taxable income:

- bond interest from other states
- the capital gains portion of lump sum distributions
- all or part of their state income tax deduction if they claimed itemized deductions at the federal level

Minnesota taxpayers are allowed several subtractions from federal taxable income:

- U.S. bond interest
- Railroad retirement benefits
- Income earned on a reservation by American Indians
- Certain K-12 education expenses of dependents
- 50 percent of charitable contributions in excess of $500, for taxpayers who don't itemize
- An elderly/disabled exclusion for qualifying low-income taxpayers
- Youth Works program benefits
- Part of the gain on the sale of a farm for insolvent taxpayers

What are the income tax rates and brackets?

Minnesota income tax is a graduated tax, with three rates: 5.35 percent, 7.05 percent, and 7.85 percent. The rates are applied to income brackets that vary by filing status. Married couples filing joint returns are allowed the most generous (widest) brackets, followed by head of household filers (single parents), and then by unmarried single filers. The table shows the income tax brackets in effect for each rate in tax year 2005 (brackets for married separate taxpayers are half the width of the married joint brackets):

	Married joint	**Single**	**Head of Household**
5.35%	First $28,860	First $19,750	First $24,310
7.05%	$28,861 to $114,680	$19,751 to $64,870	$24,311 to $97,690
7.85%	All over $114,680	All over $64,870	All over $97,690

A married couple filing a joint return owes income tax equal to 5.35 percent of their first $28,860 of taxable income, 7.05 percent of income between $28,861 and $114,680, and 7.85 percent of taxable income over $114,680. The income tax brackets are adjusted each year for inflation.

What income tax credits does Minnesota allow?

Minnesota allows taxpayers to claim several credits against tax liability. Credits that may be used only to reduce liability, called nonrefundable credits, include the following:

- Marriage credit ($57.6 million in fiscal year 2005)
- Long-term care insurance credit ($6.5 million in fiscal year 2005)
- Credit for taxes paid to other states ($70.8 million in fiscal year 2005)

In addition, Minnesota allows three refundable credits, which are paid as refunds to taxpayers even if the credit amount is greater than their income tax liability:

- Dependent care credit ($15.4 million in fiscal year 2005)
- Working family (earned income) credit ($134.5 million in fiscal year 2005)
- K-12 education credit ($17.4 million in fiscal year 2005)

Credit amounts are from the Minnesota Department of Revenue's *Tax Expenditure Budget, Fiscal Years 2004-2007.*

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 *The Minnesota Income Tax Marriage Credit*, September 2002; *The Minnesota and Federal Dependent Care Tax Credits*, December 2001, update forthcoming in October 2004; *The Federal Earned Income Credit and the Minnesota Working Family Credit*, January 2004; *Income Tax Deductions and Credits for Public and Nonpublic Education in Minnesota*, December 2003; *Income Tax Terms: Deductions and Credits*, October 2002.

John Helland

June 2004

Off-Highway Vehicles and Wetlands: 2004 Changes

In 2003, the Minnesota Legislature banned the use of off-highway vehicles (OHV), or all-terrain vehicles, on certain types of wetlands. The 2004 Legislature removed portions of that broad ban and added new restrictions on where OHVs can travel. The following summarizes the new law (Laws 2004, ch. 255, § 6, coded in Minn. Stat. § 84.773).

OHVs are banned in calcareous fens

The 2004 law prohibits OHV operation in calcareous fens. Calcareous fens are a rare type of wetland in Minnesota; they are fed by groundwater, highly alkaline, and have low dissolved oxygen. The state has approximately 137 of them.

OHV operation still banned in certain wetlands

The 2003 law had banned OHV operation in specific types of wetlands, as defined by the U.S. Fish and Wildlife Service: shallow marshes (type 3), deep marshes (type 4), shallow open water (type 5), and bogs (type 8). The 2004 law eliminated these specific references to types of wetlands. Another law (Minnesota Statutes, section 103G.505, subdivision 15a, applicable to unfrozen public waters) continues to ban OHV operation in types 3, 4, and 5 wetlands, but that section does not cover type 8 wetlands.

New provisions governing OHV operation

The 2004 law added new stipulations (in subdivision 2) that a person driving an OHV in a wetland must not operate the vehicle in a way that:

- willfully, wantonly, or recklessly disregards the safety of people or property;
- carelessly upsets the natural and ecological balance of a wetland; or
- affects more than the minimum amount of wetlands as allowed by Minnesota Statutes, section 103G.2241, subdivision 9, which is approximately 400 square fee of a wetland or more, unless
    - the wetland activity is already exempt under section 103G.2241, for a variety of activities, mainly agricultural; or
    - existing statutory requirements for replacement and repair are followed, with local government having approval rights. These requirements are in Minnesota Statutes, section 103G.222, subdivision 1(b), and section 103G.2242 and rules.

The 2004 law did not change the ban on OHV operation in unfrozen public waters, state parks, scientific and natural areas, or wildlife management areas.

Private owners may access their land

The 2004 law also authorized the commissioner of the Department of Natural Resources to issue a permit for up to ten years to exempt private landowners or leaseholders from the law, which would allow them to access their land with an OHV when they have to cross state land to do so.

Summary

In summary, the new law does not differentiate between public and private wetlands in restricting OHV operation. From formerly excluding OHV travel in certain wetland types, the above conditions of subdivision 2 will now apply. The new law is an attempt to rely less on a rider's knowledge of various wetland types and make the rider more cautious of traveling on any wetland.

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

John Williams Updated: June 2004

The Motor Vehicle Sales Tax Transfer: Current Law

After a nearly ten-year hiatus, the legislature in 2000 again began dedicating revenues from the motor vehicle sales tax (MVST) to transportation-related purposes. This time, however, the purposes were tax relief rather than new transportation spending.

What is MVST?

The motor vehicle sales tax, or MVST, is the 6.5 percent sales tax applied to the sale of new and used motor vehicles.

How MVST revenue used to be dedicated

During the 1980s, the legislature dedicated MVST revenue to highways and transit, intending that the money supplement other spending for those purposes. This dedication was periodically changed or suspended, and it was abolished entirely beginning in fiscal year 1992.

How MVST revenue is now dedicated

Beginning in fiscal year 2000, the legislature restored the MVST transfer to dedicated transportation funds, not to augment spending but provide tax relief. In 2000, the legislature put limits on license taxes for passenger cars. Since those taxes go to the highway user tax distribution fund (HUTDF) and are dedicated exclusively to highways, some means had to be found to make up the loss to highway revenue. The legislature made up the losses to dedicated highway funds from reduction of automobile license taxes, and for losses to transit systems of revenue formerly coming from property taxes.

In the 2003 session, the legislature made another significant change in the MVST distribution by increasing the percentage to dedicated transit funds at the expense of the share for dedicated highway funds. The transit funds' shares were intended not just to replace property tax revenue but also to make up for budget cuts in general fund appropriations for transit assistance. This allocation is intended to be in effect through fiscal year 2007.

The distribution of MVST revenue is now as follows:

- 30 percent to HUTDF, the fund dedicated exclusively to state and local highways. By constitutional dedication this money is further divided among the state trunk highway fund, the county state-aid highway fund, and the municipal state-aid street fund.
- 0.65 percent directly to the county state-aid highway fund, in addition to its share of the 30 percent above
- 0.17 percent directly to the municipal state-aid street fund, in addition to its share of the 30 percent above

- 21.5 percent to the Metropolitan Council to replace revenue lost when the council's property tax levy for transit operations was abolished by the legislature.
- 1.43 percent to the Department of Transportation for greater Minnesota transit assistance to replace revenue lost when the legislature prohibited using property taxes to subsidize greater Minnesota transit operating costs
- Beginning in fiscal year 2004, 2 percent additional to be appropriated by law for transit in the metropolitan area
- The remainder—46.25 percent in fiscal year 2003, and 44.25 percent thereafter—to the state general fund

The additional revenue for transit was spent for the 2004-05 biennium to partially make up for reductions in appropriations for metropolitan and greater Minnesota bus service and partly to reduce the local responsibility for Hiawatha light rail transit operating costs. This revenue was made available by effectively reducing the state trunk highway fund's share of MVST revenue from 18.8 percent to 17.7 percent, while leaving the share of MVST revenue going to local state-aid funds unchanged.

MVST Dedication

	2002	2003	2004-07	2008 and after
Highway user tax distribution fund (HUTDF)	30.86%	32%	30%	32%
County state-aid highway fund	0%	0%	.65%	0%
Municipal state-aid highway fund	0%	0%	.17%	0%
Metropolitan transit fund	0%	20.5%	21.5%	20.5%
Greater MN transit fund	0%	1.25%	1.43%	1.25%
General fund	69.14%	46.25%	46.25%	46.25%

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

Danyell Punelli

Revised: June 2004

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. BSF child care assistance also includes a set-aside, which allows a parent to stay home with their infant and receive a subsidy in lieu of assistance (at-home infant child care).

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 2004, the estimated average annual subsidy for a family receiving MFIP child care assistance was $10,564, and the estimated average annual subsidy for a family receiving BSF child care assistance was $7,532.

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 2004, an estimated average of 9,833 families received MFIP and transition year child care assistance and 10,121 families received BSF child care assistance per month.

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 March 31, 2004, there were 5,567 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, 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 several months. As of March 31, 2004, there were more than 5,500 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*, September 2003.

HOUSE RESEARCH | Short Subjects

Kathy Novak

Updated: June 2004

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 four 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 2003 federal poverty guidelines adjusted for family size ($15,756 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?

No, 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 2002-2003 was $1,142.

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

Appropriations over the last seven years have been stable at about $4.7 million per year. Student participation peaked in 2000-2001 when 2,736 students received grants. The legislature increased the maximum grant to $2,600 beginning with the 2001-2002 school year, then reduced it to $2,200 for the 2003-2004 year as part of budget balancing efforts.

The actual amount available for grants in fiscal year 2003 was significantly less than in other years because $3.6 million of child care appropriations were transferred to contribute to full funding of the state grant program.

Trends in Childcare 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	$4,743,000	932	$1,142
03-04	$2,200	$4,743,000		

* 99-00 to 00-01 appropriation excludes set aside for HESO administration.
** FY02 expenditures exceeded appropriations because of carryforward
*** $3,610,000 of FY03 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 child care assistance (BSF) 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. Over 5,560 families were on the March 2004 waiting list for BSF assistance. Families in Hennepin and Ramsey counties account for two-thirds of the waiting list.

The two child care assistance programs are funded by 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.

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

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HOUSE RESEARCH | Short Subjects

Lisa Larson

Updated: June 2004

Minnesota's New K-12 Academic Standards and Assessments

The 2004 Legislature added health and physical education standards to the language arts, mathematics, science, social studies, and arts standards adopted in 2003

The 2003 Minnesota Legislature repealed the profile of learning portion of the high school graduation rule for the 2003-04 school year and replaced it with required academic standards in five subject areas: language arts; mathematics; science; social studies, including U. S. and world history, geography, economics, government, and citizenship; and the arts. The 2004 Legislature implemented science and social studies standards for the 2005-2006 school year and added health and physical education as a sixth required subject area, with the standards to be locally developed. Public high school students must complete these standards to graduate. 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, one arts credit, and at least seven elective course credits. Districts may apply state or locally developed academic standards for the arts. Districts decide whether students meet course credit requirements by successfully completing an academic year of study or by demonstrating mastery of the applicable subject matter.

In addition to meeting course requirements, public school students also must 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 local requirements in effect when the students became ninth graders.

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 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 assessments for social studies and arts standards. An 11-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 in high school take annual language arts and mathematics assessments. Beginning in the 2007-08 school year, students take science assessments one time in the 3-5 and 6-9 grade spans, and a life sciences assessment in the 10-12 grade span. 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 vocational and technical education and world languages. Districts use locally selected assessments to determine whether students achieve these standards.

Commissioner must adopt rules for specified K-12 academic standards

The Education Commissioner adopted rules for academic standards in language arts, mathematics, and the arts, that were implemented in the 2003-04 school year and were the same as those referenced in the 2003 legislation. The commissioner must adopt rules for academic standards in science and social studies, to implement in the 2005-2006 school year, which must be the same as those adopted by the 2004 Legislature. After adopting these rules, the commissioner cannot amend or repeal the rules in which the legislature implemented the standards nor adopt new rules on the same topic without specific legislative authorization.

Commissioner annually identifies high and low performing schools

The commissioner must use objective criteria, including student 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, by September 1, 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 six subjects; schools' report cards and high or low performing designations are posted on web	Students entering ninth grade must complete credit requirements in six subjects in order to graduate	Students in grades 3-8 and high school must take annual language arts and math assessments; science and social studies standards must be implemented for all students	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 in grade spans 3-5 and 6-9, life sciences assessment in grade span 10-12

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

Karen Baker and Deborah Dyson June 2004

Special Assessments

What are special assessments?

Special assessments are one of the ways a local government may collect money to pay for local improvements. A special assessment is a charge imposed on real property to help pay for a local improvement that benefits the property.

The Minnesota Constitution gives the legislature the authority to allow local governments to use special assessments. This authority is mainly in Minnesota Statutes, chapter 429.

What can special assessments be used for?

Local improvements. Different types of local governments can use special assessments to pay for different types of local improvements. Cities, towns, urban towns, and counties can all use special assessments for the purposes listed in chapter 429. The statute doesn't apply to home rule charter cities if their charters establish other procedures.

Chapter 429 lists improvements that local governments can pay for with special assessments. Some examples include streets and roads, storm sewers, street lights, parks, nuisance abatement, district heating systems, and flood control works. For a comprehensive list, see Minnesota Statutes, section 429.021, subdivision 1.

Services and unpaid charges. Special assessments can also be used for certain services that are often paid for with general revenue and to collect payment for unpaid charges. Cities and urban towns can impose special assessments to pay for services like snow, ice, or rubbish removal from sidewalks, sidewalk or alley repairs, and to abate nuisances and eliminate public health hazards on private property. For a comprehensive list, see Minnesota Statutes, section 429.101.

How is the amount of a special assessment determined?

The special assessment cannot exceed the amount by which the property benefits from the improvement. The amount a property benefits from an improvement, called the "special benefit," is measured by the increase in the market value of the land due to the improvement. The assessment must be uniformly applied to the same class of property. A local improvement may benefit properties that are not abutting the improvement and those properties may also be assessed.

How are special assessments imposed?

Local governments generally follow a set of procedures outlined in chapter 429 to impose special assessments. The procedures may vary depending on the purpose for the special assessment. The process can be divided into roughly three phases: (1) initiation and preliminary assessment, (2) detailed analysis, and (3) approval of final assessment roll, certification, and collection.

During the initiation and preliminary assessment, a local government initiates the proceeding, prepares a report on the necessity, cost-effectiveness, and feasibility of the proposed improvement, gives notice of public hearing, conducts a public hearing, and adopts a resolution ordering the improvement.

In the detailed analysis phase, the local government solicits bids, prepares a proposed assessment roll, gives notice of a public hearing and notifies affected properties of the proposed assessment, and conducts a public hearing.

In the final phase, the local government approves and certifies the assessment roll, issues debt to finance the improvement, collects the assessment, and awards a contract for work on the improvement. In order to issue local improvement bonds without an election, at least 20 percent of the project cost must be paid with special assessments.

Can special assessments be deferred?

Special assessments can be deferred for senior citizens and people who are disabled, for property that is enrolled in the Minnesota Agricultural Property Tax Program (Green Acres), and for unimproved land.

How are special assessments different from property taxes?

Special assessments are a form of taxation and may be paid using the same mechanism and at the same time as property taxes. However, special assessments and property taxes differ on the following:

- The basis for determining the amount charged (market value vs. benefit)
- What real property is subject to charge (taxable property vs. all real property, including tax-exempt property)
- That personal property is not subject to special assessments (but may be subject to property tax)
- Whether there are any statutory limits (debt limits do not apply to local improvement bonds; property tax levy limits have not applied to special assessments)
- Deductibility for income tax purposes (special assessments are generally not deductible for federal or state taxes)

Who imposes most special assessments and what are the trends?

Cities account for 70 percent of all special assessments imposed. In general, city use of special assessments decreased from 1980 to 2000, both as a percentage of total revenue, from 13 percent to 6.4 percent, and as a percentage of total property tax levy, from 20.5 percent to 11.4 percent.

For more information: Contact legislative analyst Karen Baker at 651-296-8959 and Deborah Dyson at 651-296-8291. Also see the House Research publication *Special Assessments*, February 2004.

Danyell Punelli

Revised: July 2004

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 this 60-month limit, but has some exemptions and extensions.

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
- 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
- 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, if 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, have been granted a family violence waiver and are complying with an employment plan, alternative employment plan, or safety 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 the participant received MFIP 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. No new exemptions may be granted under this category after June 30, 2004.
- 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.

HOUSE RESEARCH | Short Subjects

Anna Bonelli

July 2004

Recent Changes in Regulation of Mental Health Professionals

The Board of Behavioral Health and Therapy (BBHT) is a health licensing board, created in 2003, to regulate Licensed Professional Counselors (LPCs) and, eventually, Alcohol and Drug Counselors (ADCs).

Licensed Professional Counselors

Minnesota passed legislation to begin regulating LPCs in 2003 (Laws 2003, ch. 118). Professionals seeking licensure as LPCs may become licensed in one of two ways. First, a "transition period" extends until July 1, 2005, under which the board may issue a license to an applicant who has not passed the examination, if the applicant is licensed, or in the process of being licensed as a:

- psychological practitioner;
- marriage and family therapist; or
- alcohol and drug counselor (Minn. Stat. § 148B.55).

Other applicants must fulfill all the requirements for licensure, which include specified education requirements, 700 hours of supervised work, and passing a national examination (Minn. Stat. § 148B.53). BBHT is currently accepting applications for licensure.

Alcohol and Drug Counselors

Regulation. The Department of Health (MDH) currently regulates ADCs. In 2003, legislation passed that transfers the regulation of ADCs from MDH to BBHT. The transfer of regulatory authority will take place on July 1, 2005 (Laws 2003, ch. 118, § 26). In the meantime, the commissioner of health and the executive directors of the health-related licensing boards must develop a transition plan to transfer authority from MDH to BBHT (Laws 2004, ch. 279, art. 5, § 11).

Transition Period for Licensees. Currently, hospitals and city, county, and state agencies employing ADCs can employ unlicensed ADCs. But beginning January 1, 2006, those entities must employ only licensed ADCs. Until that time, professionals employed by those entities who are seeking licensure can become licensed under modified requirements (Minn. Stat. § 148C.11, subds. 5-6).

Unlicensed Mental Health Professionals

Currently, the Office of Unlicensed Mental Health Practice (OUMHP) at MDH regulates UMHPs by holding them to a standard of conduct (Minn. Stat. §§ 148B.60 to 148B.71). This office was due to expire on July 1, 2004, but the 2004 Legislature extended the date for another year. Legislation passed in 2004 that requires the commissioner of health and the executive directors of the health-related licensing boards to develop a plan to regulate UMHPs after the OUMHP expires on July 1, 2005 (Laws 2004, ch. 279, art. 5, §§ 10-11).

For more information: See the House Research publication *State Regulation of Health-Related Occupations*, July 2004.

HOUSE RESEARCH | **Short Subjects**

Anna Bonelli

July 2004

Credentialing Requirements After Active Military Service or Service by Civilians During Wartime

Credential Renewal

Credentialed professionals serving in the U.S. armed forces anywhere, at any time, or serving the country as civilians outside the United States during wartime are not required to submit a renewal application or pay the renewal fees they would otherwise be obligated to pay to renew their license, certification, or registration in order to practice their occupation (Minn. Stat. § 326.56).

Eligibility

Those eligible for this exemption from normal credentialing requirements include:

- members of the U.S. armed forces, regardless of where stationed; and
- civilians engaged in employment outside of the United States "essential to the prosecution of any war or to the national defense." (Minn. Stat. § 326.56, subd. 1) This includes employees of the U.S. government, any of its agencies, or any contractor or subcontractor under the United States, engaged in work connected with the prosecution of war.

The license, registration, or certification must be effective at the time of entry into the armed forces or at the time of employment outside the United States.

Application

This exemption applies to all occupations regulated by the executive branch of the state of Minnesota. This includes, for example, occupations regulated by health licensing boards or the Department of Commerce.

Grace Period

Those who are eligible are exempt from renewing their professional credential while they are on active duty or out of the United States, and for an additional six months after they are discharged from the armed forces or from when they return to the United States.

Cancellation or Revocation

If the eligible professional's credential was cancelled or revoked either for nonpayment of the renewal fee or failure to apply for renewal, the credential must be restored without paying a fee when the professional or an agent of the professional applies.

Continuing Education Requirements

Different boards and agencies have different policies regarding continuing education credits. Some credentialing bodies waive the continuing education requirements that accrued during the eligible professional's leave. Other bodies may extend the deadline to give eligible professionals extra time to make up the required continuing education requirements.

HOUSE RESEARCH | Short Subjects

Anna Bonelli

Updated: July 2004

State Regulation of Health-Related Occupations

Who regulates health-related occupations in Minnesota?

At least 47 health-related occupations are regulated by the state. Health-related occupations regulated by the state are overseen by either the Minnesota Department of Health (MDH) or by a health-related licensing board. As of July 2004, there were 16 health-related licensing boards and two divisions in MDH that oversee health-related occupations. Some licensing boards regulate a single occupation, while others regulate a range of related occupations. For example, the Minnesota Board of Optometry only regulates optometrists, while the Minnesota Board of Medical Practice regulates acupuncturists, athletic trainers, osteopaths, physician assistants, physicians, respiratory care practitioners, and traditional midwives. MDH regulates various allied health professionals, such as speech-language pathologists and audiologists; various environmental health professionals, such as plumbers and lead workers; unlicensed mental health practitioners; and unlicensed complementary and alternative health care providers.

How are health-related occupations regulated?

Health-related occupations may be regulated in one of several ways. Where necessary and appropriate, statute allows two or more of these methods of regulation to be utilized at the same time. You cannot always rely on the title a provider uses to determine how the provider is regulated. For instance, a registered nurse is actually licensed, not registered. What follows are some methods of occupational regulation.

- *Licensure* is the most stringent form of regulation. Under licensure, a person cannot practice in an occupation unless the person has satisfied predetermined qualifications for practicing and has been recognized by the state has having met those qualifications. Minn. Stat. § 214.001, subd. 3, para. (d). This is also known as "scope of practice protection." A person may demonstrate that the required qualifications have been met by passing a licensing examination, graduating from an accredited educational institution with a relevant degree, or working in the field while under supervision. Example: dentists.
- With *registration*, only registered persons who have met predetermined qualifications for practicing are allowed to use a designated title ("title protection") and are listed on an official roster. Minn. Stat. § 214.001, subd. 3, para. (c). Under a registration system, it is possible for a person to practice in an occupation without being registered, as long as the person does not use any protected titles. Occupations that are licensed generally also prohibit nonlicensed persons from using protected titles. Example: audiologists.
- To obtain *certification*, a person must satisfy the qualification requirements specified in statute or rule. It may be possible for a person to practice in an occupation without being certified, but other laws may

allow only a certified professional to be on-site at a specific program, perform certain functions, or supervise other personnel. Example: food managers.

- Some occupations are not licensed, registered, or certified, but providers are required to conform to a *client bill of rights* and *not engage in prohibited conduct*. A regulatory body has authority to investigate complaints against these providers and take and enforce disciplinary actions against providers for engaging in prohibited conduct or violating the client bill of rights. The regulatory body may revoke or suspend the provider's right to practice. Example: unlicensed mental health practitioners.
- *Criminal and civil penalties* exist to punish or prevent illegal acts by providers. Laws imposing criminal or civil penalties are enforced by consumers or prosecutors.

How does the legislature decide if a health-related occupation should be regulated?

No occupation may be regulated by the state unless its regulation is required for the safety and well-being of Minnesotans. Minn. Stat. § 214.001, subd. 2. This standard applies to both health-related occupations and nonhealth-related occupations. When the legislature determines whether an occupation should be regulated, it must consider the following factors:

1. whether the unregulated practice of the occupation may harm the health, safety, and welfare of Minnesotans in a recognizable way;
2. whether practicing the occupation requires special skills or training, and whether the public would benefit from being assured of the person's ability to practice the occupation;
3. whether Minnesotans may be protected more effectively by means other than occupational regulation; and
4. whether the overall cost-effectiveness and economic impact of regulation would be positive for the state.

What information must the legislature receive regarding legislative proposals to regulate a new occupation or expand regulation of an already-regulated occupation?

If a bill is introduced in the legislature to regulate a new occupation or to expand regulation of an already-regulated occupation, supporters of the proposal must submit to the legislature evidence supporting the new or expanded regulation. Minn. Stat. § 214.002, subd. 1. The information must be submitted in written form and must be provided to the chairs of the House and Senate committees with jurisdiction over the occupation at issue. The subjects that must be covered in the report are specified in statute. Minn. Stat. § 214.002, subd. 2. Some of them include specifying the harm to the public caused by the unregulated practice of the occupation or continued practice at its current level of regulation; explaining why the proposed level of regulation is being proposed; and discussing how the proposed regulation would impact the supply of providers and the cost of the provider's services.

HOUSE RESEARCH | Short Subjects

Anna Bonelli

July 2004

Minors' Consent for Health Care

Minors may not receive health care services without their parents' or guardians' consent, unless specified otherwise in statute.

Specific Services

A minor may consent for medical, mental, or other health services for the following:

- to determine the presence or treatment of pregnancy and conditions associated with pregnancy
- for sexually transmitted infections
- for alcohol or other drug abuse (Minn. Stat. § 144.343, subd. 1).

In addition, minors may consent for:

- hepatitis B vaccinations (Minn. Stat. § 144.3441) and
- blood donation (only those 17 and over) (Minn. Stat. § 145.41).

Emergency Treatment

Health services may be provided to minors without the consent of a parent if, in the health professional's judgment, treatment should be given without delay, and if obtaining consent would result in delay or denial of treatment (Minn. Stat. § 144.344).

Abortion

Minors seeking an abortion must notify both parents of the intended abortion and wait 48 hours, or seek judicial approval for the procedure. A court may authorize an abortion if it finds either:

1. that the pregnant minor is mature and capable of giving informed consent, or
2. that authorizing the abortion without notification would be in her best interests.

An expedited, confidential appeal is available to any minor for whom the court denies an order authorizing an abortion without notification. An order authorizing an abortion without parental notification is not subject to appeal (Minn. Stat. § 144.343, subds. 2-7).

Marriage or Giving Birth

Any minor who has been married or has given birth may consent for personal medical, mental, dental, or other health services or for services for the minor's child (Minn. Stat. § 144.342).

Voluntary Institutional Treatment

Any person 16 years or older may request informal admission to a treatment facility for observation or treatment of mental illness, chemical dependency, or mental retardation and may give valid consent for hospitalization, routine diagnostic evaluation, and emergency or short-term acute care (Minn. Stat. §§ 253B.03, subd. 6(d); 253B.04, subd. 1).

Access to Health Records	Parents and guardians have access to their minor children's medical records, unless the minor legally consents for services specifically listed under the Consent of Minors for Health Services statute (Minn. Stat. §§ 144.341-144.347). In that case, parents or guardians do not have access to the minor's health care records without the minor's authorization (Minn. Stat. § 144.335, subd. 1, (a)). However, if a health professional believes that it is in the best interest of the minor, the health professional may inform the minor's parents of the treatment (Minn. Stat. § 144.346).
Living Apart from Parents and Managing Own Financial Affairs	A minor living apart from his or her parents or legal guardian and who is managing his or her own financial affairs may consent for his or her own medical, mental, or dental care services. This exception applies to a minor regardless of whether the minor's parents have consented to the minor living apart, or regardless of the extent or source of the minor's income (Minn. Stat. § 144.341).
Representation to Persons Rendering Service	If a minor represents to a health professional that he or she is able to give effective consent for medical, mental, dental, or other health services, but is in fact not able to do so, his or her consent is effective if relied upon in good faith by the person rendering the health service (Minn. Stat. § 144.345).
Financial Responsibility	A minor who consents for health services is financially responsible for the cost of the services (Minn. Stat. § 144.347).

For more information: Also see the House Research publication *Youth and the Law*, January 2002.

HOUSE RESEARCH | Short Subjects

Anna Bonelli

July 2004

Minnesota Clean Indoor Air Act

The Minnesota Clean Indoor Air Act (MCIAA) prohibits smoking in many indoor public places (Minn. Stat. §§ 144.411 to 144.417). The legislation was enacted in 1975 in an effort to protect public health, comfort, and the environment.

Where is smoking prohibited?

The MCIAA prohibits smoking in public places and public meetings, except in designated smoking areas. Public places include:

- restaurants
- retail stores
- offices and other commercial establishments
- public conveyances
- educational facilities other than public schools
- auditoriums
- arenas
- meeting rooms
- common areas of rental apartment buildings
- any indoor area used by the general public
- any indoor area that serves as a place of work

Smoking is completely prohibited in all nonresidential health care facilities, day care premises, and public schools.

Where is smoking permitted?

Smoking is permitted in:

- designated areas of public places;
- private, enclosed offices;
- private residences or cars;
- public places when being used for a private social function;
- places of work not usually frequented by the general public, except in those places where employees work close together or ventilation is poor;
- designated areas of licensed residential health care facilities; and
- specified areas for use in peer-reviewed scientific studies of smoking.

Except for bars, no public place may be entirely designated as smoking permitted.

How must smoking areas be designated?

Smoking areas in public places must be designated by spatial separation, a physical barrier, or specified ventilation. Signs must be posted indicating that smoking is prohibited except in designated areas. In addition, smoking-permitted areas of private offices, warehouses, factories, and similar places of work must comply with additional ventilation requirements. *See* Minn. Rules part 4620.0400 to part 4620.1450.

What are the responsibilities of proprietors?

The proprietor or other person in charge of a public place must make reasonable efforts to prevent smoking in the public place they manage. Proprietors or other people in charge must post signs; designate areas as smoking or nonsmoking; ask smokers to refrain from smoking in designated nonsmoking areas; or employ other reasonable means to prevent smoking in nonsmoking areas.

Who enforces the Minnesota Clean Indoor Air Act?

The Department of Health (MDH) enforces the MCIAA. MDH can issue fines for up to $10,000 against the facility in which the violation occurred. Also, peace officers can cite individual smokers with violations of the MCIAA, which is a petty misdemeanor.

Can local governments enact ordinances that are stricter than the MCIAA?

The MCIAA authorizes local units of government to enact stricter ordinances to enforce complete smoking bans in bars, restaurants, or other public places where smoking would otherwise be permitted in designated areas. The Minnesota Attorney General published an opinion in 2000 stating, "a city may completely prohibit smoking in restaurants under its general police powers. The Minnesota Clean Indoor Air Act expressly preserves the authority of cities to ban smoking where the Act, and Health Department rules promulgated thereunder, would otherwise allow designation of smoking areas by the proprietor" (Op. Atty. Gen. 62b May 4, 2000).

Have any local governments have banned smoking in all public places?

As of July 2004 only two cities in Minnesota have banned smoking from all public places. Bloomington and Minneapolis passed citywide smoking ordinances prohibiting smoking in all public places, including bars and restaurants. The cities of Duluth, Moose Lake, and Cloquet, and Olmstead County have enacted local ordinances that more strictly limit smoking in restaurants; however, smoking in bars is permitted.

Deborah K. McKnight

Updated: July 2004

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, 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 committee with jurisdiction over elections bills 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, one is serving a term that ends January 2005. Another member's term ends January 2006. Two have terms ending January 2007, and two have terms ending January 2008.

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.

Kathy Novak

Updated: July 2004

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 postsecondary 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 postsecondary 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 postsecondary 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 tuition maximum is $8,983 for four-year institutions and $6,913 for two-year institutions and the living allowance is $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 2002-2003 year was $1,845, an increase of 4.6 percent over the previous annual average.

Are part-time students and independent students eligible?

Part-time students are eligible for a 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 attendance compared to 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. After canceling funds for several funding cycles, the 2003 Legislature made additional appropriations, authorized fund transfers, and adjusted eligibility criteria to manage potential grant shortfalls in the biennium ending June 30, 2005.

Are eligible students entitled to a state grant?

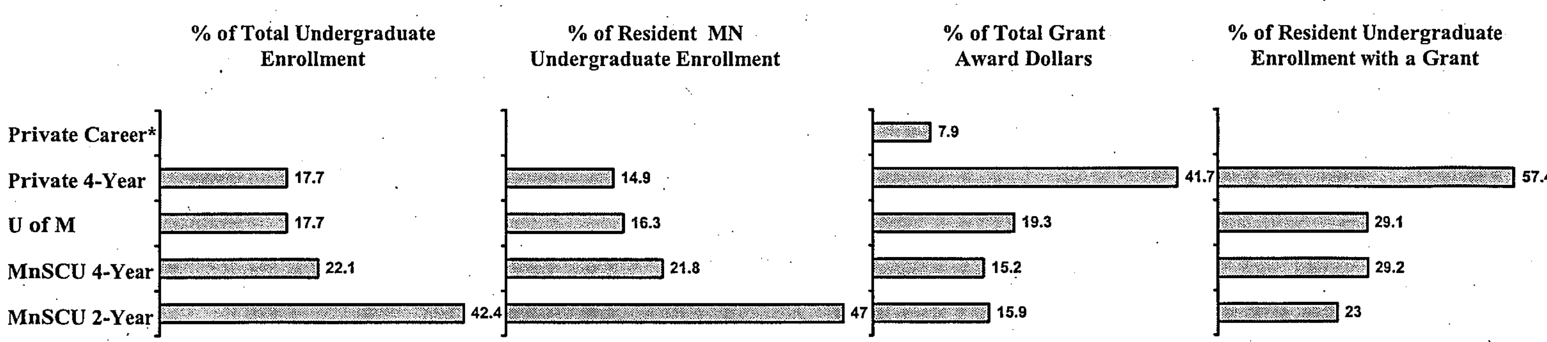
The state grant program is not an entitlement under state law, which requires HESO to award grants based on available funding. If the appropriations are insufficient for full awards, HESO must reduce all grants by adding a surcharge to the family responsibility and increasing the student's responsibility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

How do grants compare to enrollment at state postsecondary institutions?

The graph below summarizes participation in the state grant program in fiscal year 2003. Of the 219,400 Minnesota undergraduate students attending public postsecondary institutions and private four-year colleges in Minnesota, 30 percent received a state grant.*

The percentage of students at private institutions who are Minnesota residents and receive a grant is much larger (57 percent) than at public four-year institutions (29 percent each for state universities and the University of Minnesota). The total amount of grant dollars awarded to students at private institutions is also larger. Of the $134 million in grants in fiscal year 2003, 42 percent went to students at private four-year colleges compared to 34 percent to students at public four-year universities (state universities and the University of Minnesota combined).

Distribution of State Grants by Institution Type
Fiscal Year 2003



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

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

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Lisa Larson

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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 and other laws dealing with children's exposure to sexually explicit materials on the Internet have been making their way through the courts. CIPA is the third law since 1996 that Congress passed to address parents' concerns about children's access to harmful Internet materials and the only one that the U.S. Supreme Court has found constitutionally defensible.

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. The Court found that 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 ruled in 2004 that COPA restrictions were too broad and sent the case back to a lower court to rule on types of technology that allow adults to see and buy legal material and keep objectionable material away from children.

The Supreme Court found that several provisions distinguished CIPA from the CDA and COPA, making CIPA constitutionally defensible.

Federal district court found CIPA unconstitutional because it forced

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 *public libraries to censor, violate the First Amendment*

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. Three 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.

Bob Eleff

Revised: August 2004

Minnesota Statutes Promoting Renewable Sources of Electricity

Minnesota laws promote the generation of electricity from renewable sources—wind, biomass, solar, hydroelectric, and hydrogen—in several ways, as summarized below. In addition, low-interest loan programs administered by the Minnesota Department of Agriculture's Rural Finance Authority are available to farmers developing renewable energy projects. Visit www.mda.state.mn.us/agfinance/.

Increasing Supply

Renewable Energy Objectives

Minnesota Statutes, section 216B.1691 requires investor-owned utilities, generation and transmission cooperatives, and municipal power agencies to make a good faith effort to generate or purchase sufficient electricity generated from renewable sources to account for 1 percent of total retail electric sales in 2005, and 10 percent by 2015. Xcel Energy is required to meet these objectives.

Integrated Resource Planning

Minnesota Statutes, section 216B.2422 prohibits the Public Utilities Commission (PUC) from approving a new or refurbished nonrenewable energy facility unless the utility has demonstrated that a renewable facility is not in the public interest.

Wind Power Mandate

Minnesota Statutes, sections 216B.2423 and **216B.1691** require Xcel Energy to acquire 1,125 megawatts (Mw) of wind capacity: 425 Mw by year-end 2002, an additional 400 Mw by 2006, and 300 Mw more by 2010. At least 100 Mw must consist of projects of 2 Mw or less. Currently, Xcel has 675 Mw under contract.

Biomass Power Mandate

Minnesota Statutes, section 216B.2424 requires Xcel to acquire 110 Mw of biomass capacity by the end of 2002, including projects fueled from poultry litter and waste wood. The company has the full 110 Mw under contract.

Funding Development

Renewable Energy Production Incentives

Minnesota Statutes, section 216C.41 provides payments of 1.5 cents per kilowatt-hour for ten years to small wind generators (generally, under 2 Mw), owners of qualified hydroelectric dams, and farm anaerobic digesters. Payments to wind generators are limited to 200 Mw of capacity and have been fully allocated.

Minnesota Statutes, section 116C.779 annually allocates $4.5 million from the renewable development account (see below) to fund wind production incentives, and up to $1.5 million to fund incentives for other renewable fuels.

Utilizing Conservation Funding	**Minnesota Statutes, section 216B.2411** allows all public utilities and those municipal utilities and electric cooperatives meeting their renewable energy objectives to allocate 5 percent of the funds they are otherwise required to spend on energy conservation improvements to construct electric generation facilities powered by renewable fuels.

Supporting Demand

Small Producer Purchase Requirement	**Minnesota Statutes, section 216B.164** requires electric utilities to purchase power from certain small power producers, including those using a renewable energy source. The price paid to facilities under 40 Mw capacity may be set by the PUC or may be the average retail rate.
"Green Pricing" Programs	**Minnesota Statutes, section 216B.169** requires utilities to offer retail customers the option to purchase electricity generated from renewable sources.

Tax Exemptions

Wind Facilities	**Minnesota Statutes, section 297A.68, subdivision 12** exempts from the sales tax wind facilities and materials used to manufacture, install, construct, repair and replace them. Under **Minnesota Statutes, section 272.02, subdivision 22,** real and personal property of a wind facility, except land, are exempt from the property tax. **Minnesota Statutes, section 272.029, subdivision 7** exempts wind facilities located in Job Opportunity Building Zones from the wind energy production tax.
Photovoltaics	**Minnesota Statutes, sections 272.02, subdivision 24** and **297A.67, subdivision 29(c)** exempt photovoltaic devices from property and sales taxes, respectively.
Biomass and Other Agricultural Resources	**Minnesota Statutes, section 272.02, subdivisions 45, 47,** and **54** exempt from the property tax attached machinery and other personal property of specific facilities, including the Fibro Minn poultry litter project in Benson and projects proposed by Itasca Power and Rahr Malting. **Subdivision 43** provides a similar exemption, limited to five years, to any waste wood facility and any facility fulfilling Xcel's biomass mandate, if the exemption is approved by affected local government units.

Funding Research

Renewable Development Account	**Minnesota Statutes, section 116C.779** requires Xcel Energy to contribute $16 million annually to a renewable development account, at least $10 million of which funds renewable energy projects approved by the PUC.
Utilizing Conservation Funding	**Minnesota Statutes, section 216B.241** requires Xcel Energy to allocate 5 percent of the funds it must spend on energy conservation in 2003-2008 to support research on hydrogen and other renewable fuels at the University of Minnesota.

For more information: Contact legislative analyst Bob Eleff at 651-296-8961.

Joel Michael

Updated: August 2004

Cigarette and Tobacco Excise Taxes

Minnesota's cigarette tax is 48 cents per pack

Minnesota imposes an excise tax on the sale or possession of cigarettes of 48 cents per pack of 20 cigarettes. This tax is a "per unit" tax; it is imposed on the number of cigarettes sold, not as a percentage of the sale price. Because the tax is a per unit tax, it does not increase as the price of cigarettes increases. Unless the legislature increases the rate, inflation reduces the relative burden of the tax.

Tobacco products, such as cigars, pipe tobacco, snuff, and chewing tobacco, are subject to a tobacco products tax equal to 35 percent of their wholesale prices.

The legislature has increased the cigarette tax four times since 1985

Over the last 20 years, the legislature has increased the cigarette tax rate four times and the tobacco products tax rate twice. The table shows the years when rates were increased and the total rates (after the increase).

Years of Tax Rate Increases		
	Cigarette	Tobacco Products
1985	$0.23	25%
1987	$0.38	35%
1991	$0.43	35%
1992	$0.48	35%

Tax revenues are about $182 million per year

For fiscal year 2005, the Finance Department estimates collections from the two taxes will be about $182 million. Revenues from the tobacco products tax are deposited in the general fund. Revenues from 6.5 cents per pack of the cigarette tax go to fund the Academic Health Center, 2.5 cents to the medical education and research account, and the rest are deposited in the state general fund.

The tax is regressive

According to the Department of Revenue's *2003 Tax Incidence Study*, the cigarette and tobacco taxes are the most regressive of Minnesota's state and local taxes. The burden of these taxes falls much more heavily on lower income households (as a share of income) than any of the other categories of taxes analyzed in the study.

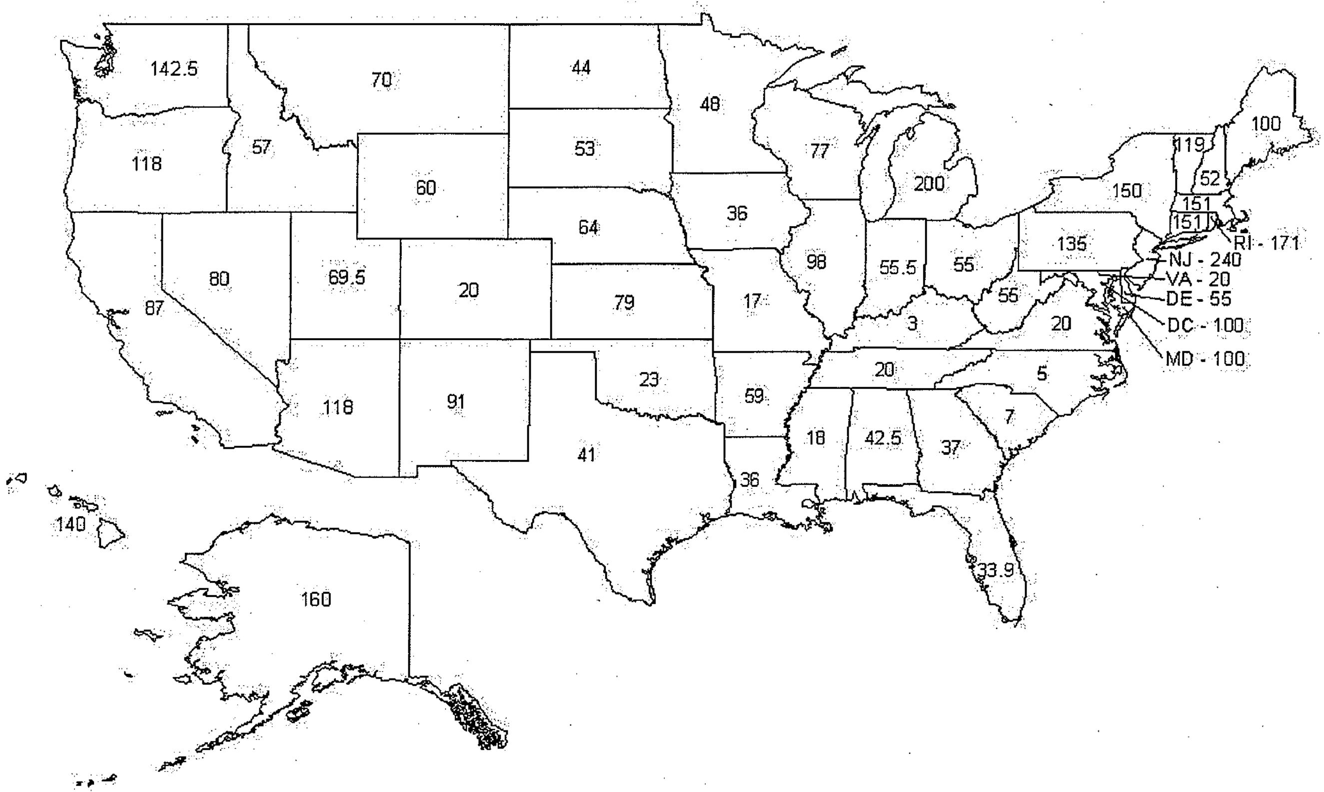
Neighboring states have comparable tax rates

Because cigarettes can easily be transported from one state to another, particularly by individuals who live near state borders, the tax rates in bordering states are important to tax policy. States bordering Minnesota have roughly comparable cigarette excise tax rates. Wisconsin (77 cents) and South Dakota (53 cents) have higher rates, while North Dakota (44 cents) and Iowa (36 cents) have lower rates.

The rates for all states are shown on the map. Minnesota's tax rate of 48 cents ranks 35th highest. The map does not reflect local cigarette taxes, which are allowed in some states; some of these local taxes are substantial (e.g., $1.50 per pack in New York City). Some states have no sales tax or exempt cigarettes from sales taxation, lowering the overall tax burden.

State Cigarette Tax Rates*

scheduled as of 1/1/2005
cents per pack



* These exclude some significant local taxes.
Source: Federation of Tax Administrators and other sources

Numerous states have recently increased their cigarette tax rates to balance their budgets or to fund program initiatives. Voters in three states are scheduled to vote on cigarette tax increases in November. The increases and referenda are listed in the table. A temporary 10-cent increase in the Oregon tax expired during 2004.

State Cigarette Tax Rate Increases in CY2004 cents per pack			
Michigan	75	Pennsylvania	35
Alaska	60	Alabama	26
New Jersey	35	Virginia	17.5
States with 11/04 Referenda for Increases			
Montana	100	Colorado	64
Oklahoma*	80		

* Also exempts cigarettes from sales tax, reducing the effective increase.
Source: FTA, NCSL, and *State Tax Notes*, compiled by House Fiscal Analysis Department

Settlements of the states' lawsuits against the tobacco companies have about the same economic effect as a cigarette tax, since these settlement payments are passed along to consumers (nationally) through higher cigarette prices. To compensate partially for the lower prices of nonsettlement cigarettes, the 2003 Minnesota Legislature imposed a 35-cent per pack "fee" on manufacturers who did not settle with the state. Michigan and Utah also impose a 35-cent surcharge on these cigarettes; Alaska imposes a 25-cent surcharge.

For more information: Contact legislative analyst Joel Michael at 651-296-5057.

Nina Manzi and Lisa Larson

Updated: August 2004

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 include the following:

- 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 2005, a typical married couple with two dependents would need to have $21,100 of gross income before owing any state income tax.

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

In 2005, an estimated 186,000 returns will claim the deduction at a cost to the state of $13.8 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 to $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 2002, 59,524 Minnesotans claimed a total of $15.6 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.

Lisa Larson

September 2004

Supplemental Education Services under the No Child Left Behind Act

Schools classified as needing improvement must provide supplemental education services

Under the federal No Child Left Behind Act, public schools that receive Title I funds and fail to demonstrate adequate yearly progress for three consecutive school years are categorized as "needs improvement." These public schools must use at least 20 percent of their Title I funds for intradistrict student transfers to schools that demonstrate adequate yearly progress and to provide supplemental education services to increase the academic performance of eligible low-income students.

In the 2004-2005 school year, 26 Minnesota public schools that need improvement must provide supplemental education services to students who are eligible to receive free or reduced price lunches and whose statewide test scores indicate that they must increase their reading or math skills. Other public schools that the Minnesota Department of Education (MDE) subsequently categorize as needing improvement because they fail to demonstrate adequate yearly progress for three consecutive school years will need to provide supplemental education services to eligible students, too.

The Minnesota Department of Education approves supplemental education service providers

Supplemental educational services include tutoring, mentoring programs, and after-school services provided by state-approved public or private providers. These providers can include school districts and charter schools that demonstrate adequate yearly progress, educational service agencies, public or private postsecondary institutions, and faith-based organizations. Supplemental education services must be "high quality, research-based and specifically designed to increase [students'] academic achievement."

The MDE uses nine criteria to develop a list of approved providers. There were 24 department-approved supplemental education service providers for the 2003-2004 school year. There are 43 approved new and existing providers for the 2004-2005 school year. The list includes, among other providers, the Minneapolis and St. Paul school districts, intermediate school districts, other Minnesota providers, and non-Minnesota providers. Generally, providers remain on the department's list of approved providers for three years.

MDE must monitor the quality and effectiveness of providers' services

The MDE also monitors the quality of providers' services. Federal law requires the department to withdraw approval of providers "that fail for two consecutive school years to contribute to the academic proficiency of students." In a March 2004 report on the No Child Left Behind Act, the Legislative Auditor recommended that the legislature examine department standards for monitoring approved providers, including:

- how the department will disentangle the impact of supplemental education from the impact of regular school instruction on students' performance; and

- whether the department will assess providers' effectiveness using an absolute measure, such as the percent of "proficient" students or measure individual students' growth over time toward proficiency.

School districts must contract with providers selected by parents and use designated funds to pay providers

School districts must tell parents that they may select an approved supplemental education service provider for their eligible students from the MDE list and that they may specify services for the students. After parents select a provider, the district must contract with that provider to meet the student's academic achievement goals set by the district in consultation with the student's parents and the provider.

The district pays the provider directly, using funds allocated for supplemental education services; fund amounts can vary by district but average about $1,500 per eligible student. If parents' demand for services exceeds available funds, districts first must serve those students with the greatest need to increase their reading or math skills.

Providers must give parents and the enrolling school information on students' progress.

State rule specifies eligibility criteria and approval process

Minnesota Rules, part 3512.5400, describes the eligibility requirements and the approval process for supplemental education service providers. The rule does not specify the basis for withdrawing approval from providers that fail to increase student proficiency for two consecutive school years, consistent with federal law.

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

Deborah K. McKnight

Updated: October 2004

University of Minnesota Constitutional Autonomy

The University of Minnesota has a special legal status, known as constitutional autonomy, that is of continuing interest to the legislature. Most frequently, members ask whether a proposed bill provision affecting the university would violate constitutional autonomy. At times, the validity of an existing law on the university is questioned. This short subject is an introduction to constitutional autonomy. It describes the relevant territorial act and constitutional provision and lays out four principles established by Minnesota cases on the university's autonomy.

Definition

Constitutional autonomy is a legal principle that makes a state university a separate department of government, not merely an agency of the executive or legislative branch. A university with this status is subject to judicial review and to the legislature's police and appropriations power. However, its governing board has a significant degree of independent control over many university functions.

Statute and Constitution

The University of Minnesota was incorporated and its powers were set out in an 1851 act of the Territorial Assembly. (Territorial Laws 1851, ch. 28.) The act established a Board of Regents, provided for the legislature to elect the board, and gave the board general authority to govern the university. Specific powers granted to the board in the act include: the ability to appoint faculty, set faculty salaries (with legislative approval), grant degrees, determine tuition, and erect buildings.

When Minnesota became a state in 1858, the constitution carried into statehood the university's legal status. This recognition of the university's original charter is known as constitutional autonomy. ("All the rights, immunities, franchises and endowments heretofore granted or conferred upon the University of Minnesota are perpetuated unto the university." Minn. Const., art. XIII, § 3).

Essential Case Law Principles

The Minnesota Supreme Court first decided a case on the constitutional status of the university in 1908. A handful of cases decided since then have resulted in the following four rules to use in evaluating legislation that affects the university.

- **The Board of Regents alone is empowered to manage the university, except as qualified below.** Case law prohibits either the legislative or executive branch from participating in internal management of the university. Cases especially reject broad legislative or executive branch control over university finances. *State ex rel. University of Minnesota v. Chase*, 175 Minn. 259, 220 N.W. 951 (1928).

- **Judicial relief is available if the regents abuse the management powers granted by the state constitution.** The Minnesota Supreme Court has ruled that the judicial branch is also prohibited from interfering with internal university management. However, parties such as students or taxpayers may obtain relief from the courts if the university fails to follow its own rules or violates a valid law in such matters as procedures for student expulsion.

Gleason v. University of Minnesota, 104 Minn. 359, 116 N.W. 650 (1908).

- **The legislature may place conditions on university appropriations, if the conditions do not violate university autonomy.** A condition is more likely to be found valid if it applies equally to all public agencies and the court finds that it (1) promotes the general welfare, and (2) makes very limited intrusions on the regents' management duties. The Minnesota Supreme Court has said it is willing to review any conditional appropriation to determine whether these tests are met. *Regents of University of Minnesota v. Lord,* 257 N.W.2d 796 (Minn. 1977).

- **The university is subject to the general lawmaking power, to the extent that it does not impede the regents' ability to manage the university.** The Minnesota Supreme Court has indicated some factors it considers in upholding application of regulatory laws to the university: (1) the law promotes the general welfare, (2) it applies to all state and local government agencies, and (3) it does not affect internal management of the university. *Star Tribune v. University of Minnesota Board of Regents*, 683 N.W.2d 274 (Minn. 2004).

Other States with University Constitutional Autonomy

This concept has the most effect in California and Michigan. Other states with cases on the subject are Alabama, Florida, Georgia, Hawaii, Idaho, Louisiana, Montana, Nebraska, Nevada, North Dakota, and Oklahoma. See *University of Minnesota Constitutional Autonomy*, Minnesota House Research Department, Appendix 2 (2004).

For more information: Contact legislative analyst Deborah K. McKnight, 651-296-5056. Also see the House Research Legal Analysis, *University of Minnesota Constitutional Autonomy*, October 2004.

Karen Baker

Updated: October 2004

Mortgage and Deed Taxes

What is the mortgage registry and deed tax?

The mortgage registry tax (MRT) is a tax based upon the amount of debt secured by a mortgage of real property. The tax is imposed on the privilege of recording the mortgage. The deed tax is a transfer tax; it is imposed on the value of real property transferred. While these taxes are independent of each other, they are often thought of as a pair since many property transactions involve both a mortgage and a deed.

What are the rates?

The MRT is calculated at the rate of 0.23 percent of total debt secured. The deed tax is calculated at the rate of 0.33 percent of net consideration (i.e., the price paid for the real property).

How does it work?

The following example helps illustrate how each of the taxes is determined for a homebuyer.

Mortgage Registry Tax

John and Mary Anderson secure a loan on a home with a purchase price of $150,000. The Andersons make a $20,000 down payment on the home. The principal debt on the home is $130,000. How much mortgage registry tax do the Andersons owe?

Principal debt x 0.23% = MRT liability

$130,000 x 0.23% = $299

The Andersons owe $299 in MRT.

Deed Tax

John and Mary Anderson record the deed for their new home. The deed is valued at $150,000. How much deed tax must be paid?

Value of the deed recorded x 0.33% = deed tax liability

$150,000 x 0.33% = $495

$495 must be paid when the deed is recorded.

Who is responsible for paying the tax?

In the case of the MRT, the mortgagor (borrower) is liable. In the case of the deed tax, the seller is liable. The lender usually collects both of the taxes at closing, and is responsible for remitting them to the county treasurer when the mortgage and deed are recorded.

The amount of deed tax is usually collected from the seller at the time of closing. However, since the deed tax must be paid in order to record the deed, and since it is in the buyer's best interest to record the deed, the tax could fall on the buyer if the dollars were not collected from the seller.

Who collects the money?

County treasurers collect these taxes. They remit 97 percent to the state, which is deposited in the general fund. The county retains the other 3 percent for administrative expenses.

How much is collected?

In fiscal year 2004, the MRT and deed tax generated $325.5 million in state revenue. As shown in the table below, collections increased substantially in 2002 to 2004. These increases were largely due to low interest rates, which generated more refinancing and purchases. The total amounts reflect only the state's 97 percent share.

MRT and Deed Tax Revenue

Fiscal Year	Total (in millions)	Change: Amount (in millions)	Change: Percent
1996	$88.0	--	--
1997	94.8	$6.8	7.7%
1998	120.2	25.4	26.8
1999	152.7	32.5	27.0
2000	142.2	-10.5	-6.9
2001	159.2	17.0	12.0
2002	231.2	72.0	45.2
2003	298.0	66.8	28.9
2004*	325.5	27.5	9.0

* Fiscal Year 2004 total does not include an estimated $25 million generated by the June 2004 accelerated payment.

Where is it collected?

About two-thirds of the statewide collections for MRT and deed tax come from the seven-county metro area; the remaining one-third comes from Greater Minnesota. Using 2003 population, which is the latest available, and the 2004 tax amounts, the statewide average MRT and deed tax per capita was $64, with a metro county average of $78, and a Greater Minnesota average of $47.

Are there exemptions from the taxes?

There are many statutory exemptions from each tax. Minnesota Statutes, section 287.04, contains a list of the exemptions from the MRT. The primary ones are contracts for deed, certain agricultural mortgages, marriage dissolution decrees, and certain low- and moderate-income housing mortgages.

Minnesota Statutes, section 287.22, contains a list of the exemptions from the deed tax. Some of the most common are recording an amendment to the mortgage, a plat, a will, a lease, a sheriff's certificate of sale in a foreclosure sale, and a decree or deed involving a marriage dissolution.

For more information: Contact legislative analyst Karen Baker at 651-296-8959. Also see the House Research publication *Mortgage and Deed Taxes in Minnesota*, April 2002.

HOUSE RESEARCH | **Short Subjects**

Randall Chun

Revised: October 2004

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 meet the following criteria:

- 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 described below.

Eligibility group	Net income limit, as % of federal poverty guidelines (FPG)	Asset limit*
Children < age 2	280	None
Children 2 through 18	150	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 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. Since October 1, 2003, adult enrollees who are not pregnant have been 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 2005, the federal government pays 50 percent of the cost of MA services, and the state is responsible for the remaining 50 percent. In fiscal year 2004, total state and federal MA expenditures for services were $4.993 billion.

Recipients

During fiscal year 2004, an average of 462,400 individuals were eligible for MA services each month. As of September 1, 2004, 280,440 MA recipients in 81 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.*

Danyell Punelli **Revised: October 2004**

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 2004 FPG for a family of three is $15,670 (115 percent of FPG for a family of three equals $18,021). 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 $788; a family of four's benefit is $932. 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.

Postsecondary education is not routinely available to MFIP caregivers. Job counselors may approve postsecondary 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 1998-2004 (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 2004, the state's required MOE amount was $179 million per year.

According to the Department of Human Services, for state fiscal year 2004, total expenditures were $176.8 million for the cash portion and $141.1 million for the food portion of the MFIP grants. Expenditures for support services were $52.5 million. In terms of funding, $102.2 million was financed with federal TANF funds, $141.1 million was from federal Food Stamp funds, and $74.6 million was from state appropriations. In addition, $42.7 million was spent on state and county administration costs.

How many families receive MFIP?

In fiscal year 2004, 44,238 families and a total of 125,436 participants were receiving MFIP assistance on an average per-month basis.

For more information: See the House Research publication *Minnesota Family Assistance*, January 2004, and the following Short Subjects: *Minnesota Family Investment Program Time Limit Exemptions and Extensions,* July 2004, and *MFIP Cases Reaching the 60-Month Time Limit,* September 2003.

Judith Zollar

October 2004

Minnesota's Civil Commitment System for Sexually Dangerous Persons

When is a sex offender subject to civil commitment?

Any person who has been determined by a court to be a "sexually dangerous person" may be involuntarily committed. **Minn. Stat. § 253B.185.** There are three elements to the definition of "sexually dangerous person."

- First, the person must have engaged in a course of "harmful sexual conduct" in the past. Sexual conduct is "harmful" if it creates a substantial likelihood of causing serious physical or emotional harm to another person. Certain crimes are presumed to cause such harm, unless proven otherwise in a particular case. For example, felony-level criminal sexual conduct crimes are presumed to qualify as "harmful sexual conduct."

- Second, the person must manifest a sexual, personality, or other mental disorder or dysfunction.

- Third, as a result of this mental disorder or dysfunction, the person must be likely to engage in future acts of harmful sexual conduct.

The law does not require proof that the person is **unable** to control his or her sexual impulses; it is sufficient that the person faces difficulty in controlling behavior and there is a likelihood of future harmful sexual conduct due to the person's mental disorder or dysfunction. **Minn. Stat. § 253B.02, subds. 7 and 18c.**

Must a person be convicted of a criminal offense in order to be civilly committed?

No. Prior criminal convictions are not required in order to civilly commit a person under this law. Because the standard of proof required for commitment is difficult to meet, it may be hard to obtain a commitment absent the type of proof a prior conviction would provide. **Minn. Stat. §§ 253B.02, subd. 18c; 253B.18, subd. 1; and 253B.185.**

How does the state ensure appropriate persons are referred for commitment?

Minnesota law requires courts sentencing offenders who have committed felony-level criminal sexual conduct crimes to make a preliminary determination as to whether civil commitment of the person as a sexually dangerous person would be appropriate. This information must be included in the court's sentencing order. If the court determines that such a petition would be appropriate, it must forward its preliminary determination and any supporting documentation to the county attorney. **Minn. Stat. § 609.1351.**

Similarly, the Commissioner of Corrections must make the same type of preliminary determination concerning the appropriateness of civil commitment before releasing certain predatory offenders from state prison. This law applies when the commissioner determines the sex offender to be in a "high risk" category. If the commissioner determines that a petition may be appropriate, the commissioner must forward the preliminary determination, along with a summary of the written reasons for it, to the county attorney in the county where the offender was convicted. This information must be forwarded no later than 12 months before the inmate's release date or as soon as is practicable if the inmate is incarcerated for fewer than 12 months. The law then directs the county attorney to proceed, under the civil commitment law, to assess the case and determine whether civil commitment proceedings should be initiated. **Minn. Stat. § 244.05, subd. 7.**

Where are civil commitment proceedings heard?

The county attorney initiates a civil commitment proceeding under this law in the county where the proposed patient resides or is present. If the proposed patient is an inmate of a state prison, the petition may be filed in the county where the proposed patient was convicted. Alternatively, the petition may be heard by a member of a specialized statewide panel of district judges established by the Minnesota Supreme Court to preside over commitment proceedings of sexually dangerous persons. **Minn. Stat. § 253B.185.**

What rights and procedures govern commitment hearings?

The hearing on the petition is a civil proceeding and is governed by the same procedures and rules as a proceeding to commit a person as "mentally ill and dangerous." These procedures, among other things, guarantee the proposed patient's right to be represented by counsel at public expense, if necessary, and require the need for commitment to be proven by clear and convincing evidence. **Minn. Stat. §§ 253B.18; 253B.185.**

Where are civilly committed individuals placed upon commitment?

Sexually dangerous persons are committed to the custody of the Commissioner of Human Services and are placed in a secure treatment facility in Moose Lake known as the Minnesota Sexual Psychopathic Personality Treatment Center. In order to obtain a less secure placement, the patient must prove, by clear and convincing evidence, that a less restrictive treatment program is available and is consistent with the patient's treatment needs and the requirements of public safety. **Minn. Stat. §§ 246B.02; 253B.185, subd. 1.**

For how long is a person committed?

During the 60-day period following the initial commitment decision by the court, the treatment facility prepares a treatment report and the court holds another hearing to decide whether the commitment decision should be made final. If the court finalizes its commitment decision at the review hearing, the person is committed to the Commissioner of Human Services' custody for an indeterminate period of time. The indeterminate commitment lasts until the person can demonstrate that he or she is no longer dangerous or in need of treatment. **Minn. Stat. § 253B.18.**

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

HOUSE RESEARCH | Short Subjects

Joel Michael **November 2004**

MinnesotaCare Provider Taxes

What are the taxes?

Minnesota imposes a series of gross revenue taxes on various types of providers of health care goods and services. Revenues collected under these taxes are used to pay for the MinnesotaCare program, which provides state subsidized health care coverage for low-income individuals.

Who is subject to the tax?

Provider taxes apply to the following:

- "Health care providers," which include licensed health care professionals such as physicians, dentists, nurses, psychologists, physical therapists, chiropractors, and so forth; nonlicensed individuals who provide services that qualify for reimbursement under Minnesota's Medicaid program; staff model health plan companies (a type of HMO where services are provided by employees); ambulance services; and opticians
- Hospitals
- Surgical centers
- Wholesale drug distributors

What entities are exempt from the tax?

MinnesotaCare provider taxes do not apply to the following:

- Nursing homes and various other residential care facilities, such as board and care homes, adult foster homes, boarding care homes, and adult day car centers
- Home health agencies
- Providers of personal care services
- Providers of private duty nursing services
- An entity that employs health care providers to service only their employees
- An educational institution that provides services to its students, if it does not charge students a fee for extended coverage

What is the tax base?

The taxes apply to the gross revenues derived from "patient services," which are defined to include most services provided to patients, such as diagnostic and therapeutic services, bed and board, and so forth. Various types of services are explicitly excluded from patient services, including the following:

- Services provided to nursing homes and in connection with assisted living and congregate housing programs
- Exams for insurance, employment, litigation, and so forth
- Certain mental health services
- Hospice services
- Various types of residential services for the mentally retarded

What is the tax rate? The tax rate is 2 percent. A temporary 1.5 percent rate applied from 1998 through 2002.

What exemptions apply? Exemptions from the tax apply to the following payments:

- For services provided under Medicare
- For home health care services
- Those made from the state chemical dependency fund
- Those funded by charitable donations
- Those under programs funding research on human subjects in compliance with federal law
- Those made by the federal employee health insurance plan that covers federal workers
- Those from providers that were already subject to the tax

Are credits allowed? Credits are allowed for taxes paid to other states and for qualifying research expenditures. The research credit is subject to annual cap of $2.5 million; the commissioner of revenue sets the credit rate to equal the cap amount.

How is the tax paid? Providers make quarterly estimated payments; an annual return is filed to reconcile the estimated payments with the final liability for the tax year. All payments and returns are required to be filed and made electronically. The Department of Revenue administers the tax. Providers may itemize the tax on patient bills.

How are drugs taxed? Legend drugs (i.e., those requiring prescriptions under FDA regulation) are taxed under a wholesale drug tax. This tax is levied on wholesale drug distributors. It applies at a 2 percent rate to the wholesale price. A use tax applies when drugs are purchased for use in Minnesota from an out-of-state seller who does not have nexus and, thus, cannot be required to pay the tax.

How much revenue is collected from the taxes? In February 2004, the Department of Finance estimated that the MinnesotaCare provider taxes will yield $360.6 million in revenues for the Health Care Access fund in fiscal year 2005. Because health costs are rising at a rapid rate and because consumption of health services is also increasing steadily, these revenues are likely to rise at a faster rate than most, if not all, of the other state tax sources.

Are these the only sources of revenue for the health care access fund? No, the revenues from applying the insurance premiums tax to health maintenance organizations (HMOs) and nonprofit health services corporations (such as Blue Cross) are deposited in the health care access fund and used to pay for MinnesotaCare. In addition, other revenues from the program, such as premium payments by participants, go to the fund.

For more information: Contact legislative analyst Joel Michael at 651-296-5057.

Pat Dalton

Updated: November 2004

Levy Limits

There are no general levy limits for taxes payable in 2005

The general levy limits under Minnesota Statutes, sections 275.70 to 275.74 usually restrict the amount of property taxes counties and larger cities may impose for general fund expenditures. Levy limits applied to property taxes payable in 2004 but expire beginning with taxes payable in 2005. This document describes how the law has usually worked in the past and then lists the more stringent restrictions that were imposed for taxes payable in 2004.

Levy limits restrict general purpose property tax levies of counties and large cities

Usually levy limits apply to counties and to cities with populations of 2,500 or more. (Schools are subject to tax limits under a different law.) Although the law limits the amount of the local levy, the local government's general-purpose state aids (see below for a list of the aids) are used to calculate the limit. When state aids increase, the maximum allowed levy decreases. Conversely, if state aids decrease, the allowed levy increases.

Levy limits are intended to ensure that state aid reduces property taxes

State aids are included in calculating the limits because the legislature adopted the limits to help ensure that cities and counties used increased state aid payments to reduce property taxes and not for higher local spending. There has been an ongoing legislative debate about whether, in the long term, levy limits actually control local spending. Proponents of limits argue that they hold down local spending and property taxes. Local government interests and other opponents of limits, by contrast, claim they do little to limit property tax levies and may actually increase them by encouraging cities and counties to levy up to the maximum amount allowed.

Levy limits have expired several times and been reenacted

Levy limits expire after property taxes payable in 2004. In recent years, the legislature has generally imposed levy limits as part of property tax reforms, or when state aid reductions may have led to higher property taxes. The table shows the years limits were imposed. Levy limits initially applied to all cities and towns. The legislature later exempted towns and cities with populations under 2,500.

Chronology of Levy Limits

Taxes payable years	Limits Apply?	Instigating Event
1972-1992	Yes	Enactment of 1971 property tax reform
1993-1997	No	Enactment of Truth-in-Taxation notices as a replacement
1998-2000	Yes	"Compression" of class rates
2001	No	Allowed to expire
2002-2003	Yes	2001 property tax reform
2004	Yes	2003 and 2004 aid reductions
2005 and later	No	Were not reenacted during the 2004 session

State aids are used to calculate limits

As noted above, state general-purpose aids are used to calculate levy limits. The aids included in the levy limit base are:

- taconite aid;
- county program aid—counties only; and
- local government aid (LGA)—cities only.

Levy limit bases are annually increased for inflation and local growth

Usually, a local government's levy limit base (levy plus aids) is increased for growth in three factors:

- The rate of inflation, as measured by the implicit price deflator (IPD) for state and local government purchases
- The number of households in the local jurisdiction, as estimated by the state demographer or the metropolitan council
- One-half of the increase in the total market value in the jurisdiction due to new commercial/industrial development

Local governments may levy "outside of limits" for certain purposes

The levy limits do not apply to "special levies." Special levies can be imposed for whatever amount the city or county needs outside of levy limits for specified purposes. For taxes payable in 2004 these purposes included:

- debt for capital purchases and projects;
- state and federal required matching grants;
- preparation for and recovery from natural disasters;
- certain abatements;
- increases in public employee retirement association (PERA) rates after June 30, 2001;
- required jail operation costs;
- operation of lake improvement districts;
- repayment of a state or federal loan related to highway or capital projects; and
- transition costs during the year the state assumes court administration costs in that county.

Local governments may go to voters for authority to exceed limits

When levy limits are in effect, a local government may not certify a levy higher than its total levy limit plus authorized special levies unless the voters approve it at a referendum. A vote to exceed the limit may be for any amount, and the tax is spread on tax capacity. Unless approved by a referendum, the final levy may not exceed the limited amount plus authorized special levies

Stricter levy limit provisions were imposed in Pay 2004

The levy limit provisions for property taxes payable in 2004 were unusually strict and differed from the usual law in the following ways:

- The starting point for calculating the limit was certified Pay 2003 levy plus aid, *minus 40 percent of the local government's 2003 aid reduction*
- No adjustment was allowed for inflation, population growth, or new commercial/industrial construction

For more information: Contact legislative analyst Pat Dalton at 651-296-7434. Statutes governing levy limits are Minnesota Statutes, sections 275.70 to 275.74.

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

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Jeffrey P. Diebel November 2004

Judicial Branch Overview

Court Structure

There are three court levels in Minnesota: district court, court of appeals, and Minnesota Supreme Court. Minnesota has ten judicial districts that contain all district courts in the state. There is also a federal trial court for Minnesota, which is called the District Court for Minnesota.

Key Responsibilities and Jurisdiction of the Courts

District Court: The district or trial court interprets the law and applies it to the facts of specific cases. District courts may hear criminal, civil, probate, juvenile, or family law cases. The district court can also hear appeals from conciliation court (civil disputes involving less than $7,500). There are 272 district court judges.

Court of Appeals: The 16 judges on the court of appeals review district court decisions for errors of law and sufficiency of evidence to support the verdict.

The court of appeals also:

- Reviews the validity of administrative rules and hears contested case appeals under the Administrative Procedures Act;
- Issues writs requiring district judges or public officials to take specified actions; and
- Adopts its own supplementary rules of procedure consistent with Supreme Court rules.

Minnesota Supreme Court: The seven justices of the supreme court hear the following:

- Criminal and civil appeals from the district courts and the court of appeals
- Appeals from the Workers' Compensation Court of Appeals and the Tax Court
- Important original actions provided by statute
- Writs requiring trial judges or public officials to take or refrain from taking specified action

The Minnesota Supreme Court also regulates lower courts, regulates attorneys, and oversees certain bodies involved in legal aid and public defense.

Special Statutory Courts

The Tax Court and Workers' Compensation Court of Appeals are executive branch agencies created by statute to deal with the specific areas of law that are reflected in their names.

Differences Between State and Federal Court

Cases Originating in State Trial Court: The first appeal is to the court of appeals and/or the Minnesota Supreme Court if the case concerns first-degree murder or legislative and statewide election contests.

If the case includes a claim that the United States Constitution has been violated, it can be further appealed to the United States Supreme Court.

Cases Originating in Federal Trial Court: Federal trials are generally held in Minneapolis or St. Paul. The kinds of cases heard include:

- federal statutory claims (criminal or civil);
- federal constitutional claims (criminal or civil); and
- any suit between a Minnesota resident or entity and a resident or entity from another state, involving a minimum amount of $75,000 in damages.

Appeals go to the Eighth Circuit Court of Appeals in St. Louis, Missouri, but cases are heard in St. Paul. Appeals from Eighth Circuit decisions go to the United States Supreme Court.

Relationship Between Judiciary and Legislature

The legislative and judicial branches are co-equal. When lawsuits involve statutes, courts try to explain and enforce the legislature's intent, unless the statutes are found to violate the state or federal constitution.

The legislature has power, through the state constitution, over the state's courts in areas such as: how the court is established, abolishment of courts, the size of the court, judicial salaries, which cases the court may and may not hear, and how long judges can serve. The Supreme Court has authority over procedural issues necessary for courts to function.

For more information: Contact legislative analyst Jeffrey Diebel at 651-296-5041. Also see the House Research publication *The Minnesota Judiciary*, March 2003.

Karen Baker and Steve Hinze

Updated: November 2004

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)
- timberland (beginning with the 2001 assessment)

Is it permanent?

LMV provisions were in effect from 1973 to 1979, and again from 1993 to the present. The 2001 Legislature enacted a law to phase out LMV over a six-year 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 2004 (taxes payable in 2005), the increase in market value shall not exceed the **greater** of:

- 15 percent of the LMV in the preceding assessment year, or
- 25 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 2004/payable year 2005
The LMV of a home is $100,000 for assessment year 2003. For assessment year 2004, the assessor determines that the EMV of the home is $130,000. The maximum market value increase for tax purposes is the greater of:

- 15 percent increase over the previous year, which is $15,000, or
- 25 percent of the $30,000 difference in value, which is $7,500.

Therefore, the home's LMV is $100,000 plus $15,000, or $115,000 for assessment year 2004.

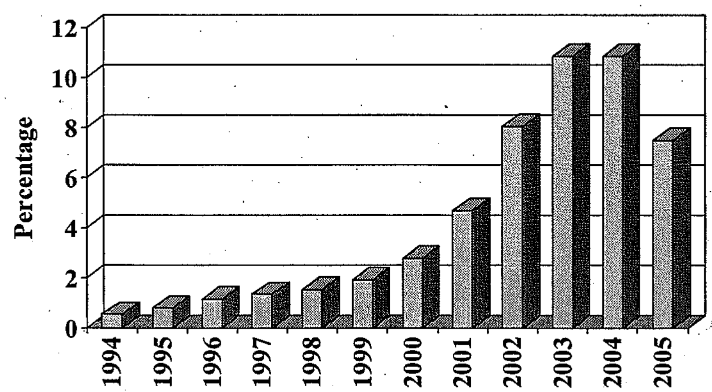
How much has LMV grown?

For taxes payable in 2005, $27 billion of market value was excluded from the tax rolls due to LMV. The table shows the amounts for 1994-2005.

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	322.9	288.0	34.9	10.8
2005	358.5	331.5	27.0	7.5

* 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.

Karen Baker and Steve Hinze Updated: November 2004

Property Tax 101 – Property Tax Administration

Who does what?

Counties are responsible for property tax administration; the Department of Revenue provides assistance and oversight. The list below shows each county office's responsibilities for property tax administration. In some counties these offices are merged and one or two offices may perform the functions.

Assessor

- Values property
- Determines proper classification
- Sends valuation notices to taxpayers

Auditor

- Determines each taxing jurisdiction's total tax capacity (i.e., its tax base)
- Calculates proposed and final tax rates
- Prepares Truth in Taxation notices (based on proposed levies)

Treasurer

- Prepares and mails out property tax statements
- Collects property tax payments
- Distributes property tax receipts to each taxing jurisdiction

Property tax timeline

The process of calculating, imposing, and collecting Minnesota property taxes for a year actually spans two full calendar years. As shown on the reverse side, the two-year cycle begins with the January 2 statutory assessment date and extends all the way through the next calendar year until the property taxes have been paid. For example, for taxes payable in 2005, the cycle begins on January 2, 2004, and doesn't end until the final payment is made in October/November 2005.

Appeal process

If a property owner disagrees with the assessor's valuation (shown on the valuation notice), the taxpayer can seek relief directly from the assessor. This may resolve the matter, so that no further action is necessary. If it does not, there are two separate avenues of appeal:

1. A three-step appeal process, consisting of an appeal to:
   - the local board of review; if not satisfied may appeal to,
   - the county board of equalization; if not satisfied, may appeal to,
   - the Minnesota tax court.
2. A single-step appeal to the Minnesota tax court. There are two divisions:
   - The regular division, which can be used for any property. Proceedings are formal (an attorney is recommended), and the decision may be appealed to the Minnesota Supreme Court; or
   - The small claims division, which can be used only for homesteads (regardless of value) and other property where the market value is under $300,000. Proceedings are less formal, and decisions are final.

Property Tax System Timeline

		Assessment Year 2003 Taxes Payable 2004	Assessment Year 2004 Taxes Payable 2005
2003	January	Assessment date (2nd)	
	March	Valuation notices mailed	
	April	Local boards of review	
	June	County board of equalization	
	July	Certification of state aid amounts	
	September	Truth-in-taxation levy certifications (15th, 30th)	
	November	Truth-in-taxation notices mailed	
	December	Truth-in-taxation hearings; final levy certifications (27th)	
2004	January	County auditors compute tax rates	Assessment date (2nd)
	March	Tax statements mailed	Valuation notices mailed
	April		Local boards of review
	May	1st half tax payments due (15th)	
	June		County board of equalization
	July	1st half state aid payments made (20th)	Certification of state aid amounts
	September		Truth-in-taxation levy certifications (15th, 30th)
	October	2nd half tax payments due – except agricultural (15th)	
	November	2nd half tax payments due – agricultural (15th)	Truth-in-taxation notices mailed
	December	2nd half state aid payments made (26th)	Truth-in-taxation hearings; final levy certifications (27th)
2005	January		County auditors compute tax rates
	March		Tax statements mailed
	May		1st half tax payments due (15th)
	July		1st half state aid payments made (20th)
	October		2nd half tax payments due – except agricultural (15th)
	November		2nd half tax payments due – agricultural (15th)
	December		2nd half state aid payments made (26th)

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

HOUSE RESEARCH | **Short Subjects**

Steve Hinze and Karen Baker

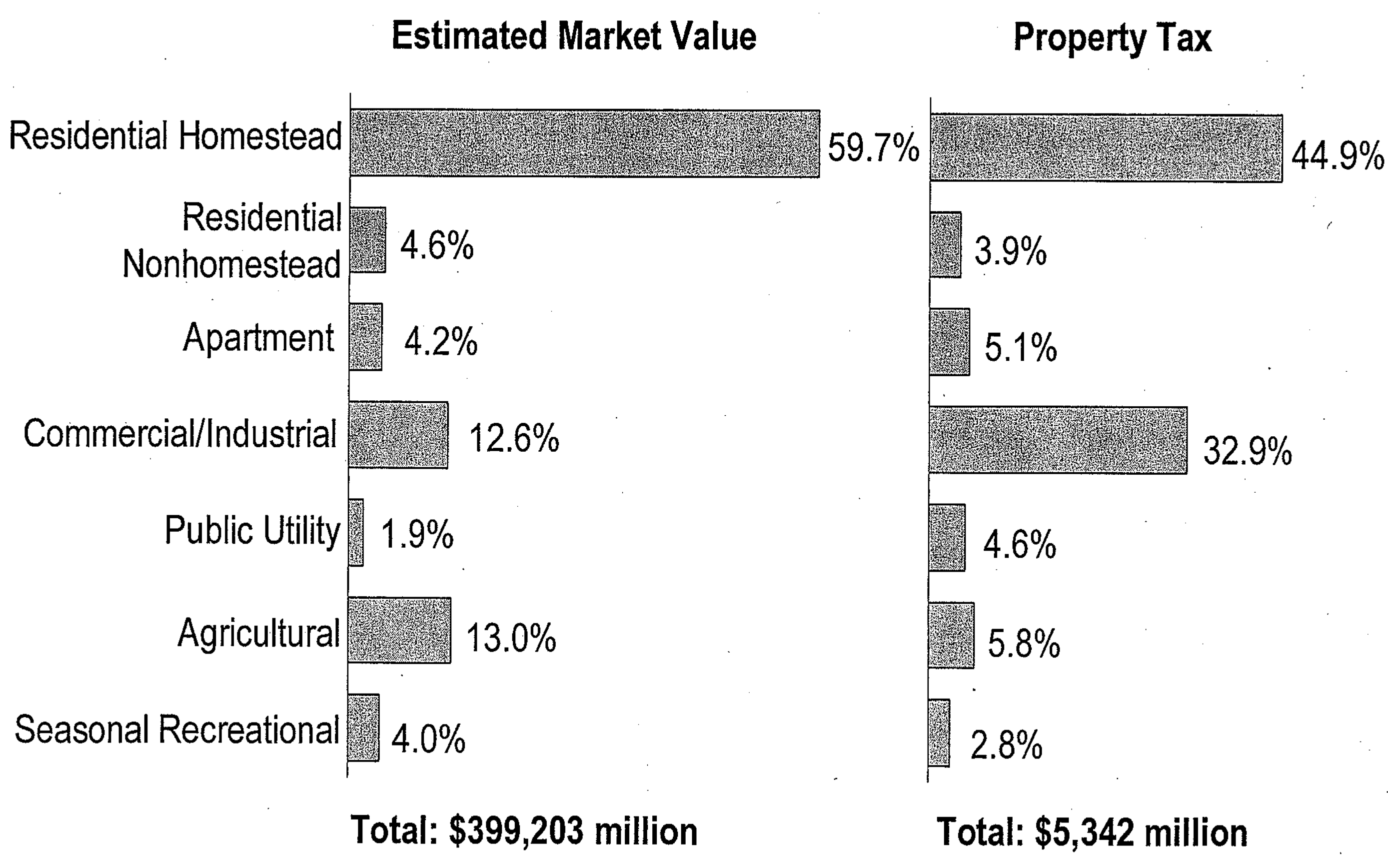
Updated: November 2004

Property Tax 101: Who Pays Property Taxes and Who Receives Them

Where property taxes come from

Total property taxes statewide were $5,342 million for calendar year 2004. The total amount of property value (excluding the value of exempt property) was $399,203 million. The graphs below show the breakdown of the state's total property tax base by market value and by taxes paid in 2004.

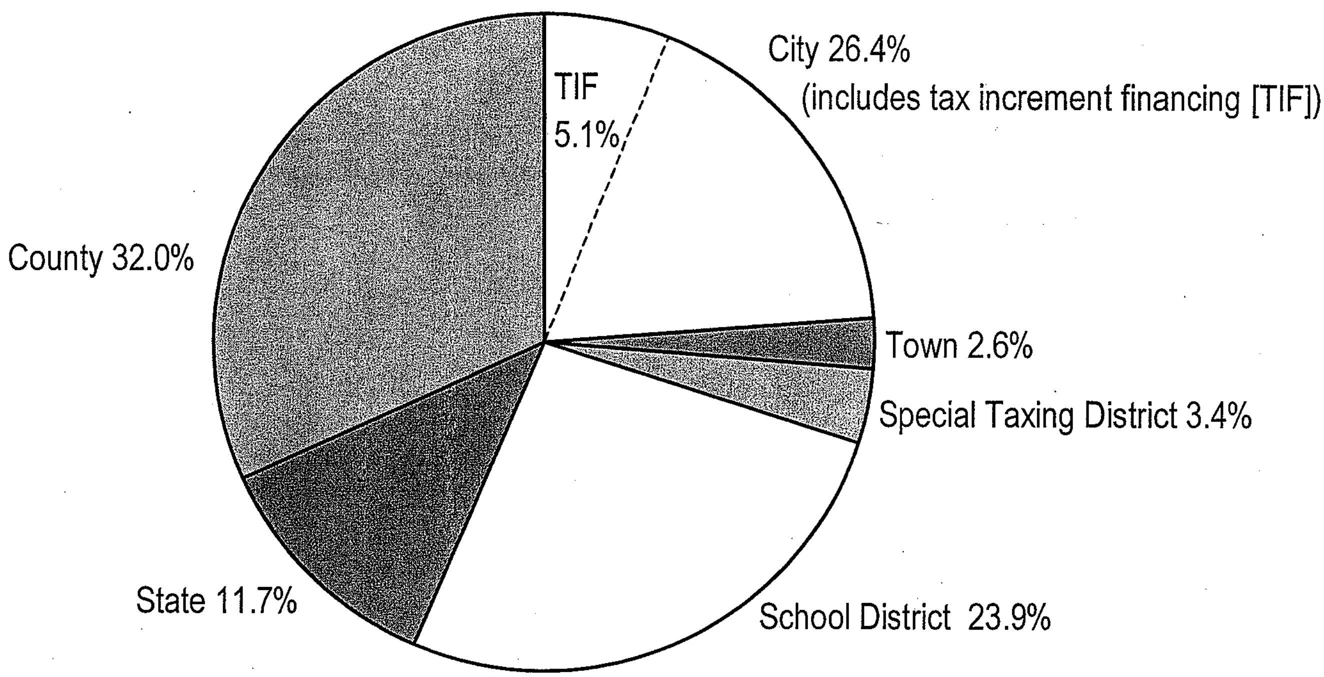
Statewide Shares of Market Value and Property Tax by Property Type (taxes payable 2004)



Where property taxes go

The total property tax burden in Minnesota was $5,342 million for calendar year 2004. The pie chart below shows the distribution of the tax among the various types of taxing jurisdictions.

Statewide Property Tax by Type of Government,*
Taxes Payable 2004
(Total: $5,342 million)



*Amounts shown are after allocation of property tax credits.

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

Deborah K. McKnight **Updated: November 2004**

Gift Ban Law and Rules for House Members

What does the gift law prohibit?

Public officials must not request or accept a gift from a lobbyist or principal, and lobbyists and principals must not give a gift to a public official or ask someone else to do so. Legislators are public officials under this law. Family members are not subject to the ban.

Who are lobbyists and principals?

A "lobbyist" is an individual registered with the board to lobby Minnesota state government. A "principal" is an entity that hires lobbyists and is registered with the Campaign Finance and Public Disclosure Board. Registered lobbyists and principals are listed on the board's web site at www.cfboard.state.mn.us. If an individual or entity is not listed on the web site, a member may call the board at 651-296-5148 to see if the web site is current. Members may rely on the information provided by board staff on the issue of who is a lobbyist or principal. Examples of people who are not lobbyists include members of the media, local government officials, state employees, and representatives of foreign governments touring the Capitol.

What is the penalty for a violation?

There is no criminal penalty or civil fine. The board, which administers the law, takes the position that if possible, it will make a recipient return or pay for an improper gift. This has happened once. The practical effect of violating the law is that it would be embarrassing.

What is a gift?

A gift is something received without giving equal or greater value in return at the same time the item is received. If the House pays to send a member to a conference sponsored by a principal, the conference is not a gift from the principal. The event was paid for. By express terms or board advisory opinions "gift" includes the following:

- money, real or personal property, or a service
- a job offer made as a bribe
- discounts, loans, privileges, or access made available to legislators but not to the general public
- forgiving or paying off a debt for a legislator
- honoraria
- travel expenses, refreshments, or lodging for a meeting

The following are excluded from the gift ban by the statute or by board opinions:

- campaign contributions and volunteer work
- information or advice to assist in performing official duties
- plaques or mementos recognizing services in a field of specialty (other than legislative service) or charitable cause
- trinkets or mementos of insignificant value (a coffee mug)
- food and drink when asked to speak or answer questions at a program (eating lunch free when speaking at a legislative update program sponsored by a principal; not eating lunch free when touring a business that hires lobbyists). An advisory opinion lets a covered individual attend a party paid for by a principal if the individual (1) reimburses the principal for his or her fair share of the cost of the party; or (2) contributes to the party an item or items that equal or exceed the individual's share of the cost of the party.
- a gift received because of membership in a group, a majority of whom are not public officials, and everyone in the group gets a similar gift (a member may accept a gift from his or her spouse's employer, which is a principal, if the employer gives all spouses an annual gift, and a majority of those spouses are not public officials)
- a gift from a lobbyist or principal who is a relative, unless the gift is given on behalf of someone outside the family
- referral of legal matters between attorneys
- a job offer in the normal course of career changes

What House rules apply to gifts?

House Rule 9.20 prohibits a member from accepting an honorarium (other than expense reimbursement) for services performed for an individual or organization with a direct interest in the business of the House, including but not limited to, lobbyists and principals. The rule specifies that violations must be referred to the Ethics Committee. House Rule 9.21 prohibits members from accepting travel or lodging from a business, union, lobbyist, association of lobbyists, or a foreign government. Both rules are stricter than the statute in restricting what members may accept.

For more information: Contact legislative analyst Deborah K. McKnight at 651-296-5056. Also see the House Research publication *Legislative Ethics*, November 2004.

HOUSE RESEARCH | **Short Subjects**

Nina Manzi

Updated: November 2004

Minnesota Taxable Income

What is Minnesota taxable income?

Minnesota taxable income (MTI) 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.
- Contributions to and earnings of Health Savings Accounts (HSAs). HSAs were authorized in the federal Medicare Prescription Drug Improvement and Modernization Act of 2003. The Minnesota Legislature has considered but not enacted legislation conforming to the exclusion of HSA contributions. In absence of conforming legislation, Minnesota taxpayers are required to add back HSA contributions and income earned in accounts that are excluded at the federal level.
- 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 2004-2007*. Revenue estimates made during the 2005 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.** Federal law prohibits state taxation of these three types of income:
  - **U.S. bond interest**
  - **Railroad retirement benefits**
  - **On-reservation earnings of enrolled tribal members**
- **K-12 dependent education expenses** ($13.8 million in fiscal year 2005). 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 2005). 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** ($1.1 million in fiscal year 2005). 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.
- **Gain on sale of farm property for insolvent taxpayers** ($100,000 in fiscal year 2005). 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.

HOUSE RESEARCH | **Short Subjects**

Steve Hinze and Karen Baker

Updated: November 2004

Property Tax 101: Property Tax Variation by Property Type

What causes property taxes to vary by type of property?

The primary cause of variation in property tax burdens is Minnesota's classified property tax system. In a classified system, each class of property is assigned one or more *class rates*. The property's taxable market value is multiplied by the class rate(s) to determine the property's tax base, technically called its *net tax capacity*.

Besides the class rates, variations in tax by type of property also occur because the state general tax and certain voter-approved referendum levies[1] apply to some types of property but not to others. The table below shows class rates and the applicability of taxes by type of property.

Class Rate Schedule for Taxes Payable in 2005

Class	Property Type (major property types only)	Class Rate	Subject to State Tax?	Subject to Referendum Levies?[1]
1	**Homestead**			
1a	Residential homestead:			
	Up to $500,000	1.00%	No	Yes
	Over $500,000	1.25	No	Yes
2	**Agricultural**			
2a	Agricultural homestead:			
	House, garage & 1 acre - same as residential homestead			
	Agricultural land & buildings:			
	Up to $600,000	0.55	No	No
	Over $600,000	1.00	No	No
2b	Agricultural nonhomestead	1.00	No	No
3	**Commercial/Industrial/Public Utility**			
3a	Commercial/Industrial/Public Utility:			
	Up to $150,000	1.50	Yes	Yes
	Over $150,000	2.00	Yes	Yes
	Electric generation attached machinery	2.00	No	Yes
4	**Other residential**			
4a	Market-rate apartments (4 or more units)	1.25	No	Yes
4bb	Residential nonhomestead single unit:			
	Up to $500,000	1.00	No	Yes
	Over $500,000	1.25	No	Yes
4b	Residential nonhomestead 2-3 unit and undeveloped land	1.25	No	Yes
4c	Seasonal recreational residential (noncommercial):			
	Up to $500,000	1.00	Yes	No
	Over $500,000	1.25	Yes	No

[1] All voter-approved levies, except school district levies for bonded debt, are levied on referendum market value. School district levies for bonded debt are levied on the net tax capacity of all types of property.

What other factors cause property taxes to vary by type of property?

Variations also occur because certain types of property qualify for property tax credits that reduce the amount of tax that would otherwise be due. The two largest credit programs are the homestead market value credit and the agricultural market value credit, which apply to all residential homesteads and all agricultural homesteads. Other credits apply to property in some areas of the state but not to others.

Local variation also occurs because tax rates are determined separately for each taxing jurisdiction in the state, based on each jurisdiction's levy and tax base.

What is effective tax rate?

Effective tax rate is a measure of tax burden useful in making property tax comparisons. It is defined as net tax divided by market value (i.e., tax as a percent of market value). It allows comparison of tax burdens between properties of different values, different types, and different locations.

Comparison of Property Taxes on Various Types of Property, within the same taxing jurisdiction, each with a market value of $120,000 (Property taxes payable in 2005)

Property Type	Class Rate(s)	Net Tax Capacity	Property Tax*		Effective Tax Rate
			Gross	Net	
Agricultural homestead**	0.55/1.0%	$795	$984	$594	0.50%
Agricultural nonhomestead	1.0	1,200	1,440	1,440	1.20
Residential homestead	1.0	1,200	1,560	1,296	1.08
Seasonal recreational residential (i.e., cabin)	1.0	1,200	1,827	1,827	1.52
Residential nonhomestead (1 unit)	1.0	1,200	1,560	1,560	1.30
Residential nonhomestead (2-3 units)	1.25	1,500	1,920	1,920	1.60
Apartment	1.25	1,500	1,920	1,920	1.60
Commercial/Industrial	1.5	1,800	3,216	3,216	2.68
Commercial/Industrial @ $1,200,000***	1.5/2.0	23,250	41,190	41,190	3.43

* These examples assume a total local net tax capacity tax rate of 120 percent, a state tax rate of 52 percent, and a total market value tax rate of 0.1 percent.

** The agricultural homestead is assumed to consist of a house valued at $30,000 and agricultural land and buildings valued at $90,000.

*** This property has a market value of $1,200,000 to show a more typical effective tax rate on a commercial/industrial property.

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

HOUSE RESEARCH | Short Subjects

Nina Manzi

Updated: November 2004

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.

What are qualifying expenses?

Qualifying expenses are amounts paid for the care of a dependent under age 13, or a disabled spouse or adult dependent, but do not include:

- amounts paid to the claimant's spouse or another dependent, or
- amounts paid through a dependent care pre-tax account.

Qualifying expenses may not exceed the claimant's earned income (for married couples filing joint returns, expenses may not exceed the earned income of the lesser-earning spouse).

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 percent 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 2005, the state credit is fully phased out when income exceeds $33,930.

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 2002, 129,882 Minnesotans claimed the federal dependent care credit and 36,039 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 $33,930, most of the state credits are claimed by low-income filers.

How much is paid out in credits?

In tax year 2002, Minnesotans claimed $50.0 million of federal dependent care credits. The average federal dependent care credit was $385.

In tax year 2002, Minnesotans claimed $11.6 million of state dependent care credits. The average state dependent care credit was $321.

How are the credits distributed geographically?

While over 45 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 2002 nonmetro filers were more likely to claim the credit than were metro area filers.

How does Minnesota compare with other states?

Nationwide, 4.7 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 2002 was $440; it was $385 in Minnesota. The District of Columbia had the highest average credit, at $507, and Montana had the lowest, at $335. 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

Nina Manzi

Updated: November 2004

Federal Taxable Income, the starting point for calculating Minnesota income tax

What is federal taxable income (FTI)?

Federal taxable income is the tax base used to calculate federal income tax liability. It is also the starting point for calculating Minnesota taxable income, which is the tax base used to calculate Minnesota income tax liability. Federal taxable income equals federal adjusted gross income after deductions and exemptions.

Federal adjusted gross income (FAGI)	–	Standard *or* Itemized deductions	–	Personal and Dependent exemptions	=	Federal taxable Income (FTI)

What kinds of income are included in FTI?

Federal adjusted gross income includes most kinds of income: wages, salaries, and tips; taxable interest; dividends; alimony received by the taxpayer; business income or loss; capital gains or losses; other gains or losses; taxable IRA distributions; taxable pension and annuity distributions (*the taxable portion is typically determined by whether or not the contributions to the pension or annuity were included in federal adjusted gross income when they were made*); income from rental real estate, royalties, partnerships, S corporations, and trusts; farm income or loss; unemployment compensation; and taxable Social Security benefits (*the amount taxable depends on the individual's income level; at most 85 percent of benefits are included in federal adjusted gross income*).

What kinds of income are excluded from FTI?

Federal adjusted gross income excludes: deductible IRA, SEP, and SIMPLE contributions; nontaxable employee fringe benefits; student loan interest payments; Health Savings Account contributions and investment income; moving expenses; one-half of self-employment tax; health insurance premiums (for self-employed taxpayers only); penalty on early withdrawal of savings; and alimony paid by the taxpayer.

What deductions are allowed from FTI?

Taxpayers may claim either the standard deduction or itemized deductions. In tax year 2002, the most recent year for which data is available, 56 percent of Minnesotans claimed the standard deduction and 44 percent itemized.

How much is the standard deduction?

In tax year 2005, the standard deduction is as follows:

- $8,600 for married couples filing joint returns
- $4,300 for married couples filing separate returns
- $7,300 for head of household filers
- $4,950 for single filers

What itemized deductions are allowed?

Itemized deductions are allowed for the following:

- state and local property and payments of income taxes
- mortgage and interest
- charitable contributions
- medical expenses in excess of 7.5 percent of income
- casualty and theft losses in excess of 10 percent of income
- job expenses and miscellaneous expenses (most only allowed in excess of 2 percent of income)

What personal and dependent exemptions are allowed?

Taxpayers may claim one personal exemption each and one dependent exemption for each dependent claimed. For tax year 2005, the personal and dependent exemptions are $3,150 each. A family of four qualifies for four exemptions, totaling $12,600.

Are there limits on deductions and exemptions?

Itemized deductions are limited for taxpayers with incomes over a threshold. Taxpayers subject to the limitation must subtract from total itemized deductions the lesser of:

- 3 percent of income in excess of the threshold; or
- 80 percent of total itemized deductions, excluding deductions for medical expenses, investment interest, casualty and theft losses, and gambling losses to the extent offset by gambling gains.

Personal and dependent exemptions are phased out for taxpayers with incomes over a threshold. Taxpayers subject to the phaseout lose 2 percent of their total exemption amount for each $2,500 of income over the threshold.

Tax year 2005	Itemized deduction limit begins at	Exemption phaseout begins at
Married joint filers	$145,100	$217,700
Married separate filers	$72,550	$108,850
Single filers	$145,100	$145,100
Head of household filers	$145,100	$181,400

The income thresholds for the itemized deduction limit and the personal exemption phaseout are adjusted annually for inflation.

The federal Economic Growth and Tax Relief Reconciliation Act (EGTRRA) of 2001 gradually phases out the limitation on itemized deductions and the phaseout of personal and dependent exemptions from 2006 to 2010. However, the general sunset of EGTRRA provisions would reinstate the limitation of itemized deductions and the phaseout of exemptions beginning in tax year 2011.

For more information: Contact legislative analyst Nina Manzi at 651-296-5204 or Joel Michael at 651-296-5057. Also see the House Research publication *Income Tax Terms: Deductions and Credits*, October 2002.

Nina Manzi

Updated: November 2004

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. In tax year 2005, individuals with more than $2,700 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 2005, 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	$397	$99	$6,490	$6,490	$11,680	$11,680
1 child	$2,645	$792	$14,260	$16,950	$30,813	$30,775
2 or more children	$4,368	$1,529	$14,260	$20,110	$35,001	$34,955
Married claimants						
No children	$397	$99	$8,490	$8,490	$13,680	$13,680
1 child	$2,645	$792	$16,260	$18,950	$32,813	$32,775
2 or more children	$4,368	$1,529	$16,260	$22,110	$37,001	$36,955

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 2002, 248,357 Minnesota returns claimed the EITC and 245,967 claimed the WFC. These claims represent 10.4 percent of all federal returns filed by Minnesotans, and 10.1 percent of all state returns filed.

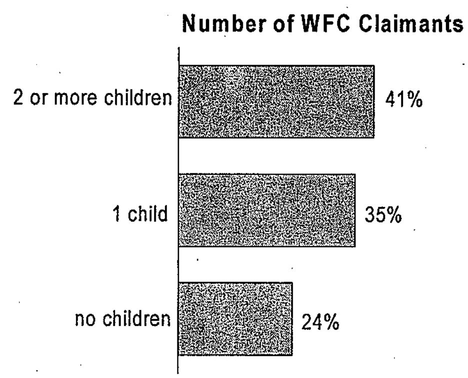
How much is paid out in credits?

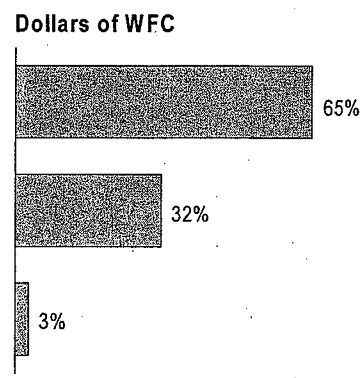
In tax year 2002, Minnesotans claimed $378 million in EITC, of which $54 million offset tax liability and the remaining $324 million was paid as a refund. The average EITC was $1,523.

Minnesotans claimed an additional $128 million in WFC, of which $25 million offset tax liability and the remaining $103 million was paid as a refund. The average WFC was $522.

How are the credits distributed among different types of families?

Seventy-six 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 2002. Individuals without children filed 24 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 2002 nonmetro filers were more likely to claim the credit than were metro area filers.

How does Minnesota compare with other states?

Nationwide, 16.5 percent of all income tax returns claimed the EITC, compared to 10.4 percent in Minnesota. The average EITC nationwide in 2002 was $1,751; it was $1,523 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 and the District of Columbia provide a state version of the EITC. 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*, January 2004.

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

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Jeffrey P. Diebel

November 2004

Minnesota's Public Defender System

Who is entitled to a public defender?

The United States and Minnesota Constitutions both establish the right to an attorney for anyone facing a charge punishable by "loss of liberty." Minnesota law entitles anyone who is financially unable to obtain counsel to a public defender if he or she is charged with a felony, gross misdemeanor, or misdemeanor; or is appealing from a conviction of a felony or gross misdemeanor and has not already had a direct appeal of the conviction.

Are juveniles entitled to a public defender?

Yes, in most cases. However, juveniles do not generally have the right to the appointment of a public defender for juvenile petty offenses (e.g., minor alcohol or controlled substance offenses, truancy, or minor traffic offenses, etc.).

In CHIPS (Children in Need of Protective Services) and TPR (Termination of Parental Rights) cases, juveniles have the right to an attorney by state statute. In addition, the parent, guardian, or custodian has the right to counsel in connection with such proceedings.

Who is considered "financially unable" to obtain counsel?

A defendant is financially unable to obtain counsel if the defendant, or a defendant's dependent (residing in the same household), receives means-tested governmental benefits; or, considering the defendant's liquid assets and current income, the defendant would be unable to pay the reasonable costs charged by a private attorney. The burden is on the defendant to show financial inability. The court must make an inquiry into the financial circumstances of the defendant, and the defendant must submit a financial statement under oath. The defendant is under a continuing duty to disclose any change in financial status.

How do co-pays work?

The Minnesota Supreme Court has ruled that the legislature's 2003 effort to impose nonwaivable co-payments on public defense clients to be unconstitutional. Prior to 2003, Minnesota law required co-payments but judges were permitted to waive the co-payment if it would impose a financial hardship. Rarely were these co-pays collected. It is unclear from the court's ruling whether or not the court intended the state to revert back to the former permissive co-pay structure.

Does the defendant ever have to reimburse the state beyond co-pays?

The presiding judge must terminate the appointment of a public defender to any person who subsequently becomes financially able to pay, and the judge may order the person to reimburse the state.

What is the governance structure of the Minnesota public defender system?

Although the State Board of Public Defense is part of the judicial branch of government, it is not under the judicial branch's administrative control. The State Board of Public Defense consists of seven members: four attorneys appointed by the Supreme Court and three public members appointed by the governor. The state public defender is appointed by the board for a four-year term. The state public defender appoints a chief administrator. The board also appoints a chief public defender in each of the state's ten judicial districts.

There are also five legal defense corporations that are funded through grants from the board. The corporations serve primarily minority communities throughout the state.

What are the duties of the Board of Public Defense?

The board has four main duties:

- It appoints the state public defender and a district chief public defender in each of the ten judicial districts
- It establishes standards for the public defender offices under its jurisdiction
- It establishes procedures for distribution of state funding to the state and district public defenders and to the public defense corporations
- It recommends a budget to the legislature

What are the duties of the State Public Defender?

Some of the duties of this position are the following: supervising the chief public defenders, supervising the deputy state public defenders, proposing standards, proposing policies to implement adopted standards, and providing training for public defense attorneys.

What are the duties of the Chief Administrator for the Board of Public Defense?

In addition to attending all board meetings (without voting), the chief administrator enforces all resolutions, rules, regulations, or board orders; presents plans, studies, and reports to the board and the state public defender; and recommends adoption of measures to carry out the board's powers and duties. Further, the chief administrator keeps track of the financial condition of the public defense system and prepares the annual budget. The chief administrator does not need to be licensed to practice law.

What are the duties of the Chief Public Defenders?

Chief public defenders' responsibilities include supervising the assistant public defenders, staff, and contract attorneys within their district.

For more information: Contact legislative analyst Jeff Diebel at 651-296-5041.

Randall Chun **Revised: December 2004**

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 meet the following criteria:

- 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.

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 2004, after accounting for prescription drug rebates, the state paid $8.5 million for prescription drugs provided to program enrollees.
Recipients	As of August 2004, enrollment in the program was 7,430.
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: December 2004

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 the following criteria:

- 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).

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

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)
- 50 percent coinsurance for basic restorative dental services

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 2004, the state spent $245.6 million in payments to medical providers for GAMC services.

Recipients

As of August 2004, 37,465 persons were eligible for GAMC services. As of September 2004, 25,216 GAMC recipients in 81 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.*

HOUSE RESEARCH | **Short Subjects**

Randall Chun

Revised: December 2004

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 (DHS); 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 meet the following criteria:

- Have gross income that does not exceed 275 percent of the federal poverty guidelines (FPG) for families and children ($51,852 for a household of four), and 175 percent of FPG for single adults and households without children ($16,296 for a household of one and $21,864 for a household of two). Parents with annual gross incomes over $50,000 are ineligible, whether or not they otherwise meet the 275 percent of FPG standard; 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 single adults and households without children with incomes not exceeding 75 percent of FPG, 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.

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.

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 2004, the MinnesotaCare program paid $487 million for medical services provided to enrollees. Fifty-six percent of this cost was paid for by the state, 36 percent by the federal government, and 8 percent by enrollees through premium payments.

State funding for MinnesotaCare and other health care access initiatives is provided by a tax of 2.0 percent on the gross revenues of health care providers and a tax of 1.0 percent on the premiums of nonprofit health plan companies.

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 August 2004, 145,553 individuals were enrolled in the MinnesotaCare program. About three-quarters of these enrollees are parents or 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*.