Short Subjects

Minnesota House of Representatives, House Research

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HOUSE RESEARCH | Short Subjects

Elisabeth Klarqvist Updated: January 2018

Medical Education and Research Costs (MERC): Funding Mechanisms

What is the purpose of MERC?

The MERC fund was created by the legislature in 1999, and its current function is to reimburse teaching institutions for a portion of the cost of clinical training of health care providers.

How is MERC funded?

Funding mechanisms for MERC have changed several times over the years, as recently as July 2016. Most of the state money directed to the MERC fund receives a federal match; only the direct appropriations from the general fund and health care access fund do not receive a federal match.

Currently, there are four sources of state revenue for the MERC fund: (1) a portion of cigarette tax revenues; (2) the PMAP carve-out; (3) University of Minnesota transfers; and (4) appropriations from the state general fund and health care access fund.

(1) **Cigarette Tax Revenue**: $3,937,000 of state cigarette tax revenue is transferred annually to an account in the special revenue fund and appropriated to the Commissioner of Health for the MERC program (Minn. Stat. § 297F.10, subd. 1, cl. (2)). This amount (minus MERC administrative costs) is used to draw the standard Medical Assistance (MA) federal match for Minnesota (generally a one-to-one federal-state dollar match). The cigarette tax revenue plus the federal match, a total of $7,575,000, is deposited into MERC.

(2) **PMAP carve-out**: A percentage of state general fund dollars used to make capitation payments to health plans under the Prepaid Medical Assistance Program (PMAP) is "carved out" according to Minnesota Statutes, section 256B.69, subdivision 5c. These "carve-out" funds receive the standard MA federal match for Minnesota.

In 2009, the federal government limited the amount of the carve-out that can be transferred to MERC to the fiscal year 2009 transfer amount, which was approximately $71,500,000 of federal-state dollars. The legislature further limited the amount of the carve-out that can be transferred to MERC to $49,552,000 in fiscal year 2014 and thereafter. This is the amount MERC received today and includes federal and state dollars.

(3) **Transfers**: Each year the University of Minnesota transfers to the Department of Human Services (DHS) $17,400,000 from the university's general fund appropriation; the transfers are made in monthly installments (Laws 2002, ch. 220, art. 17, § 2). Half of this amount, $8,700,000, is deposited into the general fund as a net gain to the state. The other half is added to the PMAP

carve-out and receives the standard MA federal match for Minnesota. The matched half plus the match is transferred to the MERC fund to be distributed back to the university in accordance with statute; the entire $17,400,000 is retransferred back to the university (Minn. Stat. § 256B.69, subd. 5c, para. (a), cls. (3) and (4)).

Additionally, the university provides an annual transfer of $2,157,000 to DHS from the university's health care access fund appropriation. (Laws 2003, 1st Spec. Sess., ch. 14, art. 13C, § 2, subd. 1). This amount is used to increase capitation payments under the carve-out and receives the standard MA federal match for Minnesota. The transfer amount is returned to the university, and the match is sent to the MERC fund for distribution in accordance with statute.

(4) **Appropriations:** $1 million from the general fund and $1 million from the health care access fund are appropriated each fiscal year for the MERC program. (Laws 2015, ch. 71, art. 14, § 3, subd. 2; Laws 2016, ch. 189, art. 23, § 3, subd. 2)

How are MERC funds distributed?

Most MERC funds ($59,127,000 in fiscal year 2017) are distributed to eligible training sites each year through a distribution formula, which is based solely on relative public program (MA) volume (Minn. Stat. § 62J.692, subd. 4). The public program volume factor is determined by the total volume of MA revenue received by each training site as a percentage of all MA revenue received by all training sites in the fund pool. A supplemental public program volume factor, which gave a supplemental payment to training sites with a public program revenue of at least 0.98 percent of the total public program revenue received by all eligible training sites, was discontinued after fiscal year 2015.

Any training site whose grant would be less than $5,000 under the formula or that trains fewer than 0.1 FTE eligible trainees is ineligible for MERC funds. A grant to a clinical training facility cannot be greater than the facility's reported clinical training expenditures. In addition, because most MERC funds receive a federal match, any change to the distribution formula requires approval by the federal Centers for Medicare and Medicaid Services (CMS) or risks loss of federal dollars for the program.

In addition to distributions under the formula, there are statutorily directed distributions, which refund in full the transfers from the university, as described above, and dedicate $1,035,360 to Hennepin County Medical Center and $1,121,640 to dental innovation grants, according to Minnesota Statutes, section 62J.692, subdivision 7a. (Minn. Stat. § 62J.692, subd. 7)

Which agency administers MERC?

The state health department (MDH) administers the MERC program and is authorized by statute to use a maximum of $150,000 from the cigarette tax revenues dedicated to MERC for administrative expenses (Minn. Stat. § 62J.692, subd. 4, para. (g)).

For more information: Contact legislative analyst Elisabeth Klarqvist at 651-296-5043 or fiscal analyst Doug Berg at 651-296-5346.

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

Sean Williams

Updated: January 2018

The Federal Earned Income Tax Credit and Minnesota Working Family Credit: An Overview

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 2018, individuals with more than $3,500 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 2018, the maximum credits, phaseout threshold, and income level at which the credits are no longer allowed are as follows:

	Maximum Credit		Phaseout Threshold		Income at which credit fully phased out	
	EITC	WFC	EITC	WFC	EITC	WFC
Unmarried claimants						
No children	$520	$136	$8,510	$8,530	$15,310	$15,300
1 child	$3,468	$1,091	$18,700	$22,230	$40,402	$40,355
2 children	$5,728	$2,104	$18,700	$26,360	$45,898	$45,808
3+ children	$6,444	$2,104	$18,700	$26,360	$49,298	$45,808
Married claimants						
No children	$520	$136	$14,210	$14,230	$21,010	$20,875
1 child	$3,468	$1,091	$24,400	$21,800	$46,102	$39,568
2 children	$5,728	$2,104	$24,400	$26,360	$51,598	$44,922
3+ children	$6,444	$2,104	$24,400	$26,360	$54,998	$44,922

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 2015, 350,470 Minnesota returns claimed the EITC and 330,292 claimed the WFC. These claims represent 12.9 percent of all federal returns filed by Minnesotans and 12.3 percent of all state returns filed by Minnesota residents. The number of EITC claims exceeds the number of WFC claims mostly because in

2015, the higher EITC rate for families with three or more children resulted in the EITC for large families extending to higher incomes than did the WFC, which did not have a higher rate for families with three or more children.

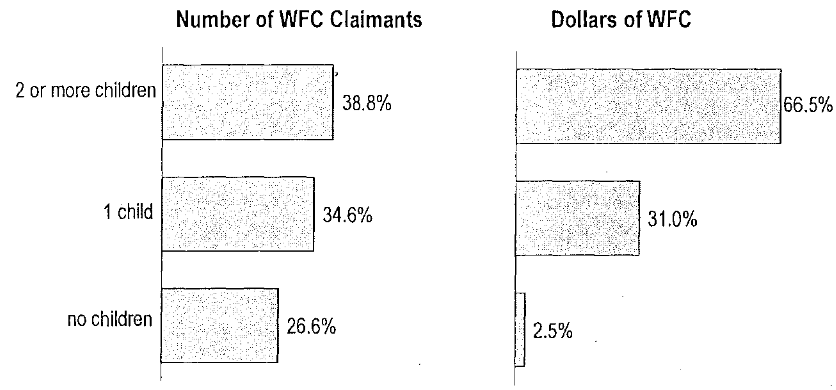
How much is paid out in credits?

In tax year 2015, Minnesotans claimed $760 million in EITC, of which $97 million offset tax liability, and the remaining $663 million was paid as a refund. The average EITC claimed by Minnesotans was $2,170.

Minnesota returns claimed $252 million in WFC, of which $43.8 million offset tax liability, and the remaining $207.8 million was paid as a refund. The average WFC was $762.

How are the credits distributed among different types of families?

Seventy-three percent of all 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 2015. Individuals without children filed 26.6 percent of returns claiming credits, but received only 2.5 percent of the total amount paid. 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. The distribution of earned income tax credits is similar.



How are the credits distributed geographically?

In 2015, just over half (51 percent) of the returns claiming credits were in the Twin Cities metropolitan area and just under half (49 percent) in Greater Minnesota; 20 percent of returns in Wadena County claimed credits, compared with only 7 percent in Carver County. The highest average credit went to Norman County claimants, at $852, and the lowest to Winona County claimants, at $642.

How does Minnesota compare with other states?

Nationwide, 18.7 percent of all income tax returns claimed the EITC in tax year 2015, compared to 12.9 percent in Minnesota. The average EITC nationwide in 2014 was $2,431; it was $2,170 in Minnesota. Minnesota's number of recipients and credit amounts are lower than the national averages because state residents have above-average incomes.

In tax year 2017, 29 other states and the District of Columbia provided 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 Sean Williams at sean.williams@house.mn. Also see the House Research information brief *The Federal Earned Income Tax Credit and the Minnesota Working Family Credit*, December 2016.

Sean Williams and Joel Michael **January 2018**

Minnesota's Tax Credit and Deduction for 529 Contributions

What federal and state tax advantages are available to Minnesotans with 529 plans?

Investment income on 529 accounts is exempt from both federal and Minnesota income taxes, if the income is used for qualifying higher education expenses. Qualifying expenses include tuition, fees, room and board, books, and some other education expenses. Investment income on the accounts that is used for nonqualifying purposes is taxed as ordinary income, plus a 10 percent penalty. 529 plans also provide special estate and gift tax benefits. Beginning in tax year 2017, Minnesota will allow both a nonrefundable income tax credit and an income tax subtraction for contributions to any state's 529 plan.

Minnesota's Section 529 Plan Credit

How does Minnesota's 529 Plan Credit work?

Minnesota's Section 529 Plan Credit is a nonrefundable credit for contributions to a college savings account established by any state under section 529 of the Internal Revenue Code. The credit equals **50 percent of contributions**, up to a **maximum of $500.** The maximum credit is phased out as income increases with varying thresholds for individuals and married joint filers.

What is a nonrefundable credit?

A nonrefundable credit may be used only to offset Minnesota income tax liability; an individual benefits only to the extent of his or her tax liability. An individual with no state income tax liability does not benefit from the credit.

How is the maximum credit phased out?

For individual filers, the maximum credit is phased out by 2 percent of federal adjusted gross income (FAGI) in excess of $75,000. The credit is fully phased out for individual filers at $100,000 of FAGI.

FAGI is a broad definition of income that includes most kinds of income. FAGI is calculated after allowance of business expenses and retirement contributions, but before reductions for itemized or standard subtractions and dependent and personal exemptions.

Income Range (FAGI)	Maximum Credit (Single Filers)
Up to $75,000	$500
$75,001 to $100,000	$500 minus 2 percent of AGI in excess of $75,000
$100,001 and above	0

For married couples filing joint returns, the maximum credit is phased out in two stages and is fully phased out when AGI reaches $160,000.

Income Range (FAGI)	Maximum Credit (Married Couples Filing Joint Returns)
Up to $75,000	$500
$75,001 to $100,000	$500 minus 1 percent of AGI in excess of $75,000
$100,001 to $135,000	$250
$135,001 to $160,000	$250 minus 1 percent of AGI in excess of $135,000
$160,001 and above	$0

Minnesota's Section 529 Plan Subtraction

How does Minnesota's 529 Plan subtraction work?

Minnesota additionally offers a subtraction for contributions to any state's section 529 Plan. A taxpayer may subtract up to $1,500 ($3,000 for married joint filers) of contributions to any state's section 529 college savings plan or prepaid tuition plan. The subtraction excludes any amounts that are rolled-over from other college savings plans. Taxpayers who claim the credit cannot take the subtraction.

Who can claim the credit or subtraction?

Any Minnesota resident who makes a contribution to a 529 plan or prepaid tuition plan may claim the credit or subtraction, as long as the individual is not claimed as a dependent. An individual does not need to be the account owner to be eligible to claim the credit or subtraction.

What are the policy differences between the credit and the subtraction?

(1) For the same contribution amount, the credit will typically provide a larger tax benefit than the subtraction. A credit reduces tax liability dollar-for-dollar, while the value of a subtraction depends upon the taxpayer's marginal tax rate. The maximum benefit of the subtraction for a married joint filer is $295.50 (top tax rate of 9.85% * $3,000 maximum contribution) compared with $500 under the credit for a smaller contribution ($1,000). Individuals in the credit phase-out range will need to compute the tax benefits under both the credit and subtraction to determine which is higher. Typically it will be the credit, but not always.

(2) Income limits apply to the credit, but not the subtraction. Single filers who earn more than $100,000—and married couples filing jointly who earn more than $160,000—are not eligible for the credit. Any taxpayer who makes a qualifying contribution may claim the subtraction, without regard to their income.

(3) The credit can result in a marriage penalty or bonus, while the subtraction can only provide a bonus. (For more information, see the House Research Information Brief, The Minnesota Income Tax Marriage Credit.)

What tax benefits do other states offer for 529 plan contributions?

- 29 states other than Minnesota and the District of Columbia allowed **tax deductions** in tax year 2016.
- Three states other than Minnesota (Indiana, Vermont, and Utah) offered **credits** for 529 plan contributions.
- Eight states with income taxes **don't offer 529 plan deductions or credits.**
- Most states limit deductions to contributions to the state's own plan, but seven states (including Minnesota) provide **deductions for contributions to any state plan.**

What are the revenue reductions due to the credit and subtraction?

The Minnesota Department of Revenue estimates that the credit and subtraction result in revenue reductions of the following amounts (in millions):

Fiscal Year	Credit	Subtraction	Total
2018	$7.5	$2.5	$10.0
2019	7.8	2.6	10.4
2020	8.0	2.6	10.6
2021	8.3	2.7	11.0

Ben Johnson

January 2018

Dangerous Dogs in Minnesota

Minnesota Statutes, sections 347.50 through 347.565, address the regulation of dangerous dogs. The 1988 Legislature created the classification and established requirements for owning a dangerous dog. Amendments in 2001 allowed owners to petition for review of the dangerous dog designation and also required that dangerous dogs be implanted with a microchip for identification. The 2008 Legislature greatly expanded and amended the state law provisions relating to dangerous dogs. Changes increased the amount of coverage owners must carry to reimburse a person who suffers personal injuries caused by a dangerous dog, shifted authority from counties to the animal control authorities, established the requirements related to the disposition of seized animals, created the ownership prohibition, enhanced the penalty for subsequent violations, and expanded the situations in which a dog could be destroyed.

What is a "dangerous dog"?

Minnesota law classifies dogs as "dangerous" or "potentially dangerous" based on a dog's actions. A "dangerous dog" is one that has:

1. without provocation, inflicted substantial bodily harm on a human being;
2. killed a domestic animal without provocation while off the owner's property; or
3. aggressively bitten, attacked, or endangered the safety of humans or domestic animals after the owner has notice that the dog was found to be potentially dangerous.

A "potentially dangerous dog" is one that:

1. unprovoked, bites a human or domestic animal;
2. chases or approaches a person on a street that is not the owner's property in an apparent attitude of attack; or
3. has a known propensity to make an unprovoked attack that threatens the safety of humans or domestic animals.

Can a person own a dangerous dog?

Minnesotans can own dangerous dogs, but dogs must be registered with the local animal control authority and owners must meet several specific conditions.

What requirements must a person meet to own a dangerous dog?

To register a dangerous dog, an owner must pay an annual fee of up to $500 in addition to any regular licensing fees and show an animal control authority that:

1. the owner has a proper enclosure with a warning sign and symbol;
2. the owner has either a surety bond or liability insurance in an amount of at least $300,000 to cover any personal injuries inflicted by the dog; and
3. the dangerous dog has had a microchip implanted.

Following registration, an owner must:

1. keep the dog in a proper enclosure while on the owner's property and muzzle the dog while off the property;
2. renew registration annually;
3. within 30 days, notify animal control of the death of the dog or its transfer to a new location;
4. pay for the sterilization of the dog;
5. before renting property, inform the property owner of the dog; and
6. if transferring the dog, notify the new owner that the dog is identified as dangerous and inform animal control of the new owner.

Are there exceptions to the dangerous dog requirements?

A dog is not subject to registration if it is used by law enforcement officials or if it (1) attacked a person trespassing on the owner's premises; (2) was provoked or abused at the time of the attack or repeatedly before the attack; or (3) attacked a person committing or attempting to commit a crime.

Can dangerous dogs be confiscated and destroyed?

If an owner fails to comply with the dangerous dog requirements, the local animal control authority can seize the dog. An owner can show compliance with the requirements and reclaim the dog within seven days. The animal control agency must seize a dog if an owner previously convicted of violating the dangerous dog ownership requirements is charged with a subsequent violation relating to the same dog. If the owner is convicted of that new offense, the animal control agency must destroy the dog. In addition, the authority may destroy a dog if it:

1. inflicted substantial or great bodily harm on a person without provocation;
2. inflicted multiple bites on a person without provocation;
3. bit multiple people in the same attack without provocation; or
4. bit a person in an attack where more than one dog participated.

Can an owner challenge the "dangerous dog" designation?

An owner has the right to a hearing. The authority declaring the dog dangerous must give a notice that identifies the dog, describes the reason for the declaration, and explains the right to appeal. Within seven days of seizure, the owner must post a security in an amount sufficient to provide for the dog's actual cost of care and keeping. The hearing must be held within 14 days of the request and the hearing officer must issue a decision within ten days. If the decision is upheld, the owner is responsible for up to $1,000 of the costs of the hearing.

Can local governments create additional restrictions?

Local governments are authorized to regulate dangerous dogs in a more restrictive manner than state statute, but dogs may not be considered dangerous or potentially dangerous based solely on their breed.

How many dangerous dogs are there in Minnesota?

Individual animal control authorities are responsible for registration procedures, but there is no central database of dangerous dog statistics. Some cities, including Minneapolis, make information about dangerous dogs living within city boundaries available online.

For more information: Contact legislative analyst Ben Johnson at 651-296-8957.

House Research | Short Subjects

Sean Williams

Updated: January 2018

The Federal Child Tax Credit

What is the federal child tax credit?

Parents may claim a credit against federal income tax for each qualifying child under age 17. The maximum per-child credit amount was $1,000 for tax year 2017.

The 2017 Tax Cuts and Jobs Act (TCJA) increased the credit to $2,000 and provided a nonrefundable credit of $500 for other qualifying dependents (i.e., other than children under 17). The TCJA repealed the dependent exemption allowance, so the changes to the child credit partially compensate for that change. The TCJA also modified the refundability of the credit (as described below). The changes are effective for tax year 2018, and expire for tax years 2026 and later.

Are there income limitations?

In tax year 2017, the credit is reduced by $50 for every $1,000 of income over $110,000 of adjusted gross income for married joint filers and $75,000 for head of household filers. A married couple filing jointly with two children under age 17 will become ineligible for the credit when their income exceeds $149,000; a single parent claiming the credit for one child will become ineligible when income exceeds $94,000. Beginning in tax year 2018, the credit will phase out for married joint taxpayers with adjusted gross income in excess of $400,000 and other taxpayers with adjusted gross income in excess of $200,000. This change was part of the TCJA.

Is the credit refundable?

The child credit is partly refundable; the refundable portion is referred to as the "additional child tax credit." In tax year 2017, the additional child tax credit equals the greater of:

- 15 percent of earned income over $3,000, or,
- for families with three or more children, payroll taxes in excess of the federal earned income tax credit.

For example, a married couple with two children under age 17 and $40,000 of income is eligible for $2,000 in child tax credits, $1,000 for each child. If the couple claims the standard deduction, their federal income tax will equal $1,110 in 2017. They use $1,110 of their $2,000 credit to reduce their liability to $0. They may claim up to 15 percent of their earnings in excess of $3,000 as a refund. Assuming all $40,000 of their income is from wages, that means they would be eligible to claim up to $5,550 of the remaining credit as a refund (15 percent of $40,000, minus $3,000, equals $5,550). The result is that they claim $1,110 as an offset to their tax liability and are paid the remaining $890 as a refund.

Beginning in tax year 2018, the TCJA decreased the earned income threshold in the refundability calculation from $3,000 to $2,500. The TCJA also limited the portion of the per-child credit that is refundable to $1,400 (rather than the full $2,000 amount).

How much do Minnesotans claim?

In tax year 2015, 412,780 federal income tax returns filed by Minnesotans claimed $551 million in the nonrefundable portion of the federal child credit. The average amount claimed was $1,336. For the same year, 230,100 returns filed by Minnesotans claimed $316 million under the refundable additional child credit. Some of these returns also claimed the nonrefundable portion of the credit. The average additional child tax credit (the refundable portion) was $1,375.

How does Minnesota compare with other states?

Nationwide, 14.9 percent of all income tax returns claimed the child credit, compared with 15.1 percent in Minnesota. The average amount of the nonrefundable portion claimed nationwide was $1,209, compared with $1,336 in Minnesota. Since the credit is only partly refundable, the larger average amount claimed on Minnesota returns may result from Minnesotans having above-average incomes, and consequently more federal liability available to be offset by the child credit. Utah had the highest average nonrefundable portion, at $1,543, and the District of Columbia had the lowest, at $964.

The average amount of the refundable portion claimed nationwide was $1,344, compared with $1,375 in Minnesota. Utah had the highest average refundable portion, at $1,598, and Massachusetts had the lowest, at $1,190.

How has the credit amount changed over time?

The credit was enacted in 1997 and equaled $400 per child in tax year 1998, increased to $500 in 1999, $600 in 2001 and 2002, and $1,000 beginning in 2003. The $1,000 credit amount was made permanent in 2012. The 2017 TCJA increased the credit to $2,000 and made several additional changes discussed above; these changes are effective for tax year 2018 and expire in tax year 2026. The TCJA also required taxpayers to include a Social Security number for each child claimed on the tax return.

What is the history of the credit's refundability?

When first enacted, the child credit was only refundable for taxpayers with three or more children, and only to the extent that their payroll taxes exceeded the federal earned income tax credit. The implicit rationale was that the refundable portion of the federal earned income tax credit was first used to offset payroll taxes for Social Security and Medicare, and then any payroll taxes left over after the federal earned income tax credit could be offset by the federal child credit.

In 2001 the refundable portion was changed to be the greater of:

- 15 percent of earned income over a minimum amount for all families regardless of the number of children, or,
- for families with three or more children, payroll taxes in excess of the federal earned income tax credit (the provision that was already in law).

The minimum amount is set at $3,000 through tax year 2017, and the TCJA of 2017 reduced the minimum amount to $2,500.

For more information: Contact legislative analyst Sean Williams at sean.williams@house.mn.

Matt Burress **Updated: January 2018**

Motor Vehicle Sales Tax

The motor vehicle sales tax has become a key transportation funding source following passage of a 2006 constitutional amendment dedicating its revenue. Fiscal year 2017 revenue totaled $754.3 million, distributed 60 percent to state and local highway systems and 40 percent to transit.

MVST imposition

The motor vehicle sales tax, or MVST, is a 6.5 percent tax applied to the sale of new and used motor vehicles registered in Minnesota. The rate is based on the purchase price and the tax is imposed instead of the state general sales tax. Minn. Stat. §§ 297B.02, 297B.13. MVST is collected by auto dealers at the time of sale or by registrars when the vehicle is registered (for private sales).

Exceptions

There are various MVST exceptions and exemptions.

- A flat tax rate applies for most low-value automobiles that are at least ten years old (at $10) as well as for some collector vehicles (at $150).
- Various exemptions are provided depending on the entity purchasing the vehicle or the vehicle use. This includes purchases by: the federal government, towns exclusively for road maintenance (but not including passenger vehicles and pickup trucks), transit providers for transit service, educational institutions for use in automotive training programs, and a person who resided outside Minnesota for at least 60 days prior to becoming a Minnesota resident (if the vehicle had been registered elsewhere).
- Some types of vehicles do not need to be registered to operate on public roads and are therefore exempt from MVST, including fire apparatuses, marked police vehicles, and marked ambulances. Minn. Stat. §§ 168.012, subd. 1; 297B.02; 297B.025; 297B.03.

Historical allocation

Historically, MVST revenue had been allocated both to the state's general fund and to transportation purposes, with periodic changes and suspension in the amount provided to transportation. A series of legislative changes from 2000 to 2003 resulted in increased MVST revenue distributed to roads and transit. (However, the modifications essentially offset reductions in other funding sources like the general fund, rather than to substantially increase transportation funding.) Changes connected to MVST reallocations during this period included (1) placing caps on the amount of registration taxes (tab fees) collected on motor vehicles (which were subsequently removed in 2008); and (2) eliminating local property taxes as a core funding source for Twin Cities metropolitan area transit operations.

The 2006 constitutional amendment

At the 2006 general election, voters approved a constitutional amendment dedicating all MVST revenue to transportation purposes. Constitutional language established a floor for revenue allocation to transit and a ceiling for allocation to roads. It required that:

- "not less than 40 percent" go to public transit assistance; and
- "no more than 60 percent" of the revenue go to the Highway User Tax Distribution (HUTD) fund, which in turn is constitutionally dedicated to state and local highways. Minn. Const. art. XIV, § 13.

The amendment also specified a phase-in period for shifting revenue from the state's general fund to transportation; this occurred over fiscal years 2008 to 2012.

MVST allocation

Within the constitutional constraints, the legislature by statute can set the division between highways and transit. Legislation passed in 2007 allocated MVST revenue for the phase-in period and after. Minn. Stat. § 297B.09. It was temporarily modified in 2009 by shifting additional funds from highways to transit only for fiscal years 2010 and 2011 (which was designed to help offset reductions in transit funding from the general fund).

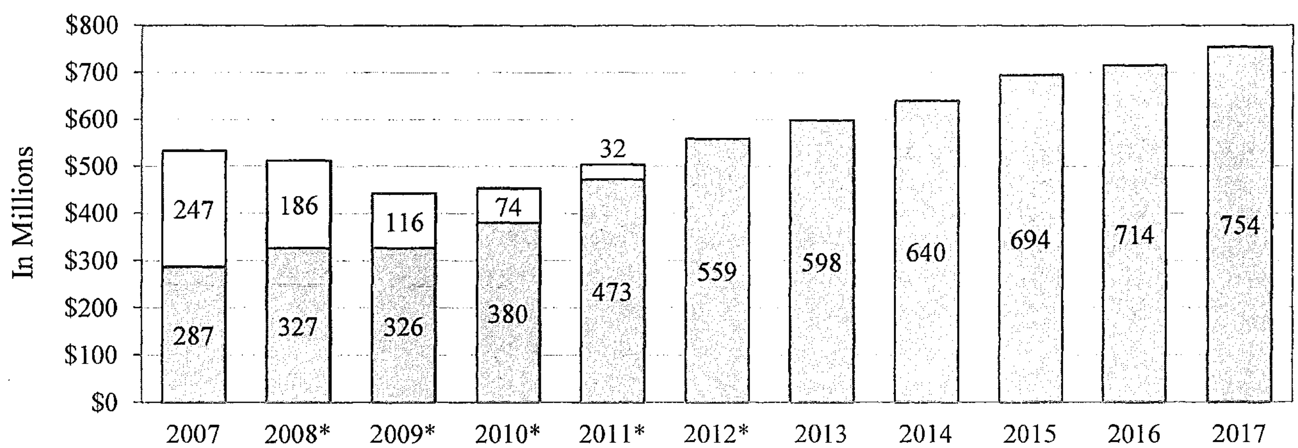
Since fiscal year 2012 (at completion of the phase-in), revenue is distributed:

- 60 percent to highways (via the Highway User Tax Distribution fund); and
- 40 percent to transit, which consists of 36 percent for the Twin Cities metropolitan area and 4 percent for Greater Minnesota.

Revenue

Fiscal year 2017 MVST revenue was $754.3 million. The chart below summarizes historical revenue and distribution. A feature of note is that while the phase-in over fiscal years 2008 to 2012 increased transportation funding, the net increase over that period was impacted by reduced MVST collections during an economic downturn.

MVST Allocation History
FY 2007-2017



* Amendment phase-in period □ To Transportation □ To General Fund

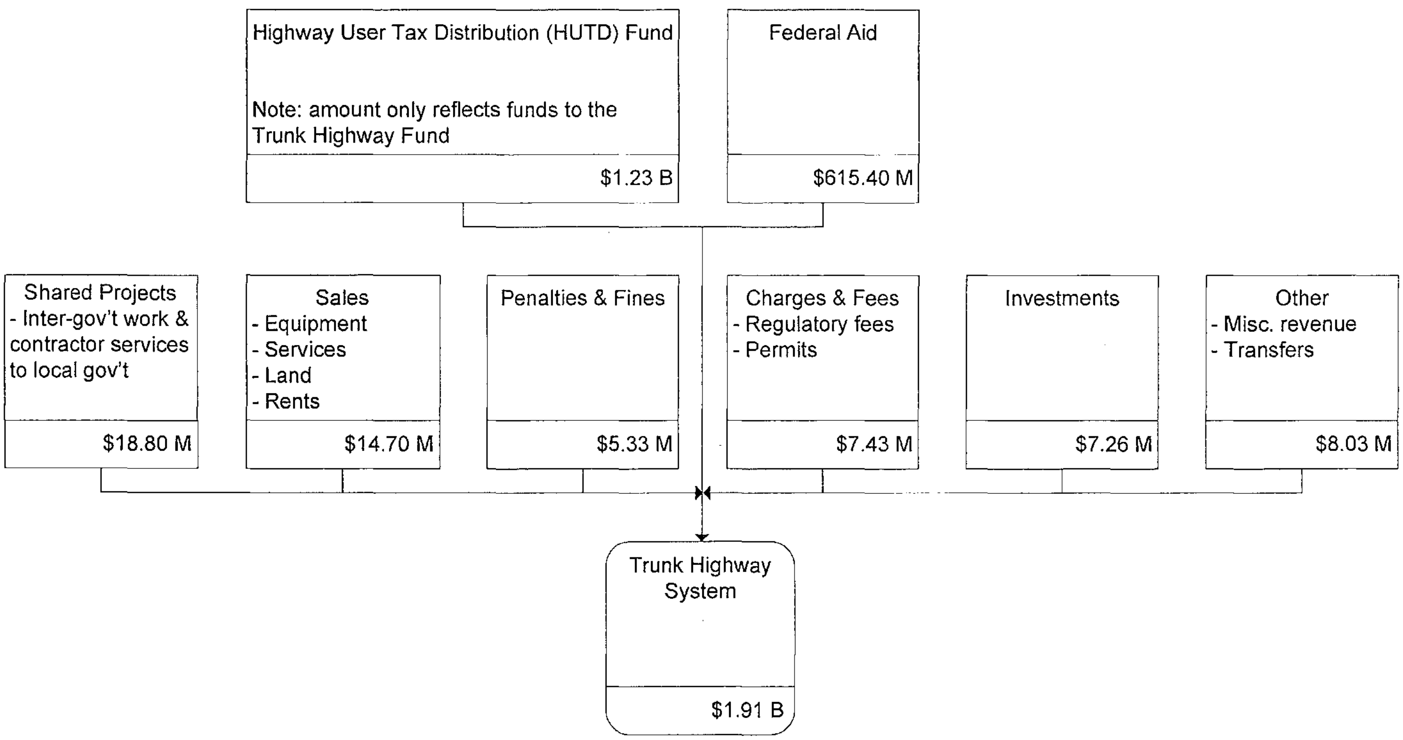
For more information: See the House Research publications *Motor Vehicle Sales Tax Chronology*, August 2009, and *Highway Finance Overview*, January 2018.

HOUSE RESEARCH | Short Subjects

Matt Burress **Updated: February 2018**

Trunk Highway System

The trunk highway system is a roughly 12,000-mile statewide network of interstates and state highways. It is maintained by the Minnesota Department of Transportation (MnDOT). The bulk of funding comes from transportation-related taxes and federal aid. FY 2017 **sources amounted to $1.91 billion**, excluding trunk highway bonding. Finance changes in 2017 will result in increased funding from state sales taxes.



Notes: chart excludes (1) $211.9 million in FY 2017 trunk highway bonds, and (2) transfers from the HUTD fund to other funds.

Funding framework

A highway finance framework is established in the Minnesota Constitution, which includes dedication of funds through transportation-related taxes and formula-based allocation of revenue via the highway user tax distribution (HUTD) fund. Minn. Const. art. XIV.

Primary funding sources

The primary state sources of trunk highway revenue are three "highway user" taxes: a tax on motor fuels, a registration tax on motor vehicles, and a tax on the sale of motor vehicles. A portion of each is allocated to trunk highways from the highway user tax distribution fund. Federal aid is another significant source. Legislation passed in 2017 allocates additional funds from state sales taxes to the trunk highway system, which starts in FY 2018 and is not detailed here.

Trunk highway bonds

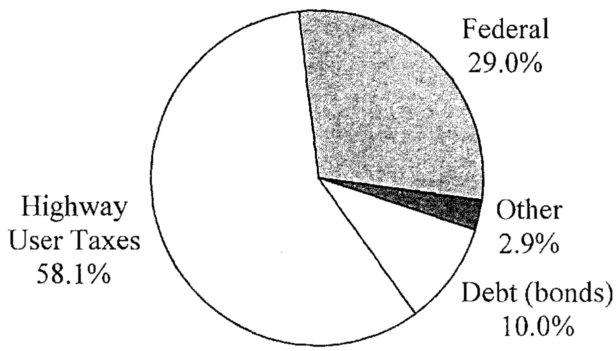
Trunk highway bonds are a specialized form of general obligation bonding, issued by the state only for construction on the trunk highway system (following constitutional limits). Minn. Const. arts. XI, § 5 (e); XIV, § 11.

Since bonds carry an obligation of future repayment with interest, proceeds from bond sales represent debt rather than additional revenue. Bonds can nevertheless be viewed as a type of funding source. In FY 2017, funds from trunk highway bonding totaled **$211.9 million**. This amount only represents funds *expended* that year for project costs. Legislative *authorizations* to issue bonds are distinct from expenditures and may occur in a year prior to the bond issuance.

Funding distribution

The split in FY 2017 funding is shown below, treating bond proceeds as a source.

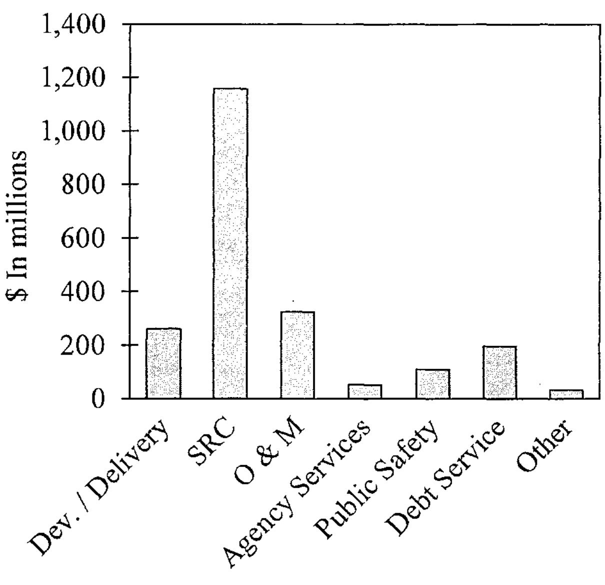
Trunk Highway System Funding Distribution
FY 2017 ($2.12 billion), incl. TH bonding



Expenditures

The following summarizes trunk highway expenditures by budget activity. (Note that expenditures exceed funding mainly due to using available fund balance.)

Trunk Highway System Expenditures
FY 2017 ($2.14 billion), incl. TH bonding



- **Program planning and delivery** includes (1) project development to prepare a project for construction through tasks like scoping, design, engineering, and environmental analysis; (2) construction management, which involves oversight of projects; and (3) statewide system planning and research.
- **State road construction (SRC)** funds specific construction projects. Its main components are (1) contracts and consultant agreements for construction work (and some project development); (2) materials purchasing; and (3) right-of-way acquisition.
- **Operations and maintenance (O & M)** is for maintaining highways through activities like bridge and roadway inspections, snowplowing, roadway repairs, safety infrastructure upkeep (such as guard rails and traffic control device), and vehicle maintenance.
- **Agency services** includes leadership, finance, information technology, and human resources.
- **Public safety** primarily funds the State Patrol.
- **Debt service** is payment of principal and interest on previously issued trunk highway bonds.

Joel Michael

Updated: March 2018

Estate and Inheritance Taxation: An Overview of Taxes in the States

For 2018 deaths, 33 states impose neither estate nor inheritance taxes

From 1924 through 2004, 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 Congress repealed the federal credit for state death taxes (effective for deaths after December 31, 2004). Now that they can no longer impose taxes that do not increase the total tax burden on estates and heirs, most states no longer impose estate or inheritance taxes (33 states for deaths in 2018). For example, Delaware and New Jersey eliminated their estate taxes, effective for 2018 deaths. Minnesota imposes an estate tax.

Inheritance and estate taxes differ in the base used to compute them; one depends on the size of the estate, the other on to whom bequests are made

Estate taxes apply a single tax rate schedule to the taxable value of the decedent's total estate (bequests to charities and surviving spouses are typically exempt).

Inheritance taxes apply varying tax rate schedules to bequests made to different classes of beneficiaries. Bequests to surviving spouses and lineal heirs typically enjoy lower rates or are totally exempt, while bequests to more distant or unrelated heirs (collateral heirs) are usually taxed at higher rates or have lower exemptions or both.

Eleven states and the District of Columbia impose only estate taxes

For decedents dying in 2018, 11 states (Connecticut, Hawaii, Illinois, Maine, Massachusetts, Minnesota, New York, Oregon, Rhode Island, Vermont, and Washington) and the District of Columbia impose only estate taxes.

Exemption amounts under the state estate taxes vary, ranging from $1 million (Massachusetts and Oregon) to the old federal estate tax exemption amount of $5.6 million (before application of the 2018 federal tax act), indexed for inflation (Hawaii and Maine). The federal amount was doubled by the 2018 federal tax act to $11.2 million (for 2018 deaths); the District of Columbia exemption appears to be linked to that amount. Both the old and new federal amounts are indexed for inflation. States have been steadily increasing their exemption amounts with Maryland's and New York's scheduled to rise to the federal amount in 2019 and Connecticut's to $6.1 million in 2020. Minnesota's exemption is $2.4 million for 2018 and will rise to $3 million in 2020. Top rates range from 12 percent to 20 percent with most states, like Minnesota, imposing a top rate of 16 percent.

Five states impose only inheritance taxes

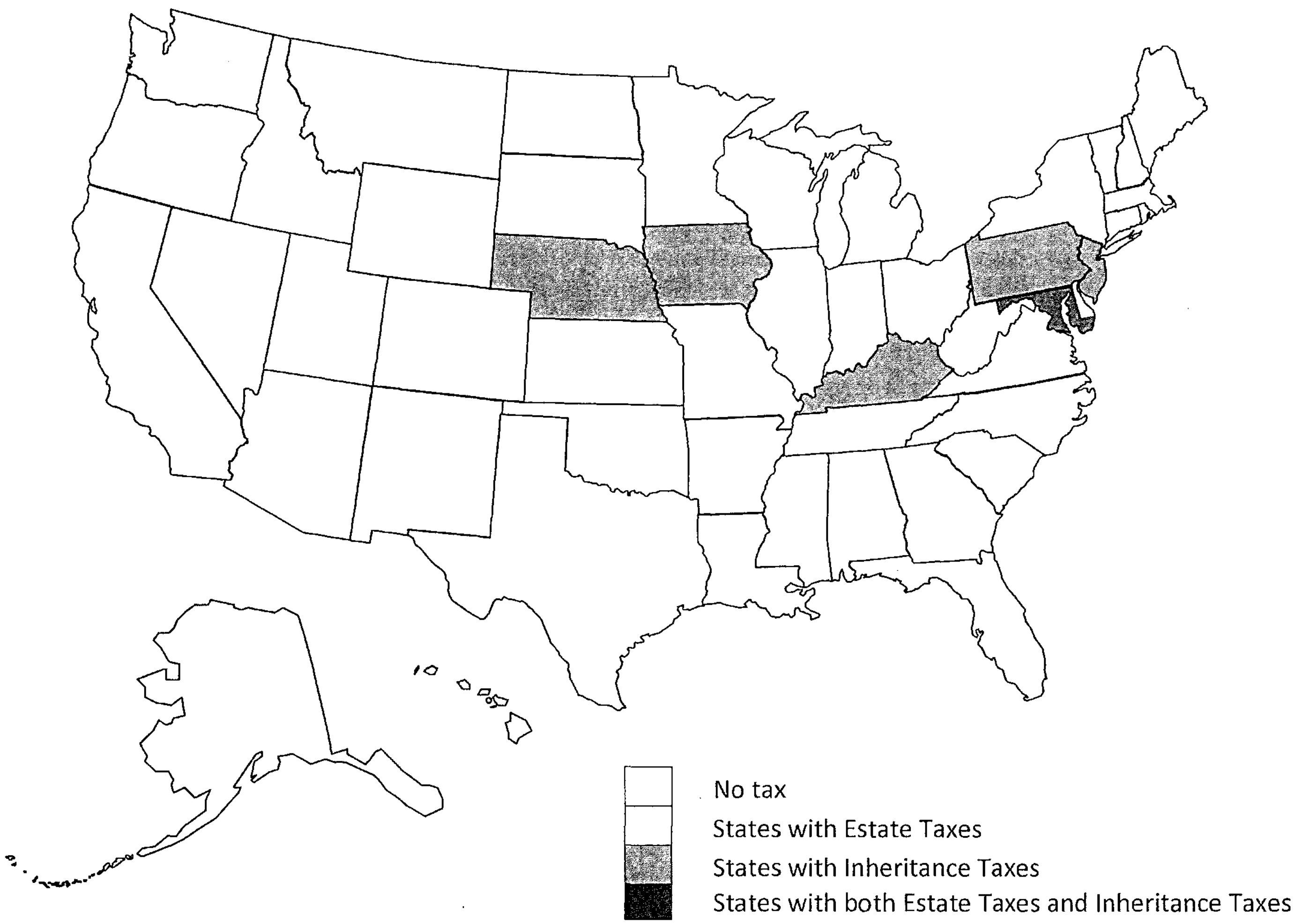
Five states (Iowa, Kentucky, Nebraska, New Jersey, and Pennsylvania) impose only inheritance taxes. Exemptions under state inheritance taxes vary greatly, ranging from $500 (Kentucky and New Jersey) for bequests to unrelated individuals to unlimited exemptions (Iowa and Kentucky) for bequests to lineal heirs, such as children or parents of the decedent. No states tax bequests to surviving spouses; only two states (Nebraska and Pennsylvania) tax bequests to lineal heirs. Top tax rates range from 4.5 percent (Pennsylvania on lineal heirs) to 18 percent (Nebraska on collateral heirs).

One state imposes both taxes

Maryland imposes both types of taxes, but the estate tax is a credit against the inheritance tax, so the total tax liability is not the sum of the two, but the greater of the two taxes. Its inheritance tax does not apply to bequests to lineal heirs.

The map shows the states with estates and inheritance taxes for deaths in 2018.

State Estate and Inheritance Taxes



House Research Department

For more information: See the information brief *Survey of State Estate, Inheritance, and Gift Taxes*, December 2015.

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

Sarah Sunderman & Elisabeth Klarqvist

Updated: June 2018

State Regulation of Health-Related Occupations

Who regulates health-related occupations in Minnesota?

At least 56 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 June 2018, there were 17 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, genetic counselors, naturopaths, 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 lead workers; and unlicensed complementary and alternative health care practitioners.

How are health-related occupations regulated?

Health-related occupations may be regulated in one of several ways. Where necessary and appropriate, state law allows two or more of these methods of regulation to be utilized at the same time. The title a provider uses cannot always be relied upon 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 as having met those qualifications. Minn. Stat. § 214.001, subd. 3, cl. (4). 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, cl. (3). 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: naturopathic doctors.
- 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 complementary and alternative health care 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
4. Whether the overall cost-effectiveness and economic impact of regulation would be positive for the state

What information must be submitted to the legislature regarding 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.

For more information: Contact legislative analyst Sarah Sunderman at 651-296-8079 or Elisabeth Klarqvist at 651-296-5043.

Elisabeth Klarqvist

Updated: June 2018

Regulation of Electronic Cigarettes

The sale and use of electronic cigarettes, referred to as electronic delivery devices in state law, have been regulated at the state level since 2014. The Minnesota Clean Indoor Air Act (MCIAA) prohibits the use of electronic cigarettes in certain indoor settings. Otherwise, requirements for the sale and use of electronic cigarettes are generally the same as requirements for the sale and use of tobacco and tobacco-related devices.

What is an electronic cigarette?

An "electronic delivery device" (referred to as an electronic cigarette) is defined as any product containing or delivering nicotine, lobelia, or other substance intended for human consumption that is used to simulate smoking through inhalation of vapor. This includes all of the components of the product, even if they are sold separately, but does not include products approved by the Food and Drug Administration as tobacco-cessation products, as tobacco-dependence products, or for other medical purposes, which are marketed and sold for that purpose.

The definition of "tobacco-related devices" also includes devices intended to be used to inhale the vapor of tobacco or tobacco products. (Minn. Stat. § 609.685, subd. 1, paras. (b) and (c))

Where is use of electronic cigarettes prohibited?

The MCIAA prohibits smoking of tobacco products in public places, at public meetings, in public transportation, and in places of employment. (Minn. Stat. §§ 144.411 to 144.417) Use of electronic cigarettes is prohibited only in the following locations:

- Day care centers
- Family home or licensed group family day care provider homes, during hours of operation
- Health care facilities
- Any building owned or operated by the state, home rule charter or statutory city, county, township, school district, or other political subdivision
- Buildings owned by Minnesota State Colleges and Universities and the University of Minnesota
- Facilities licensed by the Department of Human Services
- Facilities licensed by the Department of Health, but only if that facility is also subject to federal licensing requirements
- Public schools

Can local jurisdictions or businesses adopt more restrictive ordinances?

Political subdivisions and businesses are specifically authorized to adopt more restrictive prohibitions on the use of electronic cigarettes or the regulation of electronic cigarettes, than the prohibitions or regulations found in state law. (Minn. Stat. §§ 144.414, subd. 5, para. (b); 609.685, subd. 4)

Are electronic cigarettes licensed the same as tobacco products?	Under Minnesota Statutes, section 461.12, the sale of electronic cigarettes is subject to the same municipal licensing provisions as other tobacco products. The law also extends a municipality's ability to conduct compliance checks to places where electronic cigarettes are sold. Electronic cigarettes are prohibited from being accessible to the public without the intervention of a store employee, from being sold in vending machines, and from being sold in kiosks, in the same way as tobacco products. (Minn. Stat. §§ 461.18; 461.21)
What are the packaging requirements for electronic cigarettes?	Liquids sold as part of the use of an electronic cigarette, regardless of whether it contains nicotine, must be packaged in child-resistant packaging. Child-resistant packaging is defined under the Code of Federal Regulations, title 16, section 1700.20, effective on January 1, 2015.
How are the sales and use of electronic cigarettes regulated?	A person must be 18 years old to purchase and use electronic cigarettes. The criminal and administrative penalties for selling or furnishing an electronic cigarette to a person under 18, or for the use of electronic cigarettes by a person under 18, are the same as the criminal and administrative penalties for selling or furnishing tobacco or tobacco-related devices to persons under 18, or for the use of tobacco by persons under 18. (Minn. Stat. §§ 461.12; 609.685)
How are electronic cigarettes taxed?	Electronic cigarettes are subject to the state's other tobacco products tax. The tobacco products subject to this tax include "any product containing, made, or derived from tobacco that is intended for human consumption" as well as "any component, part, or accessory of a tobacco product." (Minn. Stat. § 297F.01, subd. 19) The tax is imposed at the rate of 95 percent of the wholesale price of the tobacco product. The tax is administered so that it only applies to the nicotine cartridge or solution used in an electronic cigarette, provided the device for which the nicotine cartridge or solution is used is sold separately. If a cartridge or solution is not sold separately from the electronic cigarette (disposable electronic cigarettes, for instance), the tax is imposed on the entire value of the electronic cigarette product. (Minn. Stat. § 297F.05, subd. 3, para. (a))

For more information: Contact legislative analyst Elisabeth Klarqvist at 651-296-5043. For questions on the taxation of electronic cigarettes, contact legislative analyst Christopher Klemen at 651-296-8959. Also see the House Research publication *Minnesota Clean Indoor Air Act*, August 2017.

Elisabeth Klarqvist Updated: June 2018

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 of or to treat 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; a 16-year-old can donate with written consent from a parent or guardian) (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:

- that the pregnant minor is mature and capable of giving informed consent, or
- that authorizing the abortion without parental 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 parental notification. An order authorizing an abortion without parental notification is not subject to appeal (Minn. Stat. § 144.343, subds. 2 to 7).

Anatomical Gifts

An emancipated minor or a minor who is at least 16 years old may make an anatomical gift during the life of the minor. However, upon the death of an unemancipated minor, the minor's parent may revoke or amend an anatomical gift, or may revoke the minor's refusal to make an anatomical gift (Minn. Stat. §§ 525A.04 and 525A.08).

Minor Who Has Been Married or Has Given 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).
Inpatient Treatment; Mental Illness, Chemical Dependency, Developmental Disability	Any person 16 years or older may request admission to a treatment facility for observation or treatment of mental illness, chemical dependency, or developmental disability and may give valid consent for hospitalization, routine diagnostic evaluation, and emergency or short-term acute care. If a minor who is 16 or 17 refuses to consent to admission to a treatment facility, the minor's parent or guardian may consent to the minor's admission for mental illness or chemical dependency treatment, if an independent examination confirms the minor has a mental illness or is chemically dependent, and is suitable for treatment (Minn. Stat. §§ 253B.03, subd. 6, para. (d); 253B.04, subd. 1).
Parent or Guardian Access to Health Records of Minor Children	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 statutes (Minn. Stat. §§ 144.341 to 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. § 144.291, subd. 2, para. (g)). However, a health professional may inform a minor's parent or guardian of treatment if, in the professional's judgement, failure to inform the parent or guardian would seriously jeopardize the minor's health (Minn. Stat. § 144.346).
Minors 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, regardless of the extent or source of the minor's income, and regardless of the duration of the separate residence (Minn. Stat. § 144.341).
Effect of Minor's Consent 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*, December 2016.

HOUSE RESEARCH | Short Subjects

Elisabeth Klarqvist

Updated: June 2018

The Minnesota Newborn Screening Programs

The Minnesota Newborn Screening Programs are public health programs through which all infants born in the state are screened soon after birth for a variety of disorders. The Newborn Screening Program, which uses blood spots to screen for more than 50 disorders, is governed by Minnesota Statutes, sections 144.125 and 144.128. The Early Hearing Detection and Intervention program, through which infants are tested for hearing loss, is governed by Minnesota Statutes, section 144.966. Screening for critical congenital heart disease (CCHD) is governed by Minnesota Statutes, section 144.1251.

Infants are screened for more than 50 genetic disorders

Under the Newborn Screening Program, hospitals and others in charge of caring for newborn infants are required to take blood from newborn infants and submit the blood spots to the Minnesota Department of Health to be tested for heritable and congenital disorders. The Commissioner of Health determines the list of disorders for which infants are tested. Currently, MDH screens for more than 50 inherited and congenital disorders, including the following:

- amino acid disorders
- fatty acid oxidation disorders
- organic acid disorders
- endocrine disorders
- lysosomal disorders
- hemoglobinopathies

(For a full list of the disorders, see the MDH website, http://www.health.state.mn.us/divs/phl/newborn/program/2018newbornscreeningpanel.pdf)

Under this program, MDH duties include the following:

- making certain information and forms related to storage of blood samples and test results are available to health care providers and parents
- notifying newborns' primary care providers of the results of the screen
- making referrals for the necessary treatment of diagnosed cases of inherited and congenital disorders when treatment is indicated
- maintaining a registry of the cases of disorders detected for the purpose of follow-up services

Expansion of the program

The legislature has expanded the program in recent years. A law passed in 2007 required all hospitals to establish an Early Hearing Detection and Intervention (EHDI) program. In 2013, a law was enacted that required all hospitals to test newborns for critical congenital heart disease.

Parental consent to newborn screening is presumed unless parents object in writing

Generally, consent for newborn screening is presumed unless parents object to the screening in writing by specifying that they want their child to opt out of the screening. Parents are notified that they may opt out of the tests being performed or have the tests performed without the results stored.

Prior to collecting a blood sample, persons with a duty to perform testing under the Newborn Screening Program must inform parents of the following:

- the benefits of newborn screening
- that parents have the right to decline to have newborn screening performed and that they may secure private testing
- that the blood samples and test results may be stored by MDH unless the parents elect against storage
- that parents have the right to have the tests performed but not have the blood samples or test results stored
- that parents have the right to authorize, in writing, that results may be used for public health studies or research
- the MDH website where more information may be found

The state's handling of genetic information is governed by law

In 2006 a law was enacted governing the treatment of genetic information held by state government. Minnesota Statues, section 13.386, subdivision 3, requires that, unless provided in law, genetic information about an individual may be collected by the government with the written, informed consent of the individual. The genetic information may be used only for the purposes and stored for the period of time to which the individual consented. Also, the genetic information may be disseminated only with the individual's written, informed consent, or as necessary to accomplish the purposes of the collection.

In November 2011, the Minnesota Supreme Court ruled on this issue in *Bearder v. State of Minnesota* (806 N.W. 2d 766, November 16, 2011), which challenged certain MDH activities related to the newborn screening programs in light of the genetic privacy law (Minn. Stat. § 13.386). The state Supreme Court found that the genetic privacy law does generally apply to blood samples collected under the newborn screening program; however, there are narrow exceptions provided in statute that authorize MDH to administer the newborn screening tests of blood samples, record and report those test results, maintain a registry of positive cases, and store those test results as required by federal law.

In 2014, the newborn screening laws were amended to allow stored blood samples and tests results to be used for studies related to newborn screening, including studies used to develop new tests. The law prohibits use of the blood samples and test results for any other reason than allowed under the law without the written consent of the parent. The law also prohibits the sale of bloodspots, test results, or other data collected during the newborn screening process.

The law allows parents and a person who was tested under the newborn screening program, once that person is 18 years or older, to request that the person's blood samples and test results are destroyed. Once a parent or person who was tested requests the blood samples or test results be destroyed, the results must be destroyed within a certain time period, as provided in law.

For more information: Contact legislative analyst Elisabeth Klarqvist at 651-296-5043.

HOUSE RESEARCH | Short Subjects

Christopher Kleman and Jared Swanson Updated: June 2018

Senior Citizens Property Tax Deferral Program

What is the Senior Citizens Property Tax Deferral Program?

The Senior Citizens Property Tax Deferral Program allows property taxpayers who are 65 years or older, and whose total household income is $60,000 or less, to defer a portion of their homestead property taxes until some later time. It allows senior citizens whose property taxes are high relative to their incomes, but who wish to stay in their homes, an option for paying their property taxes.

How does it work?

Regardless of how high the tax is on the homestead, the taxpayer initially pays an amount equal to only 3 percent of the total preceding year's household income. The state pays any amount over 3 percent, called the "deferred tax," to the county in which the home is located. A lien attaches to the property. The deferred tax is a loan. Interest on the loan is calculated at the same rate as unpaid state taxes; a floating rate that cannot exceed 5 percent. Before the owner can transfer the title of the property, the deferred tax plus interest must be repaid.

For example, John and Mary Jones own a home; its total property tax is $1,400. They have a total household income of $30,000. Under this program, they must pay $900 in tax (3 percent of $30,000); the remaining $500 ($1,400 minus $900) is deferred.

Who qualifies?

In order to qualify for the program, **all** of the following criteria must be met:

- The property must be owned and occupied as a homestead by a person at least 65 years old (If married, one spouse must be at least 65 years old and the other must be at least 62 years old)
- Total household income must be $60,000 or less for the calendar year preceding the year of the initial application
- The home must have been owned and occupied as the homestead of at least one of the homeowners for at least 15 years before the initial application
- There must be no state or federal tax liens or judgment liens on the property
- The total unpaid balances of debts secured by mortgages and other liens on the property, including deferred tax and interest amounts under the program, unpaid and delinquent special assessments and property taxes, penalties and interest (but excluding the current year's property taxes and Property Assessed Clean Energy liens), do not exceed 75 percent of the assessor's estimated market value for the current year

What information is the applicant required to provide?	An applicant must provide, at her or his own expense, a report detailing any mortgages, liens, judgments, or unpaid property taxes on the property. For "Abstract" properties, these reports must be prepared by a licensed abstracter. For "Torrens" properties, the information is part of the "Condition of Register" available from the county recorder. If owners are unsure which type of property they have, they may find out from the county recorder.
Does the taxpayer need to annually reapply?	No, once a taxpayer is enrolled in the program, annual applications are not required. However, if household income exceeds $60,000 in any calendar year, the owner must notify the Department of Revenue, and no *further* property taxes may be deferred. However, the owners will remain enrolled in the program, and once their income falls below the $60,000 threshold again, they may notify the state and request that the deferral be resumed.
Can the taxpayer still file for refunds?	Yes, a taxpayer is still allowed to file for the property tax refund and any other property rebates that the state offers. However, no direct cash payments will be made to the taxpayer. Rather, the amount of the refund will be applied to the total amount of the deferred property tax on the taxpayer's home. The property tax refund is calculated on the full tax amount.
When does it terminate?	The deferral terminates when **any one** of the following events occurs: • the property is sold or transferred • all qualifying homeowners die • the homeowner notifies the Commissioner of Revenue, in writing, of intent to withdraw from the program • the property no longer qualifies as a homestead
How many people participate in the program?	For property taxes payable in 2016, 327 people participated in the program across the state. The total amount of property taxes deferred for fiscal year 2017 was $1.2 million.
Where does a taxpayer apply for the program?	Applications are available in the county auditor's office or may be obtained from the Department of Revenue's website at www.revenue.state.mn.us/Forms_and_Instructions/crscd.pdf.

For more information: Contact legislative analyst Christopher Kleman at Christopher.Kleman@house.mn or Jared Swanson at Jared.Swanson@house.mn.

Ben Johnson **June 2018**

Liability for the Crimes of Another

When the legislature establishes new crimes or amends criminal penalties, the changes apply to a person who violates the law, but also apply to others involved before, during, or after the crime takes place. A person who helps another commit a crime can be held responsible, or liable, for the other person's actions. This is referred to as "aiding and abetting," "accomplice liability," "conspiracy, or "aiding an offender after the fact."

How can someone who did not commit a crime be held responsible for the crime?

Minnesota law makes it illegal to help someone else commit a crime, plan to commit a crime, or hide the fact that a crime was committed. A person who helps another commit a crime is an accomplice. A conspiracy exists when multiple people plan to commit a crime and take some action to commit it. A person who learns of a crime after it took place and then tries to assist the criminal is guilty of aiding an offender.

Who qualifies as an accomplice to a crime?

A person who "intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit" a crime is an accomplice under Minnesota Statutes, section 609.05, and can be convicted of committing the crime even if someone else actually violates the law. The participation can come before or during the actual crime and is often referred to as "aiding and abetting" a crime.

What if you do not know that the other person is planning to commit a crime?

The concept of "intentionally aiding" includes two required mental states. *First*, a person must know that the actor is going to commit a crime. *Second*, the person must intend any actions, including being present at the scene, to further that crime.

The accomplice does not necessarily need to know a crime is going to be committed before it begins. If a person becomes aware that someone is committing a crime and then makes a choice to aid, or continue to aid, in the commission of the crime, then the person is an accomplice.

Example:

- Person A drives a bank robber to the bank but does not know of the plan to commit a robbery. Driving the robber to the bank aided in the crime, but Person A did not know about the robbery and did not intend to help. Person A is not an accomplice.

- Person B also drove a robber to the bank without knowing of the plan, but saw the robbery in process and remained at the scene to drive the robber away. Person B chose to assist the crime. Even though the robber did not know of that decision, Person B is an accomplice.

What if someone is at the scene of a crime but does not actually do anything?

Simply being present at the scene of a crime does not make a person an accomplice. However, an accomplice does not have to actively participate in the crime. A jury can infer that someone at the scene of a crime intended that presence to offer support based on the person's actions before, during, and after that crime.

What if something unexpected happens during the crime?

Accomplice liability is broad. An accomplice is liable for any additional crime committed during the intended offense if the new crime was reasonably foreseeable. For example, an accomplice to armed robbery would be guilty of murder if one of the other accomplices killed someone.

What if someone no longer wants the crime to take place?

A person who would otherwise be an accomplice can avoid liability by: (1) abandoning the criminal activity, and (2) making a reasonable effort to prevent the crime.

How is conspiracy different from accomplice liability?

While accomplice liability is a way to make someone responsible for a crime committed by another, conspiracy is a separate crime under Minnesota Statutes, section 609.175. The crime of conspiracy does not make one liable for the crimes of another, but does make it illegal to plan a crime with someone else.

To be guilty of a conspiracy, there must be: (1) an agreement to commit a crime, and (2) an act to further that agreement.

Can a person be guilty of conspiracy and also be an accomplice?

Yes. A person's actions can constitute both forming a conspiracy and assisting in the commission of a crime.

What does it mean to aid an offender after the fact?

If a crime has already been completed, a person cannot become an accomplice or join a conspiracy to commit the crime. However, someone who helps an offender after a crime has been committed, or simply receives the proceeds of the crime, commits the crime of aiding an offender after the fact in violation of Minnesota Statutes, section 609.495.

What actions constitute aiding an offender after the fact?

There are three primary ways that someone can aid an offender.

First, it is a felony to help or conceal someone who committed a felony in order to help the person avoid arrest or punishment. The penalty applies whether the assistance involves some physical act, or simply the person's words.

Second, a person can be sentenced to up to half of the maximum sentence for the underlying crime if the person obstructs an investigation by destroying evidence, providing false information about the crime, or receiving the proceeds of the crime.

Finally, a person who falsely claims to have committed a crime in order to protect the true criminal can be sentenced to up to half of the maximum sentence of imprisonment for the underlying crime.

For more information: Contact legislative analyst Ben Johnson at 651-296-8957.

Nathan Hopkins June 2018

Fees for Government Data

This publication discusses when and how a government entity may charge a fee for responding to a data request under the Minnesota Government Data Practices Act (DPA). In situations where specific fees are set by statute or rule, those fees will apply rather than the general rules of the DPA.

There is no charge to inspect data

Inspection of data is always free. "Inspection" means visual review of data. A person is not entitled to free hard copies of data unless receiving hard copies is the only way for the government entity to allow access for purposes of inspection. Opinions issued by the commissioner of administration have held that a person may use a personal device such as a scanner or camera to record data during inspection.

Fees may be charged if a person requests copies of data

A government entity is permitted—though not required—to charge a fee when a person requests copies of data, except if providing a copy is the only way to allow for inspection of the data. "Copies" may refer to printing or photocopying data on paper, or the electronic transmittal of data. Fees charged for copies must be clearly related to the actual development cost of the copies, and the government entity must—upon request—provide documentation explaining and justifying the fee charged.

Copies of smaller amounts of public data cost 25 cents per page

Fees are only predetermined when a person is requesting copies of a smaller amount of public data. If the requested copies amount to 100 or fewer pages of black-and-white letter or legal size paper, the government entity may charge no more than 25 cents per page. No additional costs may be added to this fee amount. This predetermined fee only applies to public data; it does not apply to not public data that a person may request because he is the subject of that data. Data subjects may only be charged actual costs.

For all other copy requests, government entities may charge for the actual costs of making the copies

Unless the 25-cents-per-page rule applies, a government entity is only permitted to charge for the *actual costs* of retrieving the requested data and making the copies. Items that may be factored into a calculation of actual costs include: the cost of the media (paper, CD-ROM, etc.), mailing costs, costs associated with the need to use outside vendors (e.g., photo processing labs), and employee time spent responding to the copy request. A government entity may *not* charge for employee time spent separating public from not public data (i.e., redacting documents). By administrative rule, a government entity's fee determination may be guided by a fee schedule of standard copying charges, but only insofar as the schedule reflects the actual copying costs.

The cost of employee time spent searching for and retrieving the data to be copied may only be charged when a person is requesting copies of *public* data. If a person's access to the requested data is permissible only because that person is the subject of the data, the government entity cannot charge for employee search and retrieval time, but only for employee time spent making and compiling the actual copies. Also, opinions issued by the commissioner of administration have held that, when calculating the cost of employee time spent preparing copies, the government entity must use the wage or prorated salary (may include the cost of benefits) of the lowest-paid employee who can perform those tasks.

Because an entity is only permitted to charge actual costs, the fee for a copy request must be calculated on a case-by-case basis. For this reason, predetermined fees are not permitted and costs may vary among different government entities.

Remote access to data is a form of inspection and is therefore free, except when enhanced access is provided

Remote access refers to a person's ability to inspect government data from a personal computer, typically through an online portal or the government entity's website. Government entities are not required to provide remote access to data, but may choose to do so for certain data sets. Remote access to data is considered a form of inspection and is therefore free of charge. However, a government entity may charge for remote access if it has specific statutory authority to do so or if the data retrievable or the access itself is in some way "enhanced." Enhancement is undefined, but could include instantaneous term-based searches of data, the ability to run tests or manipulate data, or other functions.

Fees may be charged to a person who requests copies of data that has commercial value

A government entity is permitted to charge additional fees to a person who requests copies of data that (1) has commercial value, and (2) is a substantial and discrete part of a formula, program, system, etc., that the government entity has developed using a significant expenditure of public funds. Any fee charged for this purpose must be reasonable and must be related to recapturing the actual costs associated with the initial development of the formula, program, system, etc. The government entity must—upon request—provide documentation explaining and justifying the fee charged.

Costs may be assessed when a person requests that the agency prepare summary data

Summary data are statistical records and reports that are derived from data on individuals, but which do not reveal any individual's identity. If a person requests that a government entity prepare original summary data from private or confidential data on individuals, the entity may require the person to pay the cost of preparing the summary data, including employee time. By administrative rule, the entity must provide the person an initial estimate of these costs, and the funds must be collected in advance of the preparation. Also, if the requested summary data also has value to the entity, the entity must appropriately reduce the costs assessed to the requesting person.

Money collected is deposited in the general fund or in a separate fund for the agency

Money collected by state agencies for copy costs under the DPA must be credited to the general fund and cannot be spent by the agency. If, however, an agency collects a sufficiently large amount of money (statutes do not provide a precise figure), the money must be deposited in a separate fund and the amount deposited is appropriated to the agency.

For more information: Contact legislative analyst Nathan Hopkins at 651-296-5056.

Matt Burress Updated: June 2018

Municipal State-Aid Street System

Some cities receive state assistance for construction and maintenance of streets that are part of a municipal state-aid street system. Funding comes via transportation-related taxes and is distributed following a statutory formula. Calendar year 2018 direct aid totals $192.3 million.

System overview

The municipal state-aid street (MSAS) system is a collection of higher volume and key connecting streets located in 148 Minnesota cities, of which 84 are in the Twin Cities metropolitan area. At roughly 3,600 miles, state-aid streets constitute around 16 percent of all centerline miles of city streets. There are restrictions on the size of the MSAS system within each city. Minn. Stat. § 162.09.

Constitutional framework for aid

The Minnesota Constitution establishes a basic framework for state highway finance. Among its features, the constitution dedicates specific transportation-related taxes to transportation purposes; allocates tax revenues by formula; and creates a MSAS fund for financial assistance to cities. Minn. Const. art. XIV.

Eligibility based on population

The constitution requires a city to have a population over 5,000 in order to qualify for MSAS aid. Minn. Const. art. XIV, § 8. Population is determined by the last federal decennial census or most recent estimates. However, statutory provisions allow some cities whose populations drop below 5,000 to receive aid, including:

- an exception for Chisholm, whose population fell below the cutoff with the 2000 census but is permanently grandfathered in; and
- a transition period that provides continuation of aid to a city that had been receiving assistance but whose population dropped below the cutoff in a decennial census (in this decade, 2015 was the last transition year). Minn. Stat. § 162.09, subd. 4 (f); Laws 2001, 1st spec. sess., ch. 8, art. 2, § 6; Laws 2002, ch. 364, § 29.

Other assistance to ineligible cities

While cities having a population under 5,000 are not eligible for MSAS funds, the legislature established a Small Cities Assistance program. Minn. Stat. § 162.145. It was most recently funded at $8.0 million in each of fiscal years 2018 and 2019. Smaller cities are also supported indirectly through state aid to counties: a share of state funds for the county state-aid highway system must be allocated to a municipal account for use on portions of county state-aid highways located within smaller cities. Minn. Stat. § 162.08, subd. 1.

Program administration

The Minnesota Department of Transportation (MnDOT) administers the state-aid program. MnDOT determines amounts annually based on a combination of tax receipts and future estimates. Aid apportionment amounts are released each January and distributed on a calendar-year basis.

MnDOT has also adopted administrative rules governing the program, which cover topics such as minimum roadway design and engineering standards, design variance procedures, apportionment between construction and maintenance, and contract and bidding requirements. Minn. Rules, ch. 8820. While the department oversees aid distribution and provides technical assistance, prioritization of road projects as well as their development are under the purview of each city.

Allocation of funds

MSAS funds are used to provide aid as well as for related activities (such as administrative costs) based on multiple formulas in state law. Calendar year 2018 funding is at $196.9 million, but a cap on the amount held in a disaster account yielded about $223,500 in additional available funds. Allocations consist of:

- $192.3 million apportioned by formula as direct aid to cities;
- $3.9 million for MnDOT agency expenses; and
- $866,100 to a research account. Minn. Stat. §§ 162.12, 162.13.

Aid apportionment formula

Money in the MSAS fund apportioned among cities as direct aid follows a formula created in state statute, so that:

- **50 percent** is divided proportionally based on the population of each city (compared to the total for all municipal state-aid cities); and
- **50 percent** is divided proportionally based on construction needs for each city. Minn. Stat. § 162.13.

The needs calculation under the formula is structured to enable comparison across the cities (and does not identify total costs to bring municipal state-aid streets up to state standards). Calculations submitted by cities are reviewed by a screening board composed of city engineers.

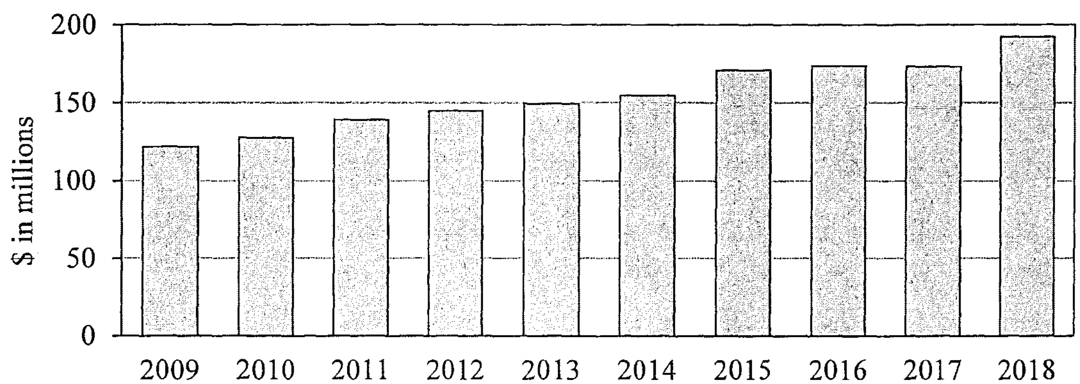
Distribution to cities

Calendar year 2018 direct aid ranges from around $195,000 to $17.5 million (or $33.30 to $88.70 on a per capita basis). Average aid per city is nearly $1.3 million, with 41 cities receiving up to $500,000 each and 22 cities receiving over $2 million. Because of the weight of population in the aid formula, larger cities tend to receive greater shares of the aid.

Historical aid

The chart below provides direct aid by calendar year.

MSAS Direct Aid History
CY 2009-18



For more information: See the House Research publications *Highway Finance*, January 2018, and *Small Cities Assistance,* October 2017.

HOUSE RESEARCH | Short Subjects

Matt Burress

Updated: June 2018

County State-Aid Highway System

System overview

The county state-aid highway system is a network of key highways under the jurisdiction of Minnesota's counties. It covers roughly 30,700 miles of roadway throughout all counties, composing over two-thirds of county highway miles. Counties receive formula-based state money to assist in the construction, improvement, and maintenance of highways included in the state-aid system.

Sources of revenue

Aid is provided through the County State-Aid Highway (CSAH) fund, which is established by the Minnesota Constitution. Revenue mainly comes from a share of taxes on motor fuels, vehicle registration, vehicle sales, and vehicle leases.

Program administration

Money in the CSAH fund is administered by the Minnesota Department of Transportation (MnDOT). Using a combination of tax receipts and future estimates, aid apportionments are released each January with distribution on a calendar-year basis. MnDOT also adopts administrative rules governing the program (covering topics such as design standards). Road project prioritization, selection, and construction management are under the purview of each county.

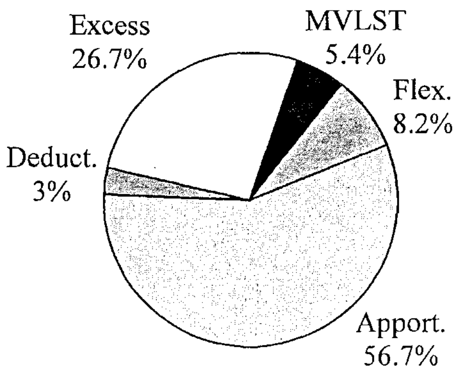
Aid requirements

Among the requirements of the aid, counties typically expend 60 percent on construction projects and 40 percent on maintenance efforts. Minn. Rules, part 8820.1400. Counties must also expend a share of aid on stretches of state-aid highways located within "small cities" having a population under 5,000, generally in amounts proportional to the share of construction needs for county state-aid highway segments located in the small cities. Minn. Stat. § 162.08, subd. 1.

CSAH funds

Total state funding is $733.9 million in calendar year 2018, allocated as follows.

County Aid Breakdown
CY 2018 ($733.9 million)



- Based on statutory requirements, $21.9 million in **deductions** are made for county highway purposes, consisting of: (1) MnDOT administrative costs, (2) a disaster account, (3) a research account, and (4) a state park roads account. Minn. Stat. § 162.06.
- A portion of general sales tax revenue, known as **motor vehicle lease sales tax (MVLST)**, is allocated by formula to Twin Cities metropolitan area counties. The distribution excludes Hennepin and Ramsey and is in proportion to the population of each county. Minn. Stat. § 297A.815. Funds in calendar year 2018 amount to $39.8 million.
- $60.4 million from a "set-aside" in the **flexible highway account** is provided for county road turnbacks (generally, trunk highway segments that are improved and turned over to become part of the county state-aid highway system). Minn. Stat. § 161.081.
- **Core aid** in calendar year 2018 is $611.9 million. It is divided into two categories for distribution among the counties by formula: the **apportionment sum** and the **excess sum**.

Apportionment and excess sum

Core aid to counties had been allocated under one formula until 2008, when the excess sum was created as a second statutory distribution formula. The excess sum was basically designed to handle increased funding for transportation due to finance changes made over 2006 to 2008 (so that the additional funding was largely allocated through the excess sum formula). Legislation in 2015 eliminated the calculation methodology used to identify excess sum revenue, replacing it with straight percentages.

Since calendar year 2016, core aid dollars are provided 68 percent through the apportionment sum formula, and 32 percent through the excess sum formula. Minn. Stat. § 162.07.

Apportionment sum formula

The formula to distribute the apportionment sum among counties is:

- 10 percent of the apportionment sum is divided equally
- 10 percent is proportional based on the number of motor vehicles registered in each county (compared to the total for all counties)
- 30 percent is proportional based on a county's state aid lane-miles
- 50 percent is proportional based on construction needs for each county, with the calculation structured to enable comparison across the counties (so that it does not identify total costs to bring county state-aid highways up to state standards). Needs calculations submitted by counties are reviewed by a screening board composed of county engineers. Minn. Stat. § 162.07.

Excess sum formula

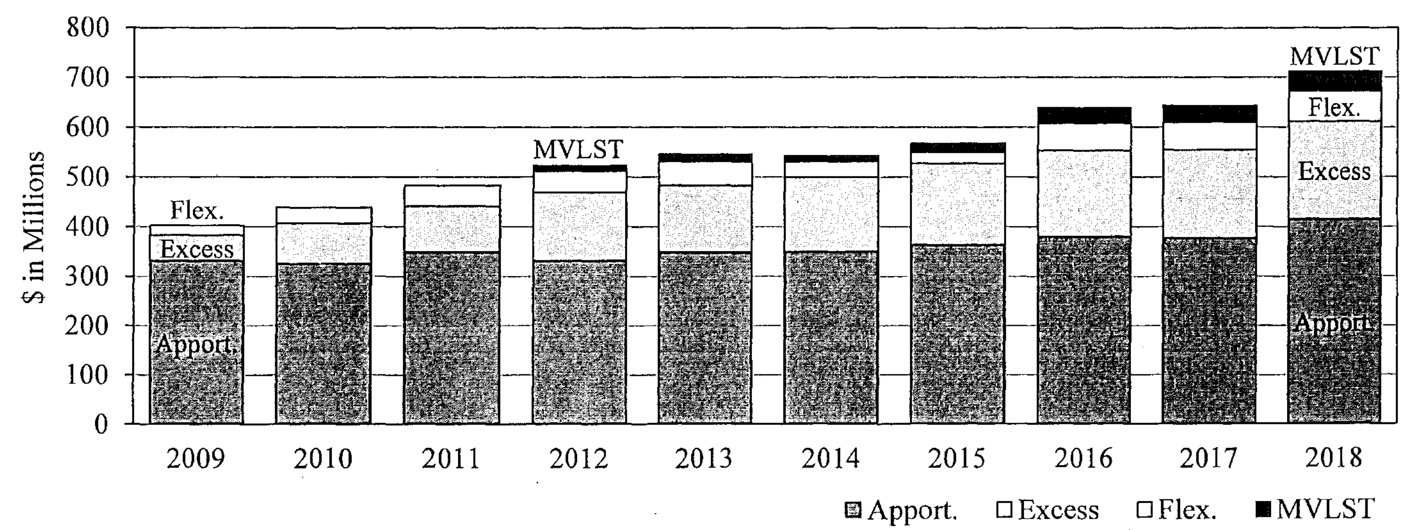
The excess sum is also distributed by formula:

- 60 percent is in proportion to each county's share of construction needs
- 40 percent of funds are allocated in proportion to each county's share of the total number of motor vehicles registered. Minn. Stat. § 162.07.

Historical aid

The following chart summarizes aid by calendar year, excluding deductions.

County Aid History
CY 2009-18



For more information: See the House Research publication *Highway Finance*, January 2018.

Danyell Punelli

Updated: June 2018

Basics of Emergency General Assistance

Emergency General Assistance (EGA) is a state program, administered by Minnesota counties, that provides income assistance in emergency situations.

Who is eligible?

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

- The person or family is not eligible for Minnesota Family Investment Program (MFIP), the Diversionary Work Program (DWP), or county emergency assistance through the MFIP consolidated fund;
- The person or family has annual net income no greater than 200 percent of the federal poverty guidelines (FPG) for the previous calendar year (in 2018, for a family of three, 200 percent of FPG was $41,556);
- The person or family has not, without financial good cause, used more than 50 percent of available income and resources for purposes other than basic needs during the 60 days before application;
- The person or family is without financial resources immediately available to resolve the emergency; and
- The emergency did not arise because the person or family member has been disqualified from General Assistance (GA) or MFIP.

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

Applicants for or recipients of Supplemental Security Income (SSI) or Minnesota Supplemental Aid who have emergency need may apply for EGA.

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

What is an "emergency situation"?

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

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

How is EGA funded and how are benefits paid?

EGA is funded with state general fund dollars.

EGA is provided within the limits of available appropriations and funds are allocated to counties by the state. The minimum county allocation is $1,000 per fiscal year. Counties may make expenditures above the amount of their state allocation but additional expenditures must be made from county funds.

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

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

HOUSE RESEARCH | **Short Subjects**

Danyell Punelli

Updated: June 2018

Corporate Foster Care Moratorium

Corporate foster care is foster care in which the primary license holder does not reside in the residence, and the foster care home is operated by a corporation with shift staff delivering services to clients. The 2009 Legislature established a partial moratorium on new licenses for corporate foster care. The moratorium has been modified by the legislature several times since 2009.

What is the corporate foster care moratorium?

Beginning July 1, 2009, the commissioner of human services was prohibited from assigning initial licenses for corporate foster care. Exceptions to the moratorium include:

- foster care settings that are required to be registered under the housing with services establishment statute;
- foster care licenses replacing foster care licenses in existence on May 15, 2009, or community residential setting licenses replacing adult foster care licenses in existence on December 31, 2013, and determined to be needed by the commissioner;
- new foster care licenses or community residential setting licenses determined to be needed by the commissioner for: (1) the closure of a nursing facility, intermediate care facility for persons with developmental disabilities, or regional treatment center; (2) restructuring of state-operated services that limits the capacity of state-operated facilities; or (3) allowing movement to the community for people who no longer need the level of care provided in state-operated facilities as provided under the MA disability waiver programs;
- new foster care licenses or community residential setting licenses determined to be needed by the commissioner for persons requiring hospital level care;
- new foster care licenses or community residential setting licenses determined to be needed by the commissioner for the transition of people from personal care assistance to the home and community-based services;
- new foster care licenses or community residential setting licenses determined to be needed by the commissioner for the transition of people from the residential care waiver services to foster fare services, only when certain conditions are met; and
- new foster care licenses or community residential setting licenses for people receiving home and community-based services and residing in an unlicensed setting before May 1, 2017, and for which a license is required, if certain conditions are met.

What is a community

The community residential setting license combines the setting and service license into one license for corporate foster care providers who serve persons receiving MA disability waiver.

residential setting license?	If a facility includes one or more persons with a funding source other than a disability waiver, such as elderly waiver or private pay, the facility is licensed as an adult foster care home. Funding sources for these facilities do not limit where people live, but funding sources do determine which license is required for the facility to operate.
What requirements must local agencies meet?	Counties are required to immediately inform the Department of Human Services (DHS) when an adult corporate foster care or community residential setting recipient chooses to move out of a corporate foster care home into a community-living setting. DHS may decrease the statewide licensed capacity for adult corporate foster care settings. (See Minn. Stat. § 245A.03, subd. 7.)
Are any settings exempt from decreases to licensed capacity?	Residential settings that would otherwise be subject to decreased licensed capacity are exempt if the license holder's beds are occupied by residents whose primary diagnosis is mental illness and the license holder meets adult mental health certification standards.
Is there a voluntary planned closure process?	Yes, there is an adult foster care planned closure process to accomplish the consolidation or closure of settings. Voluntary proposals from license holders for consolidation and closure of adult foster care or community residential settings are encouraged. License holders must submit a closure plan to the commissioner for review and approval. (See Minn. Stat. § 256B.493.)
Is there a process to determine the statewide level of need for foster care capacity?	Yes, the commissioner is required to use a resource need determination process, using available long-term care services and supports reports and other data and information, to align capacity where needed. (See Minn. Stat. §§ 245A.03, subd. 7, and 256B.493, subd 2.)

For more information: Contact legislative analyst Danyell Punelli at 651-296-5058.

Nathan Hopkins

Updated: June 2018

Tuition Reciprocity Program

The tuition reciprocity program authorizes the Office of Higher Education (OHE) to enter into agreements with other states to reduce tuition for Minnesota students at the other states' postsecondary institutions. Similarly, under the agreements, residents of reciprocity states pay reduced tuition rates when they attend a public postsecondary institution in Minnesota.

Who is eligible to participate?

Minnesota has separate tuition reciprocity agreements with North Dakota, South Dakota, and Wisconsin covering all public postsecondary institutions in those states. Minnesota also has limited agreements with Iowa (covering one institution in each state) and Manitoba (covering all public Minnesota institutions and ten institutions in Manitoba).

Although undergraduates constitute the majority of participating students, the agreements also include most graduate and professional programs. The Wisconsin agreement, however, limits reciprocity to the pharmacy and law professional programs. Similarly, the North Dakota agreement limits or excludes certain professional programs, though individual programs may voluntarily offer reduced tuition to students from neighboring states.

To participate in the program, a student must first apply to a public college or university in a reciprocity state and then apply for reciprocity to the administering agency in their home state—OHE for Minnesota students. Students have until the last day of the academic term to apply for reciprocity. The reciprocity program has no limit to the number of participating students. A student's reciprocity benefits automatically renew for subsequent academic terms. Any changes to the reciprocity agreements apply to students who first enroll after the effective date of the change.

What do the agreements cover?

The reciprocity agreements and annual memorandum specify the terms of participation, including undergraduate, graduate, and professional tuition rates for applicable institutions and programs. The agreements must be approved by postsecondary governing boards—in Minnesota, the Minnesota State Colleges and Universities (MnState) Board of Trustees and the University of Minnesota Board of Regents. Most of the agreements exclude fees charged by participating institutions. Only the South Dakota agreement includes both tuition and mandatory fees.

What tuition rates do students pay?

There are three main approaches to tuition rate setting for tuition reciprocity agreements:

1. Resident tuition at the institution attended (with or without a surcharge)
    - Applies to Minnesota residents attending North Dakota institutions
    - Applies to participating institutions under the Iowa and Manitoba agreements

2. The higher of the two states' resident tuition at a comparable institution
    - Applies to North Dakota residents attending Minnesota institutions
    - Applies to South Dakota and Wisconsin agreements
3. Resident tuition at a comparable institution in the student's state of residence
    - Not currently used under any agreement

Note that the North Dakota agreement is unique in that the tuition rate-setting approach differs depending on the student's state of residence.

Does the reciprocity program cost the state?

The state pays for the reciprocity program through general fund appropriations to public institutions and through specific appropriations to OHE for payments to other states, as required in the Wisconsin and North Dakota agreements.

For the 2016-2017 academic year, preliminary data placed Minnesota's obligation to North Dakota at $11.85 million. That same year, Wisconsin's obligation to Minnesota was $6.3 million. The approximate total obligation for the 2016-2017 academic year is therefore $5.55 million. In its 2017 higher education omnibus act, the legislature appropriated $11 million each year for tuition reciprocity contract obligations in fiscal years 2018 and 2019.

How many students participate in the program?

Minnesota's agreements with Wisconsin and North Dakota represent 88 percent of all reciprocity enrollments. Minnesota's agreement with South Dakota represents an additional 11 percent of participation. In fall 2016, a total of 42,078 students from all participating states (and Manitoba) participated in the tuition reciprocity program. Approximately 93 percent of these students are undergraduates. In keeping with historical trends, Minnesota sends more students to each of the other states than it receives from them.

Fall 2016 Reciprocity Enrollment

	From Minnesota Attending in	*Attending in Minnesota from*	*Net Outflow of Students*
North Dakota	10,844	4,118	6,726
South Dakota	3,461	1,172	2,289
Wisconsin	13,689	8,285	5,404
Manitoba*	88	62	26
Iowa Lakes Community College	288	71	217
Total	28,370	13,708	14,662

*The number of Minnesota residents enrolling in Manitoba is from fall 2015

For more information: Contact legislative analyst Nathan Hopkins at 651-296-5056.

Colbey Sullivan **Updated: July 2018**

Biofuel Use Mandates

What is a biofuel?

A biofuel is a transportation fuel derived from plants or other renewable biological resources. The most widely used biofuels are ethanol produced from corn and biodiesel produced from soybean oil and other feedstocks. Researchers and companies are actively developing new biofuels and new feedstocks for ethanol and biodiesel.

Ethanol is a substitute for gasoline; biodiesel is a substitute for diesel fuel. In contrast, gasoline and diesel are referred to as "fossil fuels" because they are derived from nonrenewable petroleum. A biofuel-blended fuel is a fossil fuel mixed with biofuel.

What is a biofuel use mandate?

A biofuel use mandate is a law that requires transportation fuel suppliers and retailers to sell biofuel-blended fuel. As the result of Minnesota's biofuel mandates, in general all motorists who fuel up in Minnesota purchase biofuel-blended fuel. Regular gasoline and diesel are not typically available at gas stations.

How do the biofuel use mandates work?

Minnesota has two biofuel use mandates—one for gasoline and another for diesel fuel. Both laws require fuel blenders to incorporate a specific amount of biofuel into each gallon of transportation fuel sold in the state, with certain exceptions.

What is the requirement for gasoline?

Prior to July 1, 2013, state law required a 10 percent blend of ethanol in nearly every gallon of gasoline. This blend of 10 percent ethanol and 90 percent gasoline is commonly referred to as "E10." As the result of a law enacted during the 2013 legislative session, fuel sellers now have an option—they may sell either E10 or gasoline blended with 10 percent biobutanol, cellulosic ethanol, or any other biofuel approved by the U.S. Environmental Protection Agency (EPA) as a gasoline substitute.

By law, the E10 option could change if the EPA authorizes additional ethanol blends. Fuel sellers who choose the ethanol option will be required to sell E15, E20, or any other blend approved by EPA for use in all light-duty vehicles. However, if EPA allows the use of new ethanol blends only in certain vehicles, the law's ethanol option will remain at E10. For example, EPA has approved E15. However, Minnesota's ethanol mandate did not increase correspondingly because EPA authorized E15 use only in model-year 2001 and newer light-duty vehicles.

What is the requirement for diesel?

The biodiesel mandate law requires a 20 percent blend of biodiesel ("B20") in most diesel fuel sold in Minnesota during the warm-weather period of April 15 through the end of September. October through March, the mandate level reverts to B5 due to concerns about B20's performance in cold weather. During the spring transition from B5 to B20 each April, the minimum content level is temporarily

B10 in order to provide time for fuel sellers to transition their diesel inventory to B20.

The law authorizes the executive branch to suspend the use mandate for a limited period of time if there is not enough biodiesel fuel available or if the wholesale price of biodiesel is so high relative to diesel fuel that the mandate would cause economic hardship for gas stations and other diesel fuel sellers who may lose business to competitors located outside of the state.

What exemptions exist?

The legislature granted exemptions from the use mandates for certain vehicles, equipment, and fuels. The exemptions reflect stakeholder concerns about the suitability of biofuel-blended fuels for their vehicles and other gasoline- or diesel-powered equipment. For a list of exemptions, see the table below.

Biofuel Mandates, Implementation Dates, and Exemptions

	Diesel	Gasoline
Mandate Level	Minimum of 20 percent biodiesel per gallon April 15 through September 30, 5 percent October 1 through March 31, and 10 percent April 1 to April 14	Option of (1) the highest ethanol blend approved by the U.S. EPA for all vehicles, or (2) 10 percent of another EPA-approved biofuel
Initial Implementation	2005*	2003**
Exemptions	Number 1 diesel fuel; Number 2 diesel used by or for nuclear plants, trains, off-road mining and logging equipment, generator manufacturers, Coast Guard boats, and certain boats subject to Coast Guard inspection	Gasoline used by or for aircraft, resorts, marinas, houseboat companies, recreational vehicle manufacturers, riparian landowners, motor sport racing events, collector vehicles, off-road vehicles, motorcycles, boats, snowmobiles, and small engines

*The legislature required E10 use statewide in 2003. From 1997 to 2003, the law effectively required E7.7 statewide.
**The legislature increased the biodiesel mandate level over time, beginning with B2 in 2005, B5 in 2009, B10 in 2014, and B20 in 2018. As required by law, the B10 and B20 levels took effect only after executive branch officials certified that certain statutory conditions had been met.

For more information: For mandate compliance information, contact the Minnesota Department of Commerce, Weights and Measures Division, at 651-215-5821. For more detail on the mandates, see the following reports from the Minnesota Department of Agriculture: *Legislative Report on Ethanol – Review of E20* (January 2011) and *Report to the Legislature - Annual Report on Biodiesel* (January 2018), available at www.mda.state.mn.us/renewable.aspx. For legislative issues, contact legislative analyst Colbey Sullivan at 651-296-5047.

Nathan Hopkins

Updated: August 2018

Child Care Grant Program for Postsecondary Students

The Child Care Grant Program provides financial assistance to resident postsecondary students to reduce the costs of child care. The program is administered by the Office of Higher Education (OHE).

Who is eligible for the child care assistance grant?

To receive a grant, a student must meet all of the following conditions:

- Be a Minnesota resident or the spouse of a Minnesota resident
- Have one or more children age 12 or under (14 or under if disabled) who receive regular care from a licensed or legal nonlicensed child care provider
- Have family income below the thresholds established by OHE, but not receive assistance from the Minnesota Family Investment Program (MFIP)
- Have not earned a bachelor's degree and be enrolled full-time for less than ten semesters, or have earned a bachelor's degree and have been enrolled full-time for less than ten semesters in a graduate or professional program
- Be enrolled in at least six credits in a nonsectarian program leading to an undergraduate, graduate, or professional degree, diploma, or certificate
- Be in good academic standing and making satisfactory academic progress

Which postsecondary institutions are eligible for child care grants?

State law and rules limit participation in the program to Minnesota institutions in one of the following categories:

- Public postsecondary colleges and universities
- Private, baccalaureate degree-granting colleges and universities
- Nonprofit, degree-granting vocational-technical institutions

For-profit schools that do not offer bachelor's degrees are ineligible for the program.

How does OHE determine the size of a student's grant?

A student's grant amount depends on the **income of the student** and his or her spouse, and the **size of the student's family.** Students with family incomes below a threshold established by the Commissioner of Higher Education receive the maximum grant amount per child. Students with incomes above the threshold receive the maximum amount minus 10 percent of their income above the threshold.

The **maximum award per child** is set in statute at $3,000. If appropriations for the first year of the biennium are unspent, the Commissioner of Higher Education may use unspent funds to increase the maximum award in the second year of the biennium. Students with more than one eligible child receive a grant equal to the per child amount times the number of eligible children.

Each year, state law requires the Commissioner of Higher Education to set the **income threshold** for the program at a level expected to fully expend the state appropriation for the program. The threshold is expressed as a percentage of the federal poverty guidelines for a given family size.

What are the income thresholds for participation in the program?

In the 2018-2019 academic year, the commissioner set the income threshold for the maximum per child grant at 200 percent of the 2017 federal poverty line. The table below shows how this threshold affects awards for students of different family sizes.

Income Thresholds for Child Care Grants by Family Size, 2018-2019

	Family Size of Student			
Family Size	**2**	**3**	**4**	**5**
Students with family incomes at or below this amount receive the maximum award	$32,000	$41,000	$49,000	$57,000
Students with family incomes above this amount receive no award	$83,000	$92,000	$101,000	$109,000

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

In recent years, appropriations have not changed, while participation has fallen.

Child Care Grant Program Trends

Award Year	Appropriations	Total Grants Awarded	Students Awarded	Average Award	Maximum Award
09-10	$6,684,000	$6,246,159	2,866	$2,179	$2,600
10-11	$6,684,000	$6,523,921	3,042	$2,145	$2,600
11-12	$6,684,000	$5,828,199	2,863	$2,036	$2,600
12-13	$6,684,000	$5,649,041	2,666	$2,119	$2,800
13-14	$6,684,000	$4,927,539	2,241	$2,035	$2,800
14-15	$6,684,000	$5,768,437	2,186	$2,644	$3,800*
15-16	$6,684,000	$4,468,319	1,985	$2,251	$2,800
16-17	$6,684,000	$6,011,162	1,693	$3,387	$5,125*

*In these years, the commissioner used unspent appropriations from the previous year to increase the maximum award from its statutory level. This increase does not carry forward.

How is the program administered?

OHE allocates funds to postsecondary institutions based on the number of students with dependent children at each institution. OHE estimates the number of students with dependent children based on applications to the State Grant Program. Institutions may disburse funds to a child care provider or directly to a student.

Are postsecondary students eligible for other types of child care assistance?

Higher education students with children may be eligible for the Basic Sliding Fee (BSF) child care assistance program administered by the Department of Human Services. Students who meet the income and other criteria are eligible, on a space-available basis, in the county where they live. Typically, more families are eligible for BSF assistance than can be served with the state and federal appropriations. Postsecondary students tend to be a lower priority for assistance than working families.

For more information: Contact legislative analyst Nathan Hopkins at 651-296-5056. For information on other child care assistance programs, see the House Research publication, *Child Care Assistance,* June 2017.

HOUSE RESEARCH | Short Subjects

Joel Michael

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Property Tax Abatements for Economic Development

What is economic development property tax abatement?

Minnesota law authorizes political subdivisions to grant property tax abatements for economic development (e.g., to encourage a business to locate or expand at a location or to redevelop an area). Minn. Stat. §§ 469.1813 - 469.1816. Abatements can be used for purposes similar to tax increment financing (TIF), a widely used development tool.

These economic development tax abatements should be distinguished from property tax abatements that are granted by the county board primarily to correct errors (e.g., to reduce the assessor's market value or to change the classification of the property). Minn. Stat. § 375.192.

For what purposes may abatements be used?

The law allows abatements to be used for a broad range of purposes, if the political subdivision finds that public benefits exceed the costs. Permitted uses of abatements include:

- General economic development, such as increasing the tax base or jobs
- Construction of public facilities or infrastructure (e.g., streets and roads)
- Redevelopment of blighted areas
- Providing access to services for residents (e.g., housing or retail would be common examples)
- Deferring or phasing in a large (over 50 percent) property tax increase
- Stabilizing the tax base resulting from the updated utility valuation administrative rules

Which property taxes may be abated?

Counties, cities, towns, and school districts may grant abatements of the taxes they impose by resolution. For towns, action at the town meeting is not required. Taxes imposed by special taxing districts (e.g., watersheds or regional agencies) cannot be abated. Similarly, the state general property tax (on commercial/industrial and seasonal-recreational properties) cannot be abated. In the Twin Cities metropolitan area and on the Iron Range, the fiscal disparities tax cannot be explicitly abated. However, a political subdivision may increase its abatement amount to reflect the amount of the tax imposed under fiscal disparities. The abatement does not directly enter into the fiscal disparities calculations.

How long does an abatement apply?

The political subdivision sets the length of the abatement, which cannot exceed 15 years. The term can be extended to 20 years if only two of the three political subdivisions (city/town, county, and school district) grant an abatement.

What is the limitation on abatements?

The total amount of property taxes abated may not exceed the larger of:

- 10 percent of the net tax capacity of the political subdivision, or
- $200,000.

How do the mechanics of abatement work?

The abatement resolution, approved by the political subdivision, sets the duration and the amount to be abated. The political subdivision has considerable flexibility in setting the terms of the abatement; for example, it may set the abatement as a percentage of tax payable, a dollar amount, the tax attributable to a portion of the parcel's market value, or something else. The local government adds the abatement to its property tax levy. The owner pays property tax and the political subdivision uses the payments as provided by the abatement resolution. For example, the abatement may be used to pay bonds or be paid to the property owner.

May abatements be used to pay bonds used to fund public or private improvements?

The abatement law authorizes the issuance of bonds to be paid with the abatements. For example, bonds could be issued to construct public improvements or to pay for a site for a business. The bonds can be general obligation bonds or revenue bonds. The abatement bond provisions parallel those in the TIF law: the abatement bonds are not subject to referendum approval and are excluded from debt limits.

Under Department of Education administrative guidance, school districts may only issue abatement bonds for certain school parking improvements without voter approval. School districts have issued about $47 million of these abatement bonds for parking improvements. The $5 million annual levy to pay these bonds is not included in the school abatement levies in the table below.

How do abatements compare with TIF?

The legislature designed the abatement law as an alternative to and a supplement to TIF; both programs can be used for similar purposes, rely on property tax funding, and have very similar bonding powers. But they differ in these important respects:

- TIF can be used for longer durations (up to 25 years in some cases) than abatements (typically 15 years)
- TIF requires approval only by the municipality (usually the city) to capture all local property taxes, while abatement requires each entity's approval to capture its taxes and cannot capture special district taxes
- TIF use is subject to more legal restrictions than abatement. These include a blight test for redevelopment districts, but-for findings, and stricter limits on what increments may be spent on.

How widely has abatement been used?

The following amounts of abatement levies were reported for property taxes payable in 2018, as reported to the Departments of Revenue (cities and counties) and Education (schools).

	Number	Amount
Cities	73	$12,485,808
Counties	31	2,409,625
Schools	12	1,608,875
Total	116	$16,504,308

For more information: See the House Research publication *Tax Increment Financing*, September 2018.

Joel Michael

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Constitutional Restrictions on State Taxation
The Prohibition on Discriminating Against Interstate Commerce

Legislators often seek to favor Minnesota businesses in setting state tax policy. They may propose limiting tax preferences to Minnesota-based businesses and activities or suggest imposing taxes that fall exclusively or more heavily on out-of-state businesses. These proposals may violate the Commerce Clause of the United States Constitution because they discriminate against interstate commerce. This short subject describes the constitutional prohibition on discriminating against interstate commerce. This is a complicated legal topic; in many cases the applicable rules are unclear. An expert needs to carefully analyze the constitutionality of any legislative proposal.

General Rule. The Commerce Clause grants Congress the power "to regulate commerce * * * among the several states * * *." U.S. Const. art. II, § 8. The Supreme Court has long held that one implication of this grant of power is that states may not adopt regulations or taxes that place an "undue burden" on interstate commerce, even if Congress has taken no action. This is referred to as the "dormant or negative" Commerce Clause doctrine. The Commerce Clause is a principal reason for the federal constitution: i.e., to join the states in a national economy and to prevent the fragmentation that resulted from individual states imposing tariffs and laws favoring local merchants.

In *Complete Auto Transit v. Brady,* 430 U.S. 274 (1977), the Court set out a four-part test for testing state taxes under the Commerce Clause. Under the *Complete Auto* test, a state tax must:

- Be applied to an activity that has substantial nexus (or connection or contact) with the state
- Be fairly apportioned to activities in the state
- Not discriminate against interstate commerce
- Be fairly related to services provided by the state

The most frequently litigated and arguably the most important of these four rules is the prohibition on discriminating against interstate commerce. It is a longstanding rule, dating to the late 19th century. The Court has described the rule as follows:

> [N]o State, consistent with the Commerce Clause, may "impose a tax which discriminates against interstate commerce . . . by providing a direct commercial advantage to a local business." This antidiscrimination principle "follows inexorably from the basic purpose of the Clause" to prohibit the multiplication of preferential trade areas destructive of the free commerce anticipated by the Constitution. *Maryland v. Louisiana*, 451 U.S. 725, 754 (1981) (citations omitted).

The Court has held that state tax provisions may not favor local business firms, local products, or local activities. However, some provisions favoring local businesses may be valid, if they are properly structured and designed.

Specific Principles and Examples. The Court has invalidated many state taxes on the grounds they discriminate against interstate commerce. Some general principles from these cases include:

- **"Facial" discrimination almost always will invalidate a tax.** If a tax explicitly ("on its face") favors local businesses, local transactions, or products, it will almost always be held to discriminate against interstate commerce. For example, the Court held invalid:

- Exempting ethanol or alcoholic beverages produced only within the state, *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263 (1984); *New Energy Co. v. Limbach*, 486 U.S. 269 (1988);
- Exempting dividends paid by in-state corporations, *Fulton Corp. v. Faulkner*, 516 U.S. 325 (1996); and
- Limiting charitable contribution deductions to in-state charities. *Chapman v. Commissioner of Revenue*, 651 N.W.2d 825 (Minn. 2002).

- **Discrimination is determined by economic effect.** It is not necessary that the state or the legislature intend to discriminate, if its economic effect is to discriminate. However, showing intent to discriminate is relevant; a legislative intent to discriminate is nearly conclusive of the tax's unconstitutionality.

- **Minor or seemingly inconsequential discrimination is enough.** The Court has rejected arguments that the effect of the discrimination is so minor or *de minimus* to not matter.

- **Incentives to encourage local investment or activity may be invalid.** Tax incentives for in-state activity (e.g., investment) may be invalid, if the net effect is to raise tax on out-of-state businesses. For example, the Court struck down an income tax credit to encourage businesses to export through in-state corporations. *Westinghouse Electric v. Tully*, 466 U.S. 388 (1984). However, incentives provided through the sales tax (e.g., capital equipment exemptions) or property tax (abatements or tax increment financing) are likely valid, because the underlying taxes apply only to in-state property or transactions. Incentives may be validly provided through direct spending programs (e.g., grants), unless they are linked to a discriminatory tax or other funding source. *West Lynn Creamery, Inc. v. Healy*, 512 U.S. 186 (1994).

- **Taxes must be "internally consistent."** This test requires determining whether the state tax, if imposed by all states, would impose higher tax on out-of-state businesses or investors than comparable local ones. If it does, it is unconstitutional. *Comptroller v. Wynne*, 135 S.Ct. 1787 (2015) (invaliding individual income tax imposing higher burdens on residents with out-of-state income).

Discriminatory taxes may be valid as complementary taxes or because they favor government enterprises or activity. Otherwise discriminatory taxes may be valid "complementary" taxes, which offset a specific tax that only a local business or transaction bears. The classic case is the use tax, which complements the sales tax. Sales taxes apply to in-state purchases, but not to purchases made outside the state, such as by phone, mail order, or the Internet. To prevent disadvantaging local merchants, however, the Court upheld a "complementary" use tax, a tax on "using" a product or service in the state. This tax, in effect, only applies to items purchased from out-of-state businesses. But the Court upheld it as a complementary tax. *Hennford v. Silas Mason Co.*, 300 U.S. 577 (1937). It has construed this exception very narrowly, refusing to uphold discriminatory taxes where the argument was made that they offset general local tax burdens.

The Court has upheld provisions that discriminate against interstate commerce where the government is acting as a "market participant." For example, the Court has held this allows discriminatory taxation favoring interest on bonds issued by in-state governments. *Dept. of Revenue v. Davis*, 553 U.S. 328 (2008).

HOUSE RESEARCH | Short Subjects

Ben Johnson September 2018

Bail in Minnesota

Bail systems balance individual liberty interests, the protection of public safety, the need to assure that defendants appear for court hearings, and concerns about equal treatment within the judicial system. This publication describes the current system of bail in Minnesota and identifies the constitutional limits and requirements related to bail.

How does bail work in Minnesota?

Following an arrest, a defendant may post bail in order to obtain a release from custody. For some offenses, a bail schedule establishes the amount of bail for all individuals accused of committing that offense and the defendant can post bail without being seen by a judge. In most cases, the defendant appears before a judge and the judge determines the amount of bail. The defendant can then post the total amount of bail, a third person can post the bail on the person's behalf, or the defendant can contract with a bail bonds company to post a bond for the defendant.

Do all jurisdictions follow the same rules for bail?

Not all states and Washington, D.C., follow the same rules for bail. Some locations use a general bail schedule for most offenses. Others have laws or policies that restrict the use of bail and promote release with more intensive supervision. Some states, such as Wisconsin, require that bail be posted in cash while other states permit the use of bonds.

How does using a bail bonds company differ from posting bail?

Bail can be refunded to a defendant. Bail bonds companies charge a premium in exchange for posting a bond on behalf of the defendant. (Minnesota allows a charge of up to 10 percent of the bail amount.) The premium is not refundable.

What are the constitutional limits on bail?

The federal and state constitutions prohibit excessive bail. Minnesota's Bill of Rights also guarantees the right to bail. Article I, section 7 says: **"All persons before conviction shall be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great."** Minnesota no longer has the death penalty, so all defendants have a right to have bail set.

Who controls the rules that govern bail in Minnesota?

The state constitution prohibits holding a defendant in custody without setting bail. The legislature can establish or amend substantive rights and regulations including maximum or minimum bail amounts for certain offenses or notification requirements for alleged victims. The judicial branch determines procedural rules including when bail hearings are held and what factors individual judges must consider in setting bail. Individual counties may also be given the ability to test new assessment tools or methods of pretrial supervision.

How is bail set?

A person arrested without a warrant and held in custody must have a hearing within 48 hours of the arrest. At that hearing, a judge determines the conditions of release. Conditions, including bail, are generally intended to assure a person's appearance at future court hearings. Court rules direct judges to release individuals without specific conditions unless a judge determines that such a release "will endanger the public safety or will not reasonably assure the defendant's appearance."

What options does a Minnesota court have in setting bail?

A judge can (1) order a defendant's release without any conditions, (2) set an amount of bail that the defendant must post to be released, or (3) authorize release with specific conditions including supervision or other restrictions on the person's actions. If the judge authorizes release with conditions, the state constitution requires the judge to also set a bail-only amount as an alternative option.

When establishing conditions, relevant court rules say that a judge may:

1. place the person under supervision of a person or organization;
2. restrict travel, association, or residence;
3. require an appearance bond, cash deposit, or other security; or
4. impose other conditions the judge finds necessary to assure the person's appearance.

Can a court set bail at any amount?

For most misdemeanors and gross misdemeanors, Minnesota Statutes, section 629.471, limits the maximum bail that can be set to twice the highest fine for the offense. The statute includes several exceptions, allowing a judge to set bail at four, six, or ten times the maximum fine for some offenses including certain DWI offenses and domestic assaults. A judge <u>must</u> set the maximum bail for a person arrested for a DWI under certain circumstances.

Does a court consider the defendant's ability to pay before setting the amount of bail?

While a court must consider a person's ability to pay, there is nothing that requires judges to set bail at an amount detainees can actually pay. That practice contrasts with the federal rule under which a judge "may not impose a financial condition that results in the pretrial detention of the person." However, the federal system has a procedure for detention in which a person can be held without bail under certain circumstances. Because the Minnesota Constitution requires judges to set bail, detention would be unconstitutional in Minnesota.

What other factors must a court consider before setting bail?

Judges consider 13 specific factors when choosing conditions of release. Those conditions include the nature of the crime charged, the person's ties to the community, the person's financial resources, and the safety of others. Statutes require a pretrial bail evaluation for a defendant accused of a felony crime of violence and several specific gross misdemeanors and misdemeanors. The evaluation tool originated in Hennepin County and underwent a detailed review in 2006. Statutes also require training for judges on how to keep bail evaluations and decisions racially and culturally neutral. Decisions must be based on each defendant's unique situation.

How long can a defendant who cannot post bail be held in jail?

It depends. If a person charged with a misdemeanor demands a speedy trial, the trial must take place within ten days or else the defendant must be released on nonmonetary conditions. Unless there are exigent circumstances, a person charged with a gross misdemeanor or felony must be released on nonmonetary conditions if trial does not begin within 120 days after the person enters a plea other than guilty.

For more information: Contact legislative analyst Ben Johnson at 651-296-8957.

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**

Cristina Parra

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Charter Schools

A charter school is a public school that operates under a contract between the charter school board and the authorizer

A charter school is a public school established under a contract between a charter school board of directors and an authorizer. Authorizers must be approved by the Commissioner of Education and may be a Minnesota college or university, nonprofit corporation, or single-purpose charitable organization. Interested teachers, parents, or community members may apply to an authorizer to establish a charter school; the group must include a licensed teacher. The application must include a financial plan, governance, management structure, and the school's purpose. The operators must form a board of directors, incorporate, and operate the school as a nonprofit corporation. If the authorizer approves the application, the authorizer and board of directors enter into a charter school contract. A school district may convert an existing school to a charter school, but a charter school may not be converted to a district school.

A charter school must comply with some of the state requirements for school districts

A charter school must comply with some state requirements as though it were a district, including requirements related to: academic standards and assessments; minimum number of instructional days; student fees; teacher evaluation and peer review; student transportation; student discipline; and financial audits and audit procedures. A charter school must be nonsectarian, must not limit admission based on achievement, aptitude, or athletic ability, and with certain exceptions, must admit students by lottery. A charter school is exempt from other school district requirements not explicitly applicable to charter schools.

~~A charter school must employ licensed teachers. Charter school teachers are~~ included in the public employee teacher retirement plan and may choose to form a union and bargain with the charter school board; most teachers do not organize and instead enter into individual employment contracts with the charter school.

An authorizer monitors a charter school's performance

The charter school contract between the board of directors and the authorizer must specify the program purpose, student outcomes, admissions requirements, operating plan, compliance with state and federal laws, ongoing oversight of operational, financial, and academic performance, school evaluation criteria, the term of the contract, applicable special education agreements, and a plan for an orderly school closing. The contract may have a term of up to five years.

An authorizer must monitor and annually evaluate a charter school's financial, operational, and student performance. With commissioner approval, the authorizer may allow a charter school to expand to additional sites or add grades. The commissioner must review an authorizer's performance at least every five years and may take corrective action against an authorizer.

A board of directors operates a charter school

The initial board of directors must adopt articles and bylaws. The board is responsible for school policy, including budgeting, curriculum, personnel, and operating procedures. The board may contract with an independent entity, usually a nonprofit charter management organization (CMO) or for-profit educational management organization (EMO), for management and administrative services including curriculum, staffing, and technology. A CMO or EMO may manage multiple schools using a standard school model.

The board of directors must have at least five members, including at least one licensed teacher, one parent of an enrolled student, and one interested community member. The initial board of directors serves until elections are held for ongoing members according to the school's articles and bylaws. Meetings of the board are subject to the open meeting requirements that apply to other government entities. Conflicts of interest are prohibited, and a board member who violates the prohibition is individually liable. The board of directors may sue and be sued.

A charter school receives state revenue on a per pupil basis similar to school districts

A charter school receives state revenue in many of the same ways a school district does, which means funding is largely based on the school's enrollment. A charter school receives state general education revenue, most other school district revenues, and federal aid. A charter school's revenue differs from school district revenue in three major ways: (1) a charter school receives state special education revenue as though it were a district and may also bill back a disabled student's resident school district for 90 percent of its eligible unreimbursed special education costs; (2) a charter school does not receive the levy portion of operating referendum revenue or any local optional revenue; and (3) a charter school may not levy taxes or issue building bonds. A charter school may either receive transportation revenue to provide students transportation services or it may choose to have the school district in which it is located provide transportation services.

A charter school may not use state funds to purchase facilities

A charter school may not use state funds to buy land or buildings. A charter school may own land or buildings if obtained with nonstate sources or may organize an affiliated nonprofit building corporation to build or buy school facilities that the charter school can then lease. A charter school may not issue building bonds but instead receives charter school lease aid, operating capital revenue, and long-term facilities maintenance revenue to help pay for its facility costs.

A charter school can be closed by the authorizer or the Commissioner of Education

A charter school can be closed by its authorizer or by the Commissioner of Education. The authorizer may unilaterally terminate a charter school contract during the term for cause or decline to renew a contract at the end of the term. The commissioner may terminate a charter school contract for failing to meet performance requirements, fiscal mismanagement, law violations, or other good cause. If an authorizer and a charter school agree to terminate or not renew a contract, the school must be dissolved unless the commissioner approves a change to a different authorizer.

For more information: Contact legislative analyst Cristina Parra, cristina.parra@house.mn.

HOUSE RESEARCH | **Short Subjects**
The Constitution and the Legislature

Joel Michael **Updated: September 2018**

Two-thirds Majority Vote to Enact General Banking Laws

Since its adoption in 1857, the Minnesota Constitution has provided that "general banking laws" may only be enacted upon a two-thirds majority vote by the legislature. Minn. Const. art. IV § 26. Based on the language of the original constitution and decisions of the Minnesota Supreme Court, it is clear that this supermajority requirement only applies to laws for "banks of issue"—i.e., laws that authorize banks to issue notes that circulate as money. The legislature has not, by all accounts, considered a bill to enact such a law since some time in the 19th century.

The original constitutional provision authorized the legislature to pass general banking laws by a two-thirds majority vote, but only if the law met five specified conditions. Minn. Const. art. 9 § 13 (1857). Four of these conditions related to notes or bills (money) issued by the bank, while the fifth was a disclosure provision. These conditions clearly imply that "general banking laws" as used in the constitution related only to banks with the power to issue their own circulating notes.

The Minnesota Supreme Court confirmed this interpretation in two cases. *Palmer v. Bank of Zumbrota* stated that the constitutional "provision applies only to a law for organizing banks of issue." 75 N.W.380, 382 (Minn. 1898). Earlier the court had made it clear that "banks of issue" are banks with the power to issue their own notes or currency:

> [W]hile banks of issue may have the power to do all these things, the only franchise or privilege which they possess, aside from the mere right to exist and act as a corporation, is that of issuing their notes for the purpose of circulation as money. It was this right and this class of corporations that the framers of the constitution evidently had in mind in using the term "banking privileges." *International Trust Co. v. American Loan & Trust Co.*, 65 N.W.78, 80 (Minn. 1895).

When the Constitution was adopted in 1857, America was in the "free banking" period during which there was neither a central bank to issue currency nor a national banking act authorizing national banks to issue notes. As a result, state bank notes were typically used as money. Thus, it made sense for Minnesota to authorize chartering of banks with the power to issue notes to be used as money and because of the gravity of this power to subject it to supermajority approval.

This situation changed in the Civil War when Congress authorized national banks to issue notes and provided a strong incentive for state banks to convert to national charters, if they wished to issue notes. To further cement this, Congress in 1865 imposed a 10 percent tax on state bank notes, effectively making them economically impractical. As a result, state banks generally ceased to issue notes. In 1895, the legislature repealed the authority for Minnesota state banks to issue circulating notes. In upholding the constitutionality of this law (for banks chartered under prior law but that had not used the power), the Minnesota Supreme Court observed that it was "a matter of common knowledge" that no "bank in this state has issued bank notes since the establishment of the national banking system." *Seymour v. Greve*, 81 N.W. 1059, 1060 (Minn. 1900).

Enactment of the Federal Reserve Act in 1913 effectively transferred the function of creating money to a true central bank. That act imposed a tax on notes issued by national banks and restricted available collateral for them, which started a process that made those notes obsolete (other than for collectors) as well.

In 1974, the Minnesota Constitution was restructured by the legislature and the voters. This restructuring dropped the five conditions imposed on general banking laws, while retaining the two-thirds majority requirement. 1974 Minn. Laws 795, 810, ch. 409 § 1. The drafters of the 1974 constitutional amendment likely considered the five conditions to be obsolete, since no state bank had issued circulating notes in over 100 years and the authorizing laws had long been repealed. (One might wonder if the two-thirds vote requirement could not also have been deleted from the constitution by the 1974 amendment. Two years later Congress repealed the 1865 federal tax on state bank notes, likely on the theory that no notes would ever be issued again. Pub. L. 94-455, § 1904(a)(18).) In any case, the 1974 amendment did not change the limitation of the supermajority requirement to laws organizing banks of issue, since by its terms it did not make "consequential changes" in the constitution. *Id.* at 819, § 3.

Because private American banks have not issued circulating notes for over a century and the Minnesota legislature is unlikely to consider reauthorizing banks to do so, the two-thirds majority vote requirement has little practical application.

HOUSE RESEARCH | Short Subjects

Joel Michael

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Tax Increment Financing

What is TIF?

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

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

How does TIF work?

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

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

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

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

What governmental units can use TIF?

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

What is the but-for test?

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

What types of TIF districts may be created?

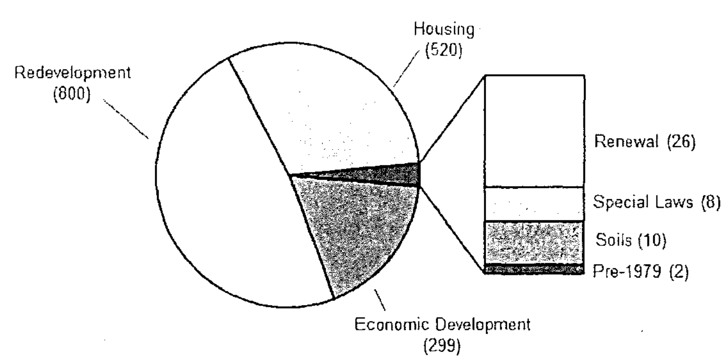
Minnesota allows several different types of TIF districts. The legal restrictions on how long increments may be collected, the sites that qualify, and the purposes for which increments may be used vary with the type of district.

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

How many TIF districts exist?

According to the 2018 report of the Office of State Auditor (OSA), there were 1,665 active TIF districts in 2016. The graph shows the relative shares by type of district.

TIF Districts by Type in 2016
(1,665 districts)



Source: 2018 Report of the State Auditor

For more information: See the House Research website for more information on TIF at www.house.mn/hrd/issinfo/tifmain.aspx.

Joel Michael

Updated: September 2018

Taxation and Equal Protection

Both the United States and Minnesota Constitutions prohibit the legislature and state government generally from denying persons the equal protection of the law. The 14th amendment of the United States Constitution provides:

> No state shall * * * deny to any person within its jurisdiction the equal protection of the laws. Art. XIV, § 1.

The Minnesota Constitution contains both a general equal protection clause and a clause requiring uniformity of taxation. Minn. Const. art. I, § 2 (general); art. X, § 1 (uniformity clause).

Most tax laws are subject to "rational basis" review under the Equal Protection Clause; to be constitutional they must simply have a rational relationship to a legitimate legislative purpose.

The Equal Protection Clause was initially adopted primarily to limit or prohibit racial discrimination by the states. The courts have also applied it to proscribe other forms of invidious discrimination (e.g., based on religion, ethnicity, etc.). However, legislation often necessarily involves "discrimination" in the broader sense that groups of individuals or businesses are treated differently based on particular characteristics (e.g., amounts of income, type of business, uses of property, etc.) that in the abstract are unobjectionable. The clause was not intended to restrict legislation that imposed different tax or regulatory rules, for example, on retailers than on manufacturers. Thus, the U.S. Supreme Court has developed a stricter standard of review for laws that create "suspect classifications" or deprive someone of a "fundamental right" as a compared with more benign legislative classifications. The lines between the two categories (perhaps inevitably) blur at the edges. At times the Court has explicitly talked about a middle level of review.

- **Strict scrutiny** applies to "suspect classifications" (such as race or religion) or to denial of fundamental rights (such as the right to vote). The classification is constitutional only if there is a compelling reason for using the classification. If strict scrutiny applies, in most circumstances the classification will be unconstitutional.

- A **rational basis test** applies to economic regulation not involving suspect classifications and, thus, to most of the classifications involved in the tax laws. In general, a classification has a rational basis and is constitutional, if it reasonably related to or has some rational relationship to the objective the legislature sought to achieve. The rational basis test gives the legislature considerable flexibility in creating classifications.

Very few tax statutes have been struck down under the Equal Protection Clause. The U.S. Supreme Court has generally given states wide latitude to fashion tax classifications, perhaps more than in any other area of law. *See San Antonio Independent School District v. Rodriquez*, 411 U.S. 1, 41 (1973), where the Court noted: "[T]hat in taxation, even more than in other fields, legislatures possess the greatest freedom in classification."

Nevertheless, the U.S. Supreme Court has struck down a number of state tax statutes on equal protection grounds. Many (probably most) of these statutes have involved laws that discriminated against nonresidents or out-of-state businesses.

Some examples include:

- Imposing a higher state insurance premium tax on out-of-state insurance companies, *Metropolitan Life Insurance Co. v. Ward,* 470 U.S. 869 (1985);
- Paying graduated rebates to residents, based on how many years they had lived in-state, *Zobel v. Williams*, 457 U.S. 55 (1982);
- Local assessment practice that raised tax valuations to the amount of the sales price but otherwise assessed properties at a fraction of market value, *Allegheny Pittsburgh Coal Co v. County Commission of Webster County*, 488 U.S. 336 (1989). *Compare Nordlinger v. Hahn*, 505 U.S. 1 (1992) (statute that applied a similar rule did not violate equal protection).

The Minnesota Supreme Court has held that the Uniformity Clause of the Minnesota Constitution is no more restrictive than the Equal Protection Clause.

Although the Minnesota Constitution contains a specific clause that requires taxes to be "uniform upon the same class of subject[,]" the Minnesota courts have held repeatedly that this clause is no more restrictive than the Equal Protection Clause. *Reed v. Bjornson*, 253 N.W.2d 102, 105 (Minn. 1934) (upholding the graduated individual income tax) appears to be the first case to establish this rule. The meaning of the Uniformity Clause remains a matter of state law and, thus, a change in the interpretation of the Equal Protection Clause by the U.S. Supreme Court should not be thought to "automatically" change the meaning of the Uniformity Clause. However, the Minnesota courts have fairly consistently followed federal interpretations of the Equal Protection Clause, since *Reed v. Bjornson.*

The Minnesota Supreme Court has set out a three-part test to determine if a tax classification satisfies the Uniformity Clause. *Miller Brewing Co. v. State,* 284 N.W.2d 353, 356 (1979). Under this test:

- The classification must not be "manifestly arbitrary or fanciful but must be genuine and substantial";
- The classification must be "genuine or relevant to the purpose of the law"; and
- The purpose of the statute must be one that the state can legitimately attempt to achieve.

The Minnesota courts have generally been very deferential to legislative tax classifications. The Minnesota Supreme Court has not struck down a tax statute for violating the Uniformity Clause in the last three decades. Some examples of laws upheld include:

- The limited market value law that taxes otherwise identical properties at different rates based upon how rapidly their values are increasing, *Matter of McCannel*, 301 N.W.2d 190 (Minn. 1980);
- Combined gross receipts gambling tax that imposes a higher tax rate on organizations with more total gross receipts from gambling activities, *Brainerd Area Civic Center v. Commissioner of Revenue*, 499 N.W.2d 468 (Minn. 1993);
- Sales tax imposed on food sold through vending machines, while sales of similar food by convenience stores exempt, *Minnesota Automatic Merchandising Council v. Salomone*, 682 N.W.2d 557 (Minn. 2004);
- Fee (35 cents/pack) imposed only on cigarettes manufactured by companies that had not agreed to participate in settlement agreement with the state, *Council of Independent Tobacco Manufacturers of America v. State*, 713 N.W.2d 300 (Minn. 2006).

For more information: See the House Research publication *Constitutional Restrictions on Taxation of Nonresidents,* September 2018.

Joel Michael Updated: September 2018

Origination Clause: Bills to Raise Revenues Must Originate in the House

The Minnesota Constitution requires that:

> All bills for raising revenues shall originate in the house of representatives, but the senate may propose and concur with amendments as on other bills. Minn. Const. art. IV § 18.

This provision, commonly referred to as the Origination Clause, is identical to the language of a parallel provision of the United States Constitution. U.S. Const. art. I, § 7, cl. 1. This short subject briefly discusses the types of bills that the Origination Clause requires to begin in the Minnesota House of Representatives.

Two Minnesota appellate court decisions have applied the Origination Clause.

The Minnesota Supreme Court has twice rejected challenges to acts (laws) based on the origination clause. In these two cases, the court held that:

- A bill containing an appropriation was not a bill to raise revenues, even though it may have necessitated imposition of a tax to pay the appropriation. *Curryer v. Merrill*, 25 Minn. 1 (1878).

- A bill imposing civil penalties to abate a nuisance, was not a bill to raise revenues, even though the law specified the penalties were to be collected as taxes. *State ex rel. Robertson v. Wheeler*, 155 N.W. 90 (1913).

In *dicta*, the Minnesota Supreme Court has also said that the clause applies to a bill "whose main purpose is to raise money by taxation." *Curryer v. Merrill*, 25 Minn. 1, 8 (1878). The Minnesota Court of Appeals has also concluded that a regulatory bill that raises more revenue than necessary to pay for the cost of the regulation does not become a bill for raising revenue that must originate in the House. *Investment Company Institute v. Hatch*, 477 N.W.2d 747 (Minn. App. 1991) (statutory construction issue, not a challenge to the constitutionality of the act).

Numerous cases have construed the federal Origination Clause; Minnesota courts likely would follow these cases.

Federal courts have generally read the Origination Clause narrowly. In fact, no act of Congress has been invalidated for a violation of the Origination Clause. The Supreme Court has explicitly reserved the issue of whether it would invalidate acts for violations of the clause in *U.S. v. Munoz-Flores*, 495 U.S. 385 (1991). For example, federal courts have rejected challenges to the Affordable Care Act, which the Supreme Court upheld as an exercise of the congressional power to tax, as violating the Origination Clause. *Sissel v. U.S. Dept. of Health and Human Services*, 2014 WL 3714701 (D.C. Cir. 2014).

The remainder of this short subject describes rules under the Origination Clause derived from federal cases, as well as cases from other states. In construing the state constitution, Minnesota courts are not bound by these federal court decisions applying the federal constitution. However, the decisions are persuasive authority; the Minnesota courts would likely follow them. Some state courts have taken a narrower view of their state origination clauses. Cases from other states are likely to have less persuasive power than federal decisions.

The Origination Clause applies to bills whose principal purpose is to raise "taxes."

As noted above, the Minnesota Supreme Court expressed this principle in *dicta*. *Curryer v. Merrill*, 25 Minn. 1, 8 (1878). Various federal cases have reached similar holdings in rejecting challenges to congressional acts. The decisions have held that the following are *not* bills to raise revenues:

- **Bills that raise revenues (including taxes) but that have another principal purpose** such as establishing a program, *Twin Cities National Bank of New Brighton v. Nebeker,* 167 U.S. 196 (1897); *Investment Co. Institute v. Hatch,* 477 N.W.2d 747, 751 (Minn. App. 1991) (stating similar principle)

- **Bills that impose user fees or raise other nontax revenues,** *U.S. v. Munoz-Flores*, 495 U.S. 385 (1991) (did not matter that bill raised more than necessary to fund the program and the excess went to the general treasury)

The Senate may amend a tax bill that originates in the House. The federal courts have permitted this, even when the Senate amendments converted a House bill that reduced taxes into a bill that raised taxes. *Wardell v. U.S.*, 757 F.2d 203 (8th Cir. 1985).

Courts in other states have addressed other Origination Clause issues.

State courts are split on whether bills that authorize borrowing (e.g., issuing bonds) are bills to raise revenues. *Compare Fent v. Oklahoma Capitol Improvement Authority*, 984 P.2d 200 (Okla. 1999) (not revenue raising bill) *and Kervick v. Bontempo*, 150 A.2d 34 (N.J. 1959) (same) *with Morgan v. Murray*, 328 P.2d 644 (Mont. 1958) (bill to raise revenues). The federal courts clearly would not consider bonding authorizations to be bills to raise revenues. The Minnesota courts likely would follow this rule. However, the legislative tradition in Minnesota is to originate state bonding bills in the House. The state's bond counsel generally have insisted on it as a condition for issuing a "clean" bond opinion, since there is no clear Minnesota judicial authority that it is unnecessary.

State courts have generally held that bills authorizing *local governments* to impose taxes are also not bills to raise revenues, on the theory that the limitation applies only to state taxes. *See Yancey & Yancey Construction Co., Inc. v. DeKalb County Commission*, 361 So.2d 4 (Ala. 1978); *Opinion of the Justices*, 233 A.2d 59 (Dela. 1967). Thus, a bill that increases levy limits or grants a local government authority to impose a local sales tax would likely not need to originate in the House. Again, the Minnesota legislative practice has been to originate these bills in the House.

In conclusion, only bills that have a primary purpose of raising state revenues from taxes clearly need to originate in the House. Minnesota practices have been more conservative, however, and have traditionally provided for state bonding bills, bills authorizing local taxes, and bills imposing fees in excess of program costs to originate in the House of Representatives. This technique avoids the possibility of constitutional challenges.

Under its independent authority to interpret and enforce the Origination Clause, the House of Representatives may take a broader view of the clause to protect its constitutional prerogatives. The U.S. House of Representatives rejects bills or amendments made by the U.S. Senate as violating the clause that likely do not violate the judicial interpretations of the clause's requirements. It does so typically by passing a "blue slip" resolution and returning the bill to the Senate with a statement that bill violates the Origination Clause. James V. Saturno, *Blue-Slipping: Enforcing the Origination Clause in the House of Representatives* (Congressional Research Service, Jan. 23, 2017) (practice is to "construe the House's prerogatives broadly to include any 'meaningful revenue proposal' ").

Joel Michael

Updated: September 2018

Constitutional Restrictions on Taxation of Nonresidents

Since nonresidents can't vote and often are perceived to be high-income investors, they provide a tempting target to raise revenues or curtail the cost of tax benefits. Legislators often wish to impose higher taxes on nonresidents or to deny them benefits granted to residents, such as credits or deductions. Tax issues relative to nonresidents can arise in these contexts:

- Individual income tax on income derived from real property or Minnesota businesses owned by nonresidents
- Income tax on earnings of nonresidents (e.g., professional athletes or entertainers)
- Property tax on vacation homes owned by nonresidents
- Property tax on farms owned by nonresidents

Federal constitutional rules generally require non-residents to be taxed as favorably as residents. Three constitutional provisions, the Privileges and Immunities Clause, the Commerce Clause, and the Equal Protection Clause, may invalidate differential tax rules for nonresidents. In addition, a nonresident must have sufficient contact with the state to be subject to tax under the due process clause—e.g., a state's income tax can only apply to a nonresident's income from in-state sources.

The Privileges and Immunities Clause provides

> The citizen of each State shall be entitled to all of the Privileges and Immunities of Citizens of the several States. U.S. Const. Art. IV § 2.

The Privilege and Immunities Clause generally prohibits a state from imposing higher tax rates or taxes on nonresidents than it imposes on residents. Although its language refers to "citizens," the Supreme Court has held that provisions discriminating against nonresidents also discriminate against citizens of other states. The clause does not absolutely prohibit discrimination against nonresidents; it permits states to provide different rules for nonresidents if there is a "valid independent reason for" the treatment. Also, it only applies to interests that are "fundamental," i.e., bear on "the vitality of the Nation as a single entity." A fee or tax on pursuing a trade or business is covered. *Toomer v. Witsell,* 334 U.S. 385, 395 (1948). Differential fees on nonresidents for recreational hunting and fishing are not. *Baldwin v. Fish and Game Commission of Montana*, 436 U.S. 371 (1978). In general, differential income or property tax rules are covered, since they affect the right to "reside in" or "to pursue trade, agriculture, [or] professional pursuits." Corporations are not protected by the clause, since they are not considered "citizens."

Examples of laws held to violate the privileges and immunities clause include:

- Denial to nonresidents of personal deductions under the individual income tax. *Travis v. Yale & Towne Mfg. Co.,* 252 U.S. 60 (1920) (personal exemption); *Lunding v. N.Y. Tax Appeals Tribune,* 522 U.S. 287 (1998) (alimony deduction).
- A "commuter income tax" applying only to nonresidents working in the state. *Austin v. New Hampshire,* 420 U.S. 656 (1975).
- A property tax credit that was limited to farms owned by residents. *Borden v. Selden,* 146 N.W.2d 306 (Iowa 1966).

The Equal Protection Clause. The Equal Protection Clause of the federal constitution prohibits states from denying "the equal protection of the law." Courts use two standards to review laws under the Equal Protection Clause:

- **Strict scrutiny** applies to "suspect classifications" (such as race) or to denial of fundamental rights (such as the right to vote).

- A **rational basis** test applies to all other classifications. Since residency is not a "suspect classification," tax laws that treat nonresidents differentially from residents will be subject to rational basis review. Differential treatment of nonresidents must be rationally related to the state's objective. In general, this gives the legislature considerable flexibility. However, analysis of the Supreme Court decisions suggest that it is not as deferential toward residency classifications as to other nonsuspect classifications, because of the federalism concerns. The Court has explicitly stated it is not doing so, but many legal scholars find this is the only way to explain the results in some cases.

The Court has invalidated laws that distinguish between residents and nonresidents on equal protection grounds. Corporations are also protected by the clause, unlike the Privileges and Immunities Clause. The Court has invalidated:

- An Alaska law that paid rebates to residents, graduated based on the years they lived in Alaska, *Zobel v. Williams*, 457 U.S. 55 (1982);
- An Alabama law that taxed out-of-state insurance companies at a higher rate than in-state companies, *Metropolitan Life Insurance Co. v. Ward,* 470 U.S. 869 (1985); and
- A law denying a property tax exemption to an out-of-state charity, *WHYY, Inc. v. Borough of Glassboro*, 393 U.S. 117 (1968).

The Commerce Clause. Although the Commerce Clause is a grant of power to Congress, the Supreme Court has held that the clause also prohibits states from imposing undue burdens on or interfering with interstate commerce. Imposing higher taxes on nonresidents who conduct business or own property in the state than on residents in the same circumstances will likely be held to unconstitutionally burden interstate commerce. Such provisions will discourage nonresidents from making investments, restricting or burdening the flow of interstate commerce. Some examples include:

- The Supreme Court has held unconstitutional a Maine law denying a property tax exemption to charitable institutions that primarily serve nonresidents. *Camp Newfound Owatonna, Inc. v. Town of Harrison,* 520 U.S. 564 (1997).
- A number of cases have invalidated imposition of higher taxes or license fees on nonresident solicitors than on residents.

Recent case authority on the extent to which the Commerce Clause restricts a state's ability to tax residents, including determining who qualifies as a resident (e.g., based on presence in or extensiveness of contacts with the state, rather than domiciliary intent to make the state home) is sparse. However, the Supreme Court has held that state taxes must be "internally consistent." With regard to residency, this requires determining that the state tax, if imposed by all states, would not impose higher burdens on individuals (residents or nonresidents) with out-of-state income. *Comptroller v. Wynne,* 135 S.Ct. 1787 (1915) (invaliding income tax imposing higher burdens on residents with out-of-state income).

Under any of the constitutional provisions, states generally have more flexibility in limiting benefits under direct spending programs, as compared with tax preferences, to residents. For example, the Court has upheld lower tuition at state higher education institutions for residents, paying bounties for scrap cars, and access to products or services provided by state-run businesses. In part, the Court may be influenced by the fact that these types of benefits are financed mainly by taxes paid by residents and the state needs to restrict access to nonresidents to maintain the economic viability of the programs.

For more information: See the House Research short subjects on the Commerce Clause and equal protection, September 2018.

HOUSE RESEARCH | Short Subjects

Cristina Parra

October 2018

School Principals

Principals supervise school buildings

A principal supervises a public school building at the assignment of a school board based on the district superintendent's recommendation. A school board is not required to assign a principal to a school, but most schools have a principal, and depending on the size of the school, may have one or more assistant principals.

A principal leads a school's educational program under the supervision of the district superintendent. Assistant principals' duties are not specified in statute. An assistant principal may carry out multiple functions within a school, including overseeing activities or curriculum.

A school district principal must hold a valid principal's license

A principal or assistant principal in a school district must hold a principal's license issued by the Board of School Administrators (BOSA). BOSA issues administrative licenses to principals, superintendents, and other school administrators, and adopts rules establishing licensure requirements, including rules relating to principal preparation programs, and continuing education requirements.

BOSA also adopts a code of ethics covering standards of professional practice for licensees. The board reviews complaints that a licensee has violated the code of ethics and may impose penalties, including suspending or revoking the license, issuing a letter of censure, and placing the licensee on probationary license status.

A charter school administrator who performs administrative, supervisory, or instructional leadership duties is not required to hold an administrative license. Instead, the charter school board of directors establishes qualifications for persons who hold administrative, supervisory, or instructional leadership roles. A person in any of these roles without an administrative license must develop a professional development plan, which must be documented in the school's annual report.

Principals may unionize

Principals and assistant principals have the right to bargain collectively with a school board under the Public Employment Labor Relations Act (PELRA). For purposes of PELRA, a "principal" or "assistant principal" is a person with a principal's license who devotes more than 50 percent of his or her time to administrative or supervisory duties.

Unlike other school employees, principals and assistant principals are "essential employees," meaning they do not have the right to go on strike when the parties reach impasse in the course of bargaining. Instead, principals and assistant principals may resolve an impasse through interest arbitration. The arbitrator must select between the final offers of the parties on each impasse item.

Principals may acquire tenure or continuing contract status

Principals and assistant principals may acquire tenure or continuing contract status under the same statutes that govern teacher tenure and continuing contracts. The tenure statute (Minn. Stat. § 122A.41) applies to districts in the four cities of the first class, and the continuing contract statute (Minn. Stat. § 122A.40) applies to all other districts. The statutes establish probationary periods of employment, and procedural requirements and substantive grounds for terminating a principal's employment.

In cities of the first class, a school board and principals' union may negotiate a plan for a probationary period of up to two school years for a teacher in the district who is later hired as a principal or assistant principal, and an additional probationary period of up to two years for an assistant principal later hired as a principal.

A school district must evaluate principals annually

A district must develop and implement a performance-based system for annually evaluating school principals. The superintendent must evaluate the district's principals. The evaluation must be designed to improve teaching and learning by supporting the principal in shaping the school's professional environment and developing teacher quality, performance, and effectiveness. The evaluation must, among other things:

- support and improve a principal's instructional leadership;
- include formative and summative evaluations;
- be consistent with a principal's job description and a district's long-term plans and goals;
- use longitudinal data on student academic growth as 35 percent of the evaluation; and
- implement a plan to improve the performance of principals not meeting standards of professional practice or other criteria, and specify the procedure and consequence if a principal's performance does not improve.

The evaluation data generated through the evaluation process is personnel data under Minnesota Statutes, section 13.43, and therefore, not public.

The 2011 Legislature directed the commissioner of education and school principal associations to convene a group to develop a performance-based principal evaluation model. Since then, the Department of Education has revised the model based on stakeholder input. The model is available on the department's website at https://education.mn.gov/MDE/dse/prev/.

Districts are not required to use the state model or to submit their evaluation systems to the commissioner of education for approval. The requirements of the principal evaluation system do not apply to assistant principal evaluations.

For more information: Contact legislative analyst Cristina Parra at cristina.parra@house.mn. Also see the House Research publication *School District Collective Bargaining*.

HOUSE RESEARCH | Short Subjects

Steve Hinze and Jared Swanson

October 2018

Disparity Reduction Credit

DRC is a credit that reduces property taxes in border cities

The disparity reduction credit (DRC) is a state-paid property tax credit that reduces property taxes for business properties in certain border areas of the state. The purpose of the credit is to make business property taxes in those cities more competitive with similar properties in the neighboring state. The credit was established by the 1988 Legislature and first effective for taxes payable in 1989. The credit is codified under Minnesota Statutes, section 273.1398, subdivision 4.

The credit is available in five cities

The credit is available in cities that lie along the border of a neighboring state where there is a city of significant size across the border. The cities that currently meet the criteria are Breckenridge, Dilworth, East Grand Forks, Moorhead, and Ortonville.

Commercial-industrial properties and apartments are eligible

Most of the credit is paid to commercial-industrial properties. Apartment properties are also eligible for the credit, but for the most part their taxes do not exceed, or barely exceed, the threshold to receive the credit. Properties in tax increment financing districts are not eligible for the credit.

DRC reduces property taxes to 1.6 percent of taxable market value

Each property receives the amount of credit necessary to reduce its net tax capacity-based property tax to 1.6 percent of the taxable market value of the property. The credit reduces both the local property tax levy and, in the case of commercial-industrial property, the state general levy; however, the credit does not apply to any referendum market value-based levies (primarily school district operating referendum levies).

The county auditor reduces the property taxes otherwise due upon the property by the amount of the credit. The county auditor reports the amount of credit issued to the state, and the state then reimburses the affected taxing jurisdictions for the credit amounts deducted from the taxes.

Credit cost

The estimated cost of the credit to the state is $12.3 million for taxes payable in 2018 (FY 2019).

There are additional tax benefits for border city businesses

In addition to the DRC program, Minnesota law authorizes the five designated border cities to provide tax benefits to businesses under the border city enterprise zone and the border city development zone programs. These two programs allow the border cities to offer state-funded reductions in property taxes, sales taxes, and income or corporate franchise taxes. Under the enterprise zone program, the cities can use the benefits either to attract new business investment or to retain existing businesses. The development zone program is limited to new businesses or expansions. The law allows each city considerable flexibility in designing the parameters of the tax benefits and in deciding whether they should be targeted to new or existing businesses. The programs are designed to (partially) offset Minnesota's higher business taxes compared with those in North Dakota and South Dakota.

The state-funded tax reductions are limited to specific dollar amounts of allocations that the legislature periodically enacts for the programs. In 2017, the legislature authorized $3 million for the two programs; the allocations are typically apportioned among the five cities on a per capita basis. The border city development zone program also authorizes border cities to provide locally borne property tax reductions to newly constructed business and residential properties. See Minnesota Statutes, section 272.0212 (limited property tax exemption).

For more information: Contact legislative analyst Jared Swanson at Jared.Swason@house.mn.

HOUSE RESEARCH | Short Subjects

Steve Hinze and Jared Swanson **October 2018**

Disparity Reduction Aid

DRA is a formula-determined aid that provides property tax relief by directly reducing levies

Disparity Reduction Aid (DRA) is a formula-determined state aid to reduce property taxes in areas where property tax rates have been historically high. The aid directly reduces the levies of counties, towns, and school districts, so that the tax relief is dollar-for-dollar. The formula for determining aid amounts is based on characteristics of unique taxing areas—geographic areas containing properties that are subject to levies of the same taxing jurisdictions.

DRA is used to reduce total taxes in unique taxing areas

A "unique taxing area" (UTA) is a geographic area consisting of properties that are all contained within the same set of taxing jurisdictions. In other words, all properties in a UTA pay taxes to the same county, city or town, school district, and the same special taxing district(s), and therefore have the same overall property tax rate. Properties in an adjacent UTA will have a different total tax rate by virtue of being in a different county, city or town, school district, and/or special taxing district.

DRA payments were originally determined to be the amount needed to reduce each UTA's tax rate to 100% of its tax capacity

The 1988 Legislature made a number of significant changes to the state's property tax system involving virtually all existing property tax aid and credit programs and how different types of property were taxed. Disparity reduction aid amounts were determined by calculating the amount of aid each UTA would need to reduce the total tax rate for the UTA to 100 percent of tax capacity for taxes payable in 1989. For the most part, the aid amounts determined under that legislation have been carried along from year-to-year, although there have been a number of reductions based on consolidations of DRA amounts into other aid programs, such as local government aid (for cities).

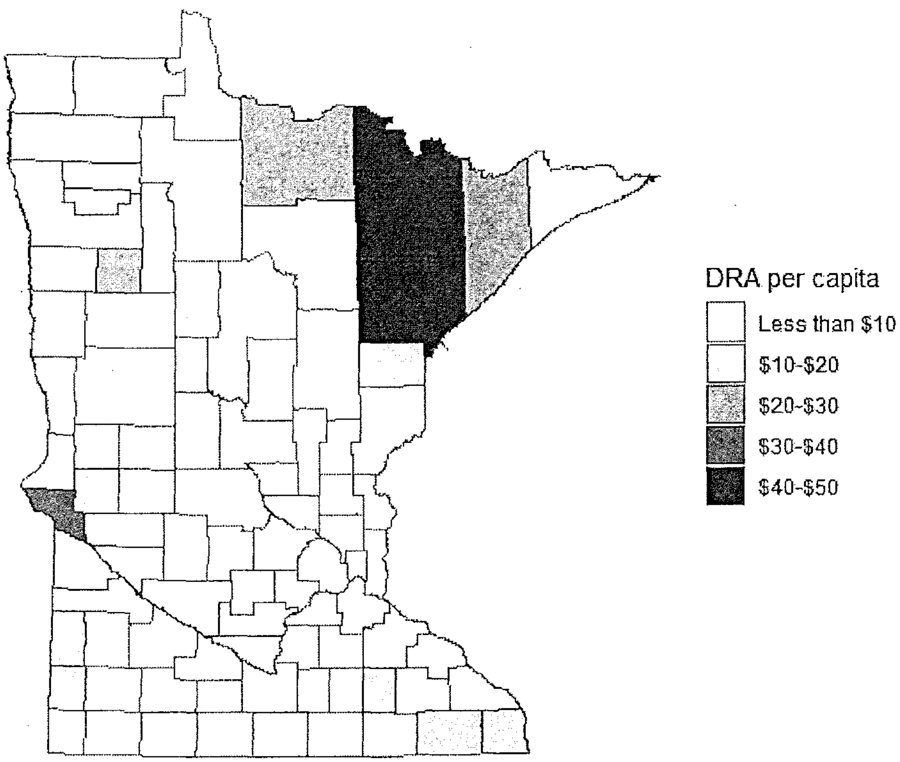
Current DRA payments are equal to the amount received in the previous year

Each UTA is initially eligible for aid equal to the amount of aid it was entitled to receive in the previous year, and the aid allocated to each taxing jurisdiction levying taxes within the UTA is equal to the amount of aid it was entitled to receive in the previous year. When the county auditor reduces the tax rates of all taxing jurisdictions within a UTA by the amount of disparity reduction aid, if the total tax rate within the UTA becomes less than 90 percent of net tax capacity, the disparity reduction aid is reduced proportionally so that the total tax rate is 90 percent of net tax capacity.

DRA can cause the tax rate within a jurisdiction to vary from one UTA to another

Because the aid amounts are applied only to tax rates within a UTA, it can cause the tax rate of a taxing jurisdiction to vary from one UTA to another. For example, rather than a county having the same tax rate throughout the county, the county tax rate will be different in each UTA that receives DRA. [Note: This feature of DRA was subject to an immediate challenge in the Minnesota Tax Court under the state constitution's uniformity clause (which requires taxes to be uniform on the same class of subjects) and the equal protection clause of the 14th amendment to the U.S. Constitution (the petitioner raised several procedural claims under the state constitution as well). Applying a rational basis standard to the constitutional claim, the tax court held that the law did not violate the state or federal constitutions (see Blume v. County of Ramsey, WL 28940 (1989)).]

Total Disparity Reduction Aid, per capita by County



based on 2017 DRA amounts

2017 Property Tax Rate Reductions from DRA

Tax rate reduction*	Number of UTAs
No Reduction	5,304
0.1% - 0.5%	228
0.5% - 1.0%	148
1.0% - 2.0%	137
2.0% - 5.0%	203
> 5.0%	171

*percentage point reduction

For more information: Contact legislative analyst Jared Swanson at Jared.Swanson@house.mn.

HOUSE RESEARCH | Short Subjects

Jared Swanson and Christopher Kleman

October 2018

Property Tax Relief for Properties Damaged in a Disaster

Property tax relief is available for properties damaged by disasters

Minnesota Statutes sections 273.1231 to 273.1235 outline a number of programs that provide property tax relief when property has been damaged in a natural disaster, such as a flood or a tornado, or by another disaster, such as a fire or vandalism. A number of factors affect the amount of relief that is available, such as whether the damage was due to a state or federally declared disaster or emergency, whether the property is a homestead, and the extent of damage to the property. Relief mechanisms affect property taxes payable in the year the damage occurs and in the year following the disaster. The flow chart on the next page shows the remedies provided under each of the various circumstances.

Disaster areas must be declared by a federal or local official and the Executive Council must approve relief applications

In order for a taxing jurisdiction to be declared a disaster or emergency area, (a) a federal official (the president, the secretary of agriculture, or the administrator of the Small Business Administration) must have determined that a disaster exists pursuant to federal law, or a local emergency must have been declared by the mayor of a municipality or the chair of a county board; and (b) the state Executive Council must approve an application for property tax relief submitted by the jurisdiction. The council may only approve applications if the average damage to all buildings in the jurisdiction exceeds $5,000, and (a) at least 25 taxable buildings were damaged, or (b) the aggregate damage exceeds 1 percent of the market value of all taxable buildings.

County assessor reassesses property

State law requires all properties potentially eligible for one of the relief programs to be reassessed by the county assessor following the disaster.

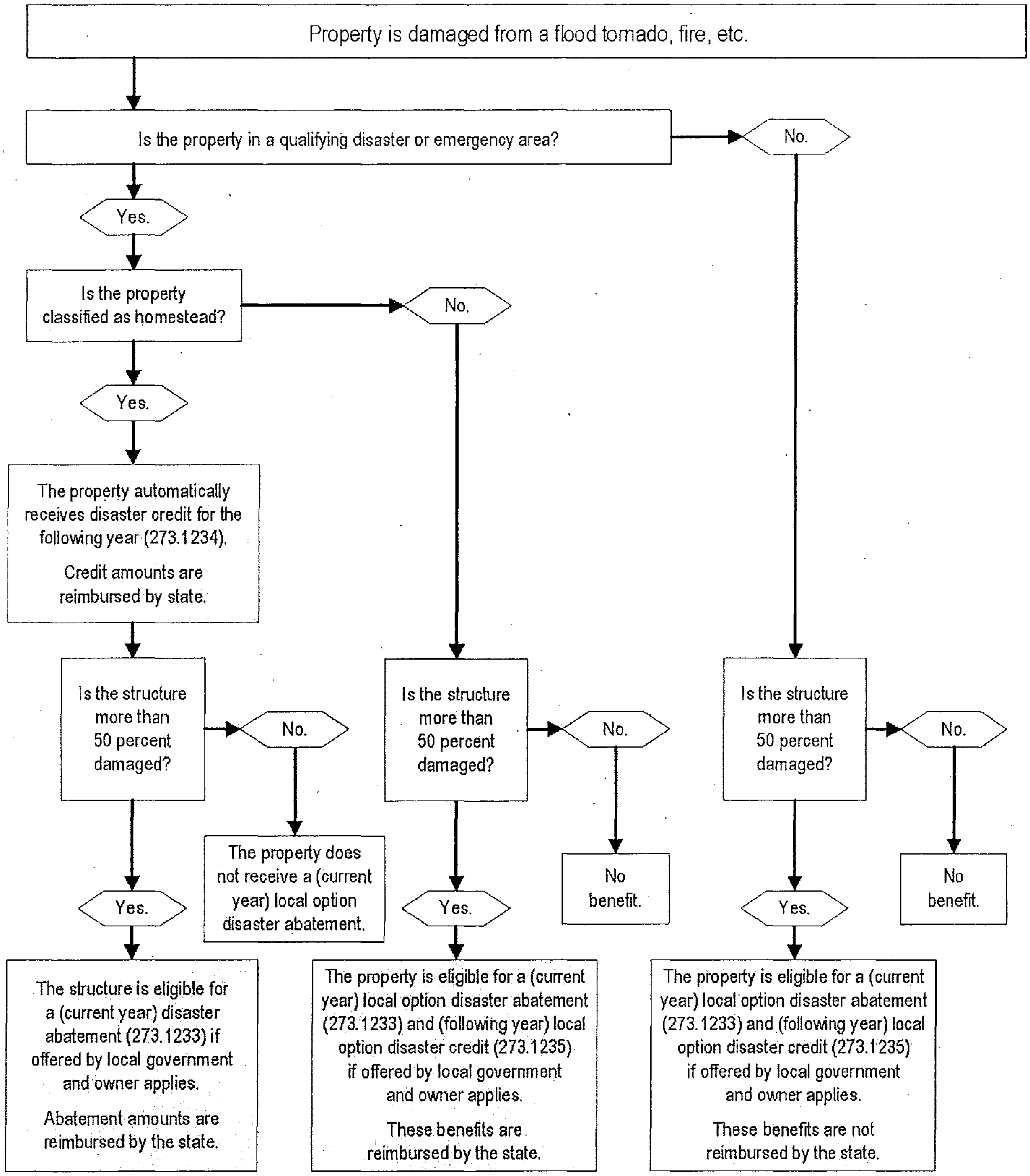
Local option abatements provide relief in the year of the disaster

Local option abatements provide relief in the year of the disaster. Only properties containing structures with damage equal to at least 50 percent of the building's value are eligible. In the case of properties in a disaster or emergency area, any abatements granted by the county will be compensated by the state. Damaged properties that are not in a disaster or emergency area may still receive abatements, but there will be no state compensation for the abatement. The abatements are offered at the discretion of the county and require the property owner to submit an application.

Homestead disaster credits and local option disaster credits provide relief in the year following the disaster

In the year following the disaster, a damaged homestead property that is located in a disaster or emergency area will qualify for a *homestead disaster credit*. This credit is automatically granted to qualifying properties and is reimbursable by the state. A damaged property of any type other than a homestead can qualify for a *local option disaster credit*, which is also reimbursable by the state. Taxes on a property not located in a disaster or emergency area may receive the *local option disaster credit* only if the damage is at least equal to 50 percent of the property's value. The credit is offered at the discretion of the county and no state compensation will be paid for this relief.

Disaster Relief Flow Chart



Source: Minnesota Department of Revenue, revised 09/2013

For more information: Contact legislative analyst Jared Swanson at Jared.Swanson@house.mn or Christopher Kleman at Christopher.Kleman@house.mn.

Jared Swanson

Updated: October 2018

County Program Aid

County program aid consists of "need aid" and "tax-base equalization aid"

Prior to calendar year 2004, counties received property tax aid under a number of different programs. Beginning in 2004, the aid programs were consolidated into one general aid program, called county program aid (CPA).

From calendar year 2005 on, CPA has been allocated by two formulas, need aid and tax-base equalization aid. From 2005 through 2017, the amounts distributed under the two different formulas were roughly equal; however, beginning in 2018 the amount distributed through tax-base equalization aid is approximately 25 percent greater than the amount distributed through need aid. The table on the next page shows how a county's aid is calculated under each formula.

Counties receiving less aid under the post-2004 formula received transition aid

Seven counties whose relative *share* of the total CPA formula allocation in calendar year 2005 was significantly less than their share of 2004 program aid qualified for "transition aid." Each county's transition aid amount was permanently fixed at one-third of the amount it received in 2005. This provision has been repealed and the last transition aid payments were made in 2017.

County program aid amounts have changed over time

For 2008 to 2011, county program aid payments were reduced due to state budgetary conditions. The total appropriation was permanently reduced by approximately $34 million in 2010, and reduced by another $32 million in 2011. By 2014, increases in the appropriation returned county program aid payments to where they were prior to these reductions.

Program change enacted in 2017

In 2017, the legislature instituted a guarantee that a county's tax-base equalization aid could not be less than 95 percent of its tax-base equalization aid in the previous year, or 0.27 percent of the total statewide appropriation for tax-base equalization aid, whichever is greater. This was in response to recent significant reductions in tax-base equalization aid in many rural counties due to rapidly increasing growth in agricultural property values.

Calculation of County Program Aid

<table>
<tr><th>Need Aid</th><th>Tax-base Equalization Aid</th></tr>
<tr><td>Share of Appropriation:
$80.4 million (CY 2013)
$100.3 million (CY 2014)
$104.8 million (CY 2015)
$103.4 million (CY 2016)
$103.2 million (CY 2017)
$103.4 million (CY 2018)
$103.3 million (CY 2019)</td><td>Share of Appropriation:
$84.7 million (CY 2013)
$104.7 million (CY 2014)
$105.2 million (CY 2015)
$105.2 million (CY 2016)
$105.2 million (CY 2017)
$130.7 million (CY 2018)
$130.7 million (CY 2019)</td></tr>
<tr><td>Reductions from the appropriation: $500,000 annually for court-ordered counsel and public defense costs</td><td>Reduction from the appropriation: up to $214,000 annually to pay for the preparation of local impact notes</td></tr>
<tr><td>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)</td><td>Tax-base equalization factor used in the formula:
Factor = N times ($190* x population - 9.45% of the county adjusted net tax capacity)
where N 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
0.25 if the county's population is 500,000 or more
*Beginning in 2019, this number will be increased by the ratio of the statewide ANTC per capita to the statewide ANTC per capita in the 2016 assessment year</td></tr>
<tr><td>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
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</td><td>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, provided that no county's aid may be less than the greater of (a) 95 percent of its aid in the previous year, or (b) 0.27 percent of the statewide appropriation.</td></tr>
</table>

For more information: Contact legislative analyst Jared Swanson at Jared.Swanson@house.mn. Also see the House Research publication *Aid Cuts to Local Governments in CY 2003 and 2004*, February 2004.

HOUSE RESEARCH | **Short Subjects**

Christopher Kleman and Jared Swanson

Updated: October 2018

Disabled Veteran Homestead Valuation Exclusion

What is the disabled veteran valuation exclusion?

This program provides a property tax benefit to qualifying homeowners by reducing the value of their home for property tax purposes by up to $300,000. The benefit applies to certain disabled veterans, their surviving spouses, the surviving spouses of military personnel who have died in the line of duty, and certain primary caregivers of disabled veterans.

What is the benefit?

Veterans who are totally and permanently disabled (100% T&P) are eligible for a valuation exclusion of $300,000; veterans who are not totally and permanently disabled, but who have a disability rating of 70 percent or higher, are eligible for an exclusion of $150,000. If a disabled veteran does not own a house, but has a designated "primary family caregiver" who does own a house, the caregiver can receive the exclusion for the time he or she continues in that role.

What are the benefits for surviving spouses?

For a veteran who received the 100% T&P benefit, the surviving spouse continues to receive program benefits in the eight calendar years following the death of the veteran. (There is no survivor benefit for spouses of veterans qualifying at the 70 percent standard.)

Surviving spouses of military personnel who have died in the line of duty are eligible to receive the 100% T&P benefit for eight years following the service member's death.

Surviving spouses of veterans who were eligible for the 100% T&P benefit but did not apply for or receive the benefit before dying and spouses who have been awarded dependency and indemnity compensation are also eligible to receive the maximum benefit for eight years following the death of the veteran.

The surviving spouse must continue to own and reside in the house to remain eligible for these benefits.

How does the benefit work?

The exclusion amount is subtracted from the value of the homestead as determined by the assessor before property taxes are calculated. If the value of the homestead in any year is less than the exclusion amount, the homestead is totally exempt from property taxes for that year. The actual tax benefit for a specific property will vary based on the value of the home and the local tax rate.

What are the qualifications for disabled veterans?

To qualify as a disabled veteran, the veteran must have been honorably discharged from the U.S. armed forces as indicated by U.S. Department of Defense form DD214 or other official military discharge papers, and must be certified by the U.S. Department of Veterans Affairs (VA) as having a service-connected disability with a disability rating of 70 percent or higher.

How do you enroll in the program?	Application for benefits under this program must be filed with the county assessor. A disabled veteran must provide form CR-DVHE70 or CR-DVHE100 and provide proof of honorable discharge and of disability rating. A surviving spouse of a service member who dies while in active service must provide either U.S. Government Form DD1300 or DD2064. Primary family caregivers must supply certification that they qualify under the VA Program of Comprehensive Assistance for Family Caregivers.
When do the benefits begin?	Applications received prior to July 1 of any year take effect for taxes payable in the following year, unless the homestead is a manufactured home, in which case the benefit takes effect in the same year. Veterans who fail to apply in the first year that they are eligible may file in any subsequent year and begin receiving benefits after that.
How is the tax benefit paid for?	Excluding all or a portion of the value of the disabled veteran's home from property taxes slightly increases the taxes on other properties (homes, businesses, farms, etc.) in the taxing jurisdictions where the veteran's home is located, meaning that the veteran's property tax benefit is essentially being provided by the other properties within the same taxing jurisdictions.
What about special assessments?	Other charges that might appear on the property tax statement, such as special assessments and various types of fees, are not affected by the valuation exclusion and must continue to be paid in full.
How does the exclusion apply to an agricultural homestead?	For agricultural homesteads, the exclusion applies only to that portion of the property consisting of the house, garage, and surrounding one acre of land.
Does the market value exclusion affect other property tax relief programs?	Properties that qualify for the disabled veterans homestead valuation exclusion do not receive the "regular" market value homestead exclusion of $30,400 or less. Properties that qualify for the disabled veterans homestead valuation exclusion are not eligible to receive the preferential classification (1b) generally available on the first $50,000 of market value on homesteads owned by persons who are blind or disabled. Disabled veterans, surviving spouses, and primary caregivers continue to be eligible for the property tax refund program, although it is likely that they would qualify for a significantly smaller refund because their property taxes would be so much lower due to the exclusion.

For more information: Contact legislative analyst Christopher Kleman at Christopher.Kleman@house.mn or Jared Swanson at Jared.Swanson@house.mn. Also see the Department of Revenue's fact sheet on the disabled veterans exclusion program at
http://www.revenue.state.mn.us/propertytax/factsheets/factsheet_11.PDF

Christopher Kleman **Updated: November 2018**

Cigarette and Tobacco Excise Taxes and Fees

Minnesota imposes a $3.04/pack tax on cigarettes

Minnesota imposes an excise tax on the sale or possession of cigarettes of 15.2 cents per cigarette ($3.04 per pack of 20). The excise tax on cigarettes is imposed on a "per unit" basis—i.e., on the number of cigarettes sold, not as a percentage of the sale price. As a result, the tax does not vary based on the price of the brand purchased or change as the prices rise or fall.

A per-pack tax applies in lieu of the general sales tax

In addition to the excise tax, a tax in lieu of the sales tax is imposed on each pack of cigarettes. Since 2005, cigarette sales have been exempt from state and local sales taxes. The commissioner of revenue annually sets the in-lieu tax based on a survey of Minnesota retail cigarette prices. The rate is set as an average of these prices and is reset January 1 for the calendar year. Effective January 1, 2019, the rate is 55.8 cents/pack. The tax does not replace local sales taxes, although cigarettes are exempt from these local taxes.

Payments made to settle state lawsuits against the tobacco industry have similar effects as excise taxes

Settlements of the states' lawsuits against the tobacco companies have similar economic effects to cigarette taxes, since these settlement payments are passed along to consumers (nationally) as higher cigarette prices. However, they do not affect companies that were not part of the lawsuit or that have not entered the Master Settlement Agreement as participating manufacturers.

Minnesota was not part of the Master Settlement Agreement and instead entered into its own agreement with the four largest tobacco companies. To compensate for the lower prices of cigarettes produced by nonsettling companies, the 2003 Legislature imposed a 35-cent per-pack fee on those cigarettes. The 2013 Legislature increased this fee to 50 cents.

A 95 percent excise tax applies to other tobacco products

An excise tax of 95 percent of the wholesale price applies to other tobacco products, such as cigars, pipe tobacco, snuff, and chewing tobacco. Since this tax is a percentage of price, it fluctuates as the prices of the products change with two exceptions to this general rule:

- A minimum tax applies to each container of moist snuff equal to the tax rate on a pack of 20 cigarettes.
- Premium cigars (with a wholesale price of $2/cigar or more) are taxed at a rate of 50 cents per cigar.

A use tax can apply, if Minnesota tax has otherwise not been paid

A use tax applies to consumers who purchase untaxed cigarettes (e.g., over the Internet or in-person in another state) for use in Minnesota. The tax is the same as the rate of the excise tax. The use tax does not apply to one carton of cigarettes purchased in another state and brought into the state by the individual. For larger quantities brought into the state and for any quantity shipped to the consumer in Minnesota, the use tax applies.

The taxes yielded revenues of $691 million in FY 2017

For fiscal year 2017, the Minnesota Department of Revenue reported collections from the nonsettlement fee, the two excise taxes, and the in-lieu sales tax on cigarettes to be $691.3 million. Revenues from the tobacco products tax are deposited in the general fund. Each fiscal year, cigarette tax revenues of $22.25 million go to fund the Academic Health Center, $3.94 million to the medical education and research account, and the rest to the state general fund.

Minnesota has a higher cigarette excise tax rate than neighboring states

Because cigarettes can easily be transported, the tax rates in other states (especially border states) are important. Minnesota excise tax ($3.04/pack) is higher than any of the bordering states: Wisconsin ($2.52), South Dakota ($1.53), Iowa ($1.36), North Dakota (44 cents). All states' rates are shown on the map below. The map does not reflect local cigarette taxes; some of these local taxes are substantial (e.g., $1.50 in New York City and $4.18 per pack in Chicago). The map does not reflect the effect of general sales taxes (including Minnesota's per-pack tax in lieu of the sales tax). Some states have no sales tax or exempt cigarettes from sales taxation, lowering the overall tax burden.

State Cigarette Tax Rates*
as of 9/18/2018
cents per pack

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

For more information: Contact legislative analyst Christopher Kleman at christopher.kleman@house.mn.

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

Christopher Kleman

Updated: November 2018

Mining Taxes

What taxes does the iron mining industry pay?

Mines and facilities used in the production of taconite are exempt from the property tax. In lieu of the property tax, the iron mining industry pays a **production tax** based on the tons of taconite produced. The industry is also exempt from the corporate franchise tax and instead pays an **occupation tax**.

What is the total tax paid by mining companies?

As reported by Department of Revenue, *Mining Tax Guide* (2018), Minnesota collected $104.9 million from taconite-related taxes in 2018. The breakdown of the taxes is shown in the table. In addition, state general fund aid of $7.1 million was distributed with the production tax revenues.

Tax	amount (millions)	% of total
Production	$86.7	82.6%
Occupation	13.1	12.5%
Sales & use	4.9	4.6%
Other	.3	0.3%
Total	$105	

How does the occupation tax differ from the corporate tax?

The occupation tax is similar in structure to the corporate franchise tax—the tax applies to a synthetic measure of profits from only the corporation's mining operations—yet there are some key differences. The occupation tax rate of 2.45 percent is lower than the regular corporate rate of 9.8 percent. This lower rate can be seen as compensation for the statutory requirement that all taconite sales (which occur out of state and would not therefore be used to determine how much income is taxable under the franchise tax) are deemed to be Minnesota sales.

How is the production tax calculated?

The following are some of the key features of the production tax:

- The tax is computed using a **tax rate**, expressed as a dollar amount per taxable ton of taconite production ($2.701 for production year 2017, distributed in 2018). The tax rate is set in state law, not by local levy decisions, and is indexed for inflation. For 2018 production, the rate was $2.751 per ton.
- The **tax base** is taxable tons, computed using a three-year average to keep the tax base stable. For example, tons produced in calendar years 2015, 2016, and 2017 are used to compute taxable tons for production year 2017, distributed in 2018 (32.1 million tons).
- The state calculates the tax amounts and notifies each mining company how much to pay.
- **Payments** are due in two equal installments by February 24 and August 24.
- The state notifies the counties of the distribution to each city, town, and school district, and the county then pays each affected local government.
- A 22-cent per ton state general fund payment supplements distributions of production tax revenues. For the 2018 distribution, this amount was $7.1 million. This increased the total distribution by about 6.8 percent.

Who receives the production tax revenues?

Because it is in lieu of the property tax, the taconite production tax is paid to local governments and is a major revenue source for counties, cities, towns, and school districts located in the "taconite relief area." The taconite relief area includes all or a portion of Cook, Lake, St. Louis, Itasca, Aitkin, Crow Wing, and Koochiching counties. Part of the revenue is also paid to the Iron Range Resources and Rehabilitation Board (IRRRB), a state agency that conducts a variety of operations on the Iron Range.

How are the taxes distributed?

The formula for distributing production tax revenues is specified in statute and is generally defined on a cents-per-taxable-ton (CPT) basis. By statute, the remainder goes to the Douglas J. Johnson economic protection trust fund (DJJ) and the taconite environmental protection fund (TEPF). The 2018 tax was distributed as follows:

Distribution	Amounts[a]
Cities and townships	$10,407,124
School districts	30,777,075
Counties	11,101,581
Property tax relief and misc.	13,546,809
IRRRB	27,777,242
Range Association of Municipalities and Schools	118,494
Hockey Hall of Fame	64,218
Total	**$93,792,543[b]**

(a) Amounts are calculated based on data from the Minnesota Department of Revenue.
(b) Includes state aid from the general fund in the amount of $7,064,142.

How has the amount changed over the past years?

The amount of taxes has decreased in recent years along with decreasing production rates and taxable tons.

		Amount (in millions)		
Production year	**Distribution year**	**Levied on companies**	**State aid**	**Total**
2008	2009	89.6	8.5	98.1
2009	2010	74.3	6.9	81.2
2010	2011	72.4	6.7	79.1
2011	2012	73.3	6.7	80.0
2012	2013	94.2	8.4	102.6
2013	2014	101.2	8.7	109.9
2014	2015	102.4	8.7	111.1
2015	2016	98.7	8.3	107.0
2016	2017	89.1	7.4	96.5
2017	2018	86.7	7.1	93.8

For more information: Contact legislative analyst Christopher Kleman at christopher.kleman@house.mn.

HOUSE RESEARCH | Short Subjects

Randall Chun

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Medical Assistance: An Overview

Medical Assistance (MA), the state's Medicaid program, is a federal-state program that pays for health care services for low-income individuals. The program is administered by counties, under the supervision of the state Department of Human Services (DHS). Federal Medicaid law 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, persons with disabilities, and adults without children.
- Meet program income and any applicable asset limits. Certain types of income and specified assets are excluded when determining eligibility. Income and asset limits for selected groups are described below.
- Be a U.S. citizen or a noncitizen who meets specified immigration criteria.
- Be a resident of Minnesota.
- Meet other program eligibility requirements.

Eligibility group	Net income limit, as % of federal poverty guidelines (FPG)	Asset limit*
Children < age 2	283	None
Children 2 through 18	275	None
Children 19 through 20	133	None
Pregnant women	278	None
Parents and caretakers	133	None, unless on spenddown
Age 65 or older, blind, or have a disability	100	$3,000 for one/$6,000 for two/$200 each additional
Adults without children	133	None

* The homestead, household goods, a vehicle, a burial plot and certain assets for burial expenses, and other specified items are not counted as assets.

Some 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 133 percent of FPG for families and children and 80 percent of FPG for individuals who are age 65 or older, blind, or have a disability. There is no spenddown for adults without children.

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 care, hospitalization, therapy and rehabilitation, dental, medical equipment and supplies, home health care, health clinic services, mental health, prescription drugs, medical transportation, nursing home, and intermediate care facility for persons with developmental disabilities (ICF/DD) services. Adult enrollees who are not pregnant are subject to copayments for certain services.

The state has also received federal approval to provide home and community-based "waivered services" not normally covered by Medicaid that are intended to allow individuals to remain in the community, rather than reside in a hospital, nursing home, or intermediate care facility for persons with development disabilities (ICF/DD).

Provider reimbursement The MA program reimburses providers under both a fee-for-service system and a managed care system (composed of the Prepaid Medical Assistance Program or PMAP, county-based purchasing initiatives, and programs for the elderly and persons with disabilities). In recent years. DHS has used competitive bidding to select managed care and county-based purchasing plans to deliver services to MA enrollees who are families and children.

Funding and expenditures In state fiscal year 2017, total state and federal MA expenditures for services were $10.888 billion. The federal share of MA costs is determined by a formula based on state per capita income. In most fiscal years, the federal government has paid 50 percent of the cost of MA services, with Minnesota responsible for the remaining 50 percent. The federal government is providing an enhanced federal match, initially 100 percent of the cost of services and phasing down to 90 percent by 2020, for services provided to adults without children.

Recipients During state fiscal year 2017, an average of 1,082,654 individuals were eligible for MA services each month. As of July 2018, 892,137 MA recipients received services through the MA managed care system, with the remaining enrollees served through fee-for-service.

Application procedure Individuals interested in applying for MA should contact their county human services agency or MNsure, the state's health insurance exchange.

For more information: See the House Research information brief *Medical Assistance*.

Christopher Kleman

Updated: November 2018

Aggregate Tax

Counties may impose aggregate taxes

Minnesota law authorizes counties to impose taxes on aggregate mined in the county. These taxes are often referred to as "gravel taxes." By law, the proceeds of the taxes (net of collection costs) are used for transportation infrastructure and restoration of the mine sites.

Aggregate material includes a number of nonmetallic substances

For purposes of taxation, aggregate material is defined as a number of nonmetallic substances that include silica sand, gravel, limestone, and granite. Taconite tailings and some other material removed from taconite mines are also included in this category. This material must be measured or weighed after it has been extracted to determine the appropriate tax.

Thirty-five counties and one town impose aggregate taxes

According to Department of Revenue data, 35 counties collected the tax in 2017. The map on the next page shows the counties. Special laws also authorize a few towns in St. Louis and Ottertail counties to impose aggregate taxes, as long as the county does not impose the tax. Only Solway Township in St. Louis County collected tax under this authority in 2017.

The tax rate is 21.5 cents per cubic yard

State law sets the rate of the tax at 21.5 cents per cubic yard or 15 cents per ton; counties do not have discretion to set a lower rate.

However, if the county borders two states and is not contiguous to a county imposing an aggregate tax, the law authorizes the county to impose a rate of 10 cents per cubic yard or 7 cents per cubic ton. This limit expires on December 31, 2024, and currently applies to Rock County.

A county board may exempt an operator that removed less than 20,000 tons, or 14,000 cubic yards, in the previous year.

The tax is imposed on the amount of aggregate excavated

The aggregate tax is imposed when the material is taken from the extraction site or sold, whichever occurs first. If the aggregate is stored in a stockpile without being transferred on a public road, the tax is imposed either when the aggregate is sold, when transported from the stockpile site, or when it is used from the stockpile, whichever comes first.

The taxes are apportioned among counties

If aggregate material is transported outside the county via a waterway, railway, or any other means besides a public road, the tax is to be apportioned equally between the county where the material is extracted and the county where the material is imported. If the receiving county is not in Minnesota, the county where the material was extracted receives the full amount of the tax.

Other fees are prohibited

A county, city, or town that receives aggregate tax proceeds is prohibited from imposing any additional host community fees on aggregate production.

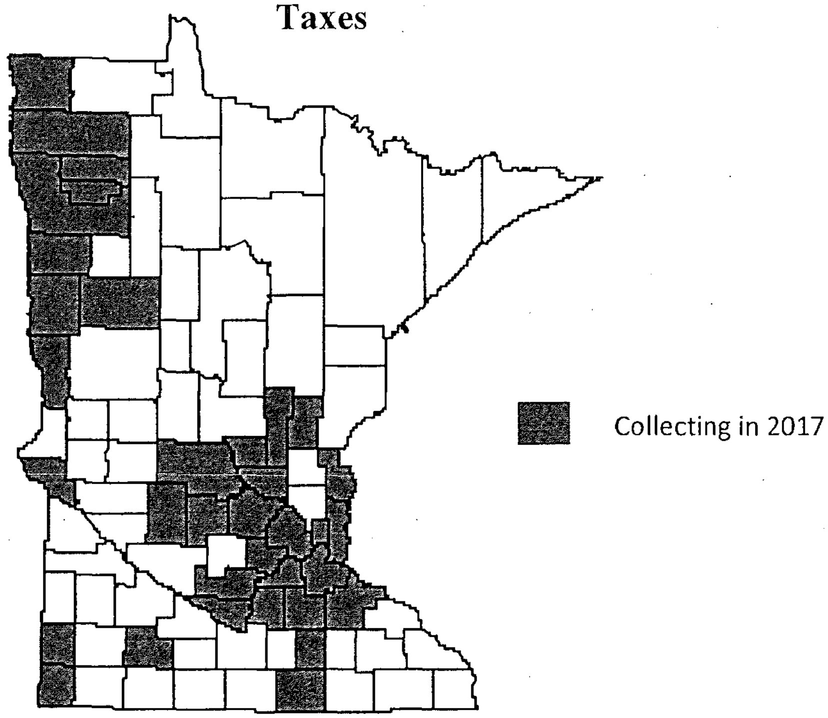
Proceeds of the tax are used for various purposes; about $6.2 million in revenues were collected in CY 2017

State law specifies how the revenues from the tax are to be used. The taxes are deposited into the county treasury and must be spent as follows:

- The county auditor may retain up to 5 percent of the total revenues as an administrative fee for administering the tax
- 42.5 percent of the remaining amount must be added to the county road and bridge fund for expenditure in maintenance, construction, and reconstruction of roads, highways, and bridges
- 42.5 percent of the remaining amount must be deposited in the general fund of the city or town in which the mine is located, or to the county where the mine is located in an unorganized town, to be expended for maintenance, construction, and reconstruction of roads, highways, and bridges
- 15 percent of the remaining funds must be put into a special reserve fund that is established for expenditures made related to the restoration of abandoned pits, quarries, or deposits located within the county

According to Department of Revenue data, $6.2 million in aggregate taxes were collected in calendar year 2017.

Counties Collecting Aggregate Taxes



For more information: Contact legislative analyst Christopher Kleman at christopher.kleman@house.mn.

MN HOUSE RESEARCH

Agency Authority to Transfer Appropriated Money

December 2018

What is a transfer?

For purposes of this publication, a transfer occurs when a state agency exercises statutory authority to reallocate money appropriated by the legislature for one program to a different program administered by that same agency. This is sometimes referred to as an "intra-agency transfer."

Do agencies have general intra-agency transfer authority?

As a general rule, a state agency, official, or employee may spend money only for the purpose for which the legislature has appropriated it. Minn. Stat. § 16A.139. However agencies do have limited, statutory authority to perform certain intra-agency transfers. Specifically, state law authorizes an agency in the executive, legislative, or judicial branch to transfer operational money from one program to another if both programs received an appropriation from the same fund (e.g., the general fund). However, if the legislature appropriated a specific amount of money for an "item within an activity," the recipient agency cannot transfer or use this amount for any other purpose. Minn. Stat. § 16A.285.

What is the process?

Before performing the transfer, the agency must request and receive approval from Minnesota Management and Budget (MMB). MMB staff may approve the transfer only after determining that it will not frustrate legislative intent.

What is operational money?

The term "operational money" is not defined for purposes of this statute. In this context, it is generally understood to mean money appropriated to an agency so that the agency can function and fulfill its legal duties. Agencies use operational money to compensate staff, purchase supplies, pay overhead, etc. For purposes of this statute, operational money is generally understood not to include money that the legislature appropriates to an agency to award aid, pass-through grants, or other financial assistance to local units of government, private entities or individuals, or others.

What is a program?

The term "program" is not defined for purposes of this statute, but in this context it is generally understood to mean the budgetary level at which the legislature typically appropriates operating money to state agencies. This technical, budgetary definition differs from the common usage of the term "program." For example, for budgetary purposes the Waste Pesticide Collection Program administered by the Department of Agriculture is a budgetary "item" within the Pesticide and Fertilizer Management "activity," which is one of several budgetary activities within the Protection Services "program." Therefore, for purposes of this transfer authority, the term program has a technical meaning that often denotes a collection of related activities for which the legislature appropriates one lump sum of money.

By **Colbey Sullivan,** 651-296-5047

What is an item within an activity?

The term "item within an activity" is not defined for purposes of this statute, but in this context it is generally understood to mean a specific purpose for which the legislature has designated a specific amount of money. In an appropriations law, the legislature typically uses rider language to identify the amount of money it has designated for a specific item within a larger program-level appropriation.

Are there reporting requirements?

The commissioner of MMB must report each intra-agency transfer to the chairs of the legislature's main budgetary control committees—i.e., the Senate Finance and House of Representatives Ways and Means committees.

Additionally, Laws 2017, First Special Session, chapter 4 (codified as Minn. Stat. § 15.0395), requires each agency to annually report to the legislature all transfers of appropriations within the agency or between it and another agency during the previous fiscal year if the cumulative value of such transfers totaled more than $100,000. An agency must submit this report to the chairs and ranking minority members of the Senate and House of Representatives committees with jurisdiction over the agency's budget. The first reports under this law were due October 15, 2018.

Are there other legal methods for an agency to transfer appropriated money?

In addition to the intra-agency transfer authority described in this publication, state agencies also transfer appropriated funds to other agencies via inter-agency or joint powers agreements pursuant to Minnesota Statutes, section 471.59. Separately, the commissioner of the Department of Administration is authorized, subject to certain conditions, to transfer functions and employees from one state agency to another in order to improve efficiency and avoid duplication in the delivery of government services. When this transfer takes place, the corresponding appropriation or portion of an appropriation is also transferred to the receiving agency. Minn. Stat. § 16B.37. Finally, subject to approval by the Legislative Advisory Commission, agencies may transfer excess appropriated money to the information and telecommunications account in the special revenue fund to implement information technology projects that create government efficiencies. Minn. Stat. § 16E.21.

For information on the transfer of duties and personnel from one agency to another, see the House Research publication *Transfer of Executive Branch Responsibilities*.

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MN HOUSE RESEARCH

State Elected Officials' Compensation

December 2018

Salaries for governor, lieutenant governor, attorney general, state auditor, secretary of state, and judges are established by state law or by the legislature, depending on the position. Salaries for legislators are prescribed by a Legislative Salary Council in each odd-numbered year.

Salaries for Constitutional Officers

As required by the Minnesota Constitution, salaries for constitutional officers are prescribed by law. Art. V, § 4. The 2013 Legislature passed legislation increasing the governor's salary by 3 percent on January 1, 2015, and by 3 percent on January 1, 2016. Laws 2013, ch. 142, art. 6, § 12. Salaries of the other constitutional officers are a specified percentage of the governor's salary, so those salaries also increased by 3 percent in 2015 and 3 percent in 2016. Laws 2001, 1st spec. sess., ch. 10, art. 1, § 2. The salaries of the constitutional officers have not increased since 2016.

Officer	% of Governor's Salary	Current Salary
Governor	—	$127,629
Attorney General	95%	$121,248
State Auditor	85%	$108,485
Secretary of State	75%	$95,722
Lt. Governor	65%	$82,959

The governor can veto legislation establishing compensation for constitutional officers because, according to the constitution, the compensation is set "by law."

Salaries for Judges

The Minnesota Constitution stipulates that the legislature must establish compensation for judges and that judges' salaries cannot be reduced while they are in office. Art. VI, § 5. The most recent salary increases for judges were 2.5 percent on July 1, 2017, and 2.5 percent on July 1, 2018. These increases were funded in Laws 2017, ch. 95, art. 1, sections 2, 3, and 4. Annual salaries for various judges are as follows.

Official	Current Salary
Supreme Court, chief	$195,467
Supreme Court, justice	$177,697
Court of Appeals, chief	$175,808
Court of Appeals, judge	$167,437
District Court, chief	$165,037
District Court, judge	$157,178

By **Matt Gehring,** 651-296-5052
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The constitutional provisions governing judges have been interpreted to mean that the governor may not veto provisions setting judges' compensation because their compensation is prescribed "by the legislature." *Gardner v. Holm*, 241 Minn. 125, 62 N.W. 2d 52 (1954).

Salaries for Legislators

Prior to 2016, the Minnesota Constitution provided that legislators' compensation was set by law. Under that structure, the annual salary for representatives and senators was $31,140 and had remained at that amount since 1999.

At the 2016 state general election, the voters ratified a constitutional amendment requiring that legislator salaries be set by a newly established Legislative Salary Council. The council consists of members appointed by the governor and chief justice of the Supreme Court. Council members are prohibited from communicating with legislators during the period beginning when the council convenes its first meeting and ending the date it submits its salary determinations.

The council must report its determinations, and the rationale used to reach them, by March 31 of each odd-numbered year. If it directs a salary adjustment, the adjustment takes effect July 1 of that year.

On March 17, 2017, the Legislative Salary Council prescribed a salary of $45,000 for legislators. The new salary became effective July 1, 2017.

The Compensation Council's role in establishing salaries for constitutional officers and judges

A 16-member Compensation Council exists to assist the legislature in establishing the compensation of constitutional officers and judges. Minn. Stat. § 15A.082. Members of the Compensation Council are appointed in January of each odd-numbered year. The council must make its recommendations to the legislature by April 15 of that year.

By law, the council's recommendations take effect if an appropriation to pay the recommended salaries is enacted after the recommendations are submitted and before their effective date.

Insurance benefits and pension plans

Constitutional officers, legislators, and judges all are members of the state employee group insurance plan and receive the same insurance benefits as state employees.

Most legislators (those first elected after July 1, 1997, and some elected before then) and all constitutional officers are members of a defined contribution pension plan. Under this plan, the member contributes a percent of his or her salary (5.75 percent in fiscal year 2019, and 6 percent beginning in fiscal year 2020) and the state contributes separately (6 percent of salary in fiscal year 2019 and 6.25 percent beginning in fiscal year 2020). This money is invested, and upon leaving state service, the elected official is eligible to receive whatever money is in the account.

Judges belong to a defined benefit pension plan, in which the benefit is determined by multiplying years of service times a service-credit percentage and applying this percentage to the judge's average high-five years of salary.

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MN HOUSE RESEARCH

Section 179 Expensing under the Federal and Minnesota Income Tax

December 2018

What is section 179 expensing?

Income tax laws generally require businesses to spread deductions of capital expenditures over the useful lives of the purchased property. Section 179 expensing, which takes its name from a section of the Internal Revenue Code (IRC), allows businesses to deduct the entire amount of the cost of qualifying property in the tax year the property is placed in service, rather than claiming depreciation deductions over a number of years. This allows the business to accelerate recognition of the expense from future tax years into the present year. The number of years over which property would otherwise be depreciated ranges from three to 15 years, depending on the type of property and its useful life as classified under the IRC.

What businesses can use section 179 and what property qualifies?

A business is allowed to use section 179 based on the amount of its qualifying capital expenditures in a taxable year. Purchases of most equipment and other personal property qualify, including many leasehold improvements by businesses renting their facilities. Some interior improvements to nonresidential real property also qualify. The amount of a taxpayer's section 179 deduction is limited to the taxpayer's taxable income, although the disallowed amounts may be carried over.

How much property qualifies for federal section 179 expensing?

Businesses may deduct up to $1 million in qualifying property placed into service in the tax year. This amount is phased out dollar for dollar once a business's qualifying property expenditure amount exceeds $2.5 million. The phase-out effectively prohibits businesses making more than $3.5 million in qualifying property in a tax year from using section 179 for that tax year.

What are the section 179 expensing allowances under the Minnesota income tax?

Prior to 2006, Minnesota conformed to the federal allowances, allowing businesses to claim the same amount for their Minnesota taxes as they did for their federal taxes. Since then, the legislature has elected not to conform to the higher federal allowances, but does allow the full amount of the deduction to be taken over multiple years.

In Minnesota, the amount of expenditures that may be deducted in the year the property was placed in service is determined based on two factors: the state's own cap and phase-out limits, and the section 179 addition.

Under the state's cap and phase-out limits, deductions are capped at $25,000, with a dollar-for-dollar phase-out once a business's total expenditures exceed $200,000.

By **Christopher Kleman,** christopher.kleman@house.mn
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In addition to any amount deducted under the state's cap and phase-out limits, 20 percent of any remaining amount that is deducted under section 179, minus the amount deducted under the state's cap and phase-out limits, may also be deducted in the year the property is placed in service. The remaining 80 percent must then be added back to the business's Minnesota taxable income; 16 percent of this remaining amount is then deducted in each subsequent tax year for five years, until the full amount of the federal deduction has been used.

The following chart shows the difference between the amounts that may be deducted in the year the property is placed in service under section 179 compared to state expensing laws.

Section 179 Property Placed in Service in the Tax Year	Deduction Allowed Federally	Amount Allowed under the Minnesota Cap and Phase-out	Minnesota Add-back	Total Minnesota Deduction, Current Year
≤ $25,000	Full amount	Full amount	$0	Full amount
$25,000 to $200,000	Full amount	$25,000	80% of the amount in excess of $25,000	$25,000, plus 20% of the amount in excess of $25,000
$200,000 to $225,000	Full amount	$25,000 minus amount in excess of $200,000	80% of the federal amount in excess of amount allowed under the Minnesota cap	Amount allowed under the Minnesota cap, plus 20% of the amount in excess of that amount
$225,000 to $2,500,000	Full amount, up to $1,000,000	$0	80% of the federal amount	20% of the federal amount
$2,500,000 to $3,500,000	$1,000,000 minus amount in excess of $2,500,000	$0	80% of the federal amount	20% of the federal amount
> $3,500,000	$0	$0	$0	$0

MN HOUSE RESEARCH

Major State Aids and Taxes: An Overview of the 2015 Update

December 2018

The following provides a brief overview of the longer publication *Major State Aids and Taxes: A Comparative Analysis, 2015 Update*, which highlights major aids provided to the local governments and people in Minnesota and lists the major taxes collected. The per capita amounts were calculated using 2014 population.

State Aids

Program	Year	Amount (millions)	Per Capita
Education aid *Aid paid to school districts for all K-12 educational expenses*	2014/2015	**$7,926.6 State** $4,470.9 Metro $3,455.6 Nonmetro	**$1,445 State** $1,488 Metro $1,394 Nonmetro
Human services aid *State's share of human services aid for various income and medical assistance programs*	2015	**$6,072.1 State** $3,449.6 Metro $2,662.5 Nonmetro	**$1,107 State** $1,148 Metro $1,058 Nonmetro
Highway aid *Distributed to counties, cities, and towns for highway purposes*	2015	**$801.7 State** $279.2 Metro $522.5 Nonmetro	**$145 State** $93 Metro $211 Nonmetro
Local government aid *Provides property tax relief by providing general purpose financial support to cities*	2015	**$516.9 State** $177.2 Metro $339.7 Nonmetro	**$94 State** $59 Metro $137 Nonmetro
Disparity reduction aid *Provides aid to jurisdictions (counties, towns, and school districts) that had inordinately high tax rates in 1988*	2015	**$18.1 State** $1.4 Metro $16.7 Nonmetro	**$3 State** -- Metro $7 Nonmetro
County program aid *Includes former homestead and agricultural credit, county criminal justice aid, family preservation aid, and attached machinery aid*	2014//2105	**$209.9 State** $100.3 Metro $109.6 Nonmetro	**$38 State** $33 Metro $44 Nonmetro
Community corrections funding *Aid that provides a portion of counties' costs for community corrections services*	2015	**$86.3 State** $41.7 Metro $44.6 Nonmetro	**$16 State** $14 Metro $18 Nonmetro
Property tax refund (excludes targeting) *Reimburses homeowners and renters for a portion of property taxes if those taxes exceed a household income threshold*	2014 (filed in 2015)	**$582.2 State** $403.5 Metro $178.7 Nonmetro	**$106 State** $134 Metro $72 Nonmetro
Targeting *Additional homeowner property tax refund if property taxes increased a certain percentage threshold over previous year (no income limits)*	2014 (filed in 2015)	**$3.8 State** $2.8 Metro $1.1 Nonmetro	**$1 State** $1 Metro -- Nonmetro

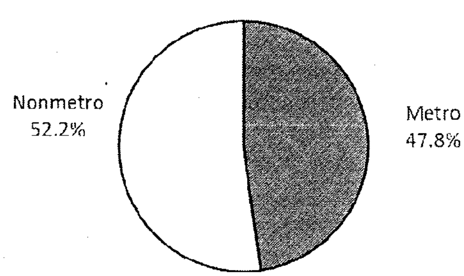
By **Sean Williams,** sean.williams@house.mn
Jared Swanson, jared.swanson@house.mn

Major Taxes

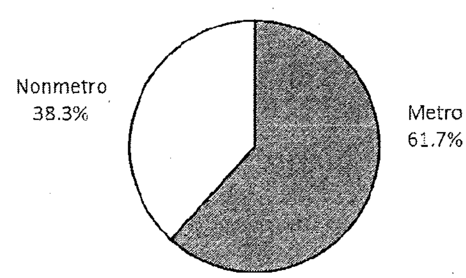
Program	Year	Amount (millions)	Per Capita
Individual income tax *Imposed on income of state residents and income derived from state sources of nonresidents*	2014 (filed in 2015)	**$9,362.0 Total** **$8,829.1 Residents** $6,025.3 Metro $2,803.7 Nonmetro	 **$1,610 State** $2,005 Metro $1,131 Nonmetro
Sales and use tax *Imposed on gross receipts of people who sell, lease, or rent tangible personal property at retail at a rate of 6.5 percent (does not include local sales tax)*	2015	**$5,552.8** (After refunds) **$4,559.5 Residents** $2,971.4 Metro $1,588.2 Nonmetro	 **$831 State** $989 Metro $640 Nonmetro
Motor vehicle sales tax *Imposed on new and used motor vehicles at the time of sale at the same rate of state sales tax*	2015	**$790.9 State** $417.8 Metro $373.1 Nonmetro	**$144 State** $139 Metro $150 Nonmetro
Motor vehicle registration tax *Imposed annually on vehicles licensed in the state*	2015	**$704.5 State** $385.4 Metro $319.1 Nonmetro	**$128 State** $128 Metro $129 Nonmetro
Motor vehicle fuels tax (gas tax) *Imposed on gasoline, diesel fuel, and other motor fuels used by vehicles and on aviation fuels*	2015	**$894.2 State** $424.7 Metro $469.5 Nonmetro	**$163 State** $141 Metro $189 Nonmetro
Corporate franchise (income) tax *Imposed at a rate of 9.8 percent on the net income of corporations (or alternative minimum tax)*	2015	**$1,201.3 State** $864.7 Metro $336.7 Nonmetro	**$219 State** $288 Metro $136 Nonmetro
State general property tax *Imposed on commercial/industrial/public utility property and seasonal recreational property*	2015	**$849.6 State** $534.2 Metro $315.4 Nonmetro	**$155 State** $178 Metro $127 Nonmetro

Property Tax Data, Payable 2015

Market Value
Total statewide: $592.8 billion



Net Property Tax
Total statewide: $8.9 billion



For more information: See *Major State Aids and Taxes: Comparative Analysis, 2015 Update* for further details about each aid program and tax and data by county and economic development region.

MN HOUSE RESEARCH

Budget Forecasts, Surpluses, and Deficits

December 2018

When are economic forecasts prepared?

The commissioner of Minnesota Management and Budget (MMB) must prepare a forecast of general fund revenues and expenditures twice each year—in February and November. Employment levels, wages, sales of taxable goods and services, health care costs, the number of children enrolled in public schools, and numerous other factors influence state expenditures and receipts. The forecast attempts to predict how these factors will collectively impact the state budget during the forecast period.

How are the forecasts used?

The forecasts inform the governor's budget proposals and the legislature's development of tax and spending laws. In this way, the legislature and governor use the forecasts to develop and enact a balanced general fund budget in which total biennial revenues meet or exceed total expenditures.

The November forecast in even-numbered years informs the governor's initial biennial budget recommendations to the legislature. For example, the November 2018 forecast provides the revenue and expenditure projections that Governor-elect Tim Walz will use to prepare a preliminary budget proposal for the upcoming fiscal year 2020-2021 biennium, which runs from July 1, 2019, to June 30, 2021. The same November 2018 forecast projected that the state was on track to finish the fiscal year 2018-2019 biennium with a positive general fund balance.

The February forecast updates the preceding November forecast with any new economic, revenue, and spending data. Following the February 2019 forecast, Governor-elect Walz will submit revised budget recommendations informed by the latest revenue and expenditure estimates. Similarly, the February 2019 forecast will provide the revenue and expenditure projections that the 2019 Legislature will use to enact a balanced state budget for the fiscal year 2020-2021 biennium. It will also provide the final comprehensive update on the status of general fund revenues and expenditures for the remaining months of the fiscal year 2018-2019 biennium.

The November forecast in odd-numbered years and the February forecast in even-numbered years update revenue and expenditure estimates for the current biennium. Using the projections in the November 2019 and February 2020 forecasts, Governor-elect Walz may propose modifications to the enacted fiscal year 2020-2021 budget. The 2020 Legislature will use the latest projections in the February 2020 forecast to determine whether budgetary changes are needed in order for the fiscal year 2020-2021 biennium to close with a balanced general fund budget.

What if a forecast predicts a general fund deficit?

If a balanced budget is enacted but a subsequent forecast anticipates a general fund deficit in the current biennium, the commissioner of MMB may access funds in the budget reserve account as needed to pay for all enacted expenditures. If there is not enough money in the budget reserve to balance the general fund in the current biennium, the commissioner may also selectively reduce or delay existing appropriations, commonly referred to as "unalloting." Before reducing the budget reserve or unalloting general fund appropriations, the commissioner must obtain the approval of the governor and consult the Legislative Advisory Commission. If the legislature is in session or will soon convene, the governor

By **Colbey Sulivan**, 651-296-5047

typically makes recommendations to the legislature on how to resolve the shortfall before approving use of the budget reserve or unallotment.

What if the forecast predicts a general fund surplus?

If a forecast projects a general fund surplus for the current biennium, the commissioner of MMB must allocate the surplus in priority order as follows:

1) to the cash flow account, until it reaches $350 million (currently satisfied)
2) to the budget reserve account, until it reaches $1,596,522,000 (currently surpassed)
3) to increase the school aid payment schedule to 90 percent, in increments of one-tenth of 1 percent with any residual amount remaining in the budget reserve (currently satisfied)
4) to restore previous school aid reductions and reduce the property tax recognition shift accordingly (currently satisfied)

If a November forecast predicts a surplus and priorities (1) to (4) have been satisfied, MMB must transfer 33 percent of the remainder to the budget reserve until it reaches the balance recommended by MMB. No later than September 30 each year, MMB must assess the volatility of state tax revenues and report to the legislature any corresponding change in the agency's budget reserve benchmark.

Any surplus remaining after satisfying the four statutory priorities and transferring 33 percent of any remainder to the budget reserve is reported in the forecast as a positive general fund balance. For the fiscal year 2018-2019 biennium, as of the November 2018 forecast there is a projected surplus in the general fund.

What are recent changes to the treatment of budget surpluses?

Laws 2014, chapter 150, required MMB to recommend a budget reserve level (specified as a percentage of general fund revenues for the current biennium), to update this percentage each January, and to transfer 33 percent of a November forecast surplus to the reserve. Laws 2015, chapter 77, pushed the commissioner's annual update back to September. Laws 2017, first special session, chapter 1, added a requirement to transfer $22 million of general fund surplus dollars to the Clean Water Fund. MMB performed this $22 million transfer when the agency's February 2018 forecast projected that a sufficient surplus existed in the general fund for the fiscal year 2018-2019 biennium.

For more information: See the House Research publication *Unallotment: Executive Branch Power to Reduce Spending to Avoid a Deficit*, November 2018.

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MN HOUSE RESEARCH

Minnesota Building Code

December 2018

The building code is a collection of state laws and rules that apply a uniform set of standards to the construction and modification of buildings in order to enhance safety, energy efficiency, and accessibility.

What is the state building code?

Under Minnesota Statutes, section 326B.121, the Minnesota Building Code, or the code, is the "standard that applies statewide for the construction, reconstruction, alteration and repair of buildings and other structures." It is the same throughout Minnesota and supersedes any county or municipal rules.

While there is a single state building code, it is composed of many smaller codes each focused on a particular technical area or type of structure, such as plumbing, electrical, elevators, accessibility, energy, or residences. A list of all of these codes is available on the Department of Labor and Industry website, http://www.dli.mn.gov/ccld/codes15.asp.

Most of the language of the code comes directly from national and international standards, such as the International Building Code, that are incorporated in whole or in part into the Minnesota Building Code via rulemaking.

Who administers and enforces the building code?

The code is administered by the state Department of Labor and Industry's (DOLI) Construction Codes and Licensing Division (CCLD) in conjunction with cities, townships, and counties throughout the state.

For public buildings, state-licensed facilities, and places of public accommodation, state officials at DOLI enforce the code or delegate enforcement to local building officials. For definitions of these types of buildings see Minnesota Statutes, sections 326B.103, subdivisions 11 and 13, and 326B.108.

For other types of buildings in counties and municipalities where the code has been formally adopted, enforcement is done by local building officials. For details on code enforcement in a specific area, see DOLI's code enforcement database, http://workplace.doli.state.mn.us/jurisdiction/.

For other types of buildings in jurisdictions that have not formally adopted the code, there may be no government entity actively monitoring code enforcement. Nevertheless, the code still applies to buildings in these areas. Further, compliance may be required by contracts with lending institutions or insurance providers.

How is the code changed?

The code is modified regularly by DOLI, after consultation with committees of technical experts, in conjunction with semi-annual updates to national and international standards. The code may also be amended by the legislature.

By **Anna Scholin**, anna.scholin@house.mn

How can the legislature affect the code?

The legislature can write laws that alter the code, either by adding new regulations or by changing how the existing codes will apply within Minnesota. For instance, because of legislative action, state law directs that the code cover several broad areas including elevators, electricity, plumbing, accessibility, manufactured homes, prefabricated homes, and industrialized and modular buildings.

Examples of recent legislative changes to the code include laws affecting the rules that apply to fire sprinklers, smoke detection, automatic garage door openers, radon control, and window fall prevention.

Does the code apply to agricultural buildings?

Agricultural buildings generally are not covered by the code. Agricultural buildings are those used only for agricultural purposes and situated on agricultural land. For more detailed information on exempt agricultural buildings, see Minnesota Statutes, sections 326B.103, subdivision 3, and 273.13, subdivision 23.

Does the state building code include the state fire code?

The State Fire Code is a separate set of standards. The Minnesota Department of Public Safety (DPS) and the State Fire Marshal administer the State Fire Code. For additional information about the State Fire Code see the DPS website, https://dps.mn.gov/divisions/sfm/fire-code/Pages/default.aspx.

Where can people find a copy of the building code?

The DOLI website provides free digital copies of all parts of the state building code, as well as links for purchasing code books and to helpful fact sheets, http://www.dli.mn.gov/ccld/codes15.asp.

Who can answer code questions?

If people have questions about how the code might apply to a specific situation, the best sources for interpretation are local building officials or the CCLD.

Contact information for local officials can be found in this database from DOLI, http://workplace.doli.state.mn.us/jurisdiction/.

The CCLD's list of contact numbers by topic of question may be found on the DOLI website, http://www.dli.mn.gov/about-department/our-areas-service/phone-and-email-directory.

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