Short Subjects

Minnesota House of Representatives, House Research

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HOUSE RESEARCH Short Subjects

Sam Rankin October 2002

Minnesota Financial Resources for Farmers

Minnesota laws have established several grant and loan programs to help beginning farmers get started, existing farmers expand their operations, and innovative farmers try new and different approaches. Most of these programs are offered through the Minnesota Department of Agriculture (MDA) and its Rural Finance Authority (RFA) division. This paper briefly summarizes several of the programs. At times these programs may be closed to new applications for lack of available funding.

Aggie Bond Beginning Farmer Loan Program Coordinated by the RFA, this federal program allows a beginning farmer to apply to a local lender for a real estate mortgage. The lender can then purchase a tax-free bond for the loan amount. The tax-free nature of these bonds allows the lender to reduce the interest rate paid by the farmer. Contact: RFA; 651-297-2175. http://www.mda.state.mn.us/agfinance/aggiebond.html.

Basic Farm Loan Program This state program offers affordable financing and technical support for beginning farmers. The RFA carries 45 percent of the loan principal (a maximum $125,000 per loan), and a local lender carries the balance. The current interest rate is 5.5 percent. Contact: RFA; 651-296-4985. http://www.mda.state.mn.us/agfinance/basic.html.

Seller Assisted Farm Loan Program This program for beginning farmers includes financing provided by the seller, with the RFA participating at up to 45 percent of the mortgage (maximum $125,000 per loan), and a local lender carrying the balance. The current interest rate is 5.5 percent. Contact: RFA; 651-296-4985. http://www.mda.state.mn.us/agfinance/seller.html.

Restructure II Loan Program This loan program is for farmers with reasonably good credit status but who are having trouble with cash flow due to adverse events. The RFA will carry up to 45 percent of the loan principal (maximum $150,000 per loan), and a local lender will retain the balance of the loan. The current interest rate is 7.0 percent. Contact: RFA; 651-296-4985. http://www.mda.state.mn.us/agfinance/restructure2.html.

Agricultural Improvement Loan Program This program allows eligible farmers to finance capital improvements to their farming operation to improve efficiency, productivity, and income. It can be used for land, buildings, and affixed equipment. The RFA will carry up to 45 percent of the loan principal (maximum $125,000 per loan), and a local lender will retain the balance. The current interest rate is 6.0 percent. Contact: RFA; 651-296-4985. http://www.mda.state.mn.us/agfinance/improvement.html.

Livestock Expansion Loan Program Another RFA loan program helps finance the construction of state-of-the-art livestock and dairy facilities on existing farms. Livestock cannot be purchased with these loans, and loans must not be used to refinance existing debt. The RFA will carry up to 45 percent of the loan principal (maximum $250,000 per loan), and a local lender will retain the balance. The current interest rate is 7.0 percent. Contact: RFA; 651-296-4985. http://www.mda.state.mn.us/agfinance/expansion.html.

Dairy Business Planning Grant Program This program is aimed at encouraging dairy business planning and modernization activities. MDA can make grants of up to $5,000 to cover 50 percent of the cost of eligible projects. The balance must come from sources other than the state. Contact MDA; 651-215-3946. http://www.mda.state.mn.us/dairyfood/dbgrant.pdf.

Value-Added Stock Loan Program	This program helps farmers purchase shares of stock in cooperatives, limited liability companies, or limited liability partnerships that plan to operate a facility to produce or process marketable products from agricultural crops. The farmer must be a producer of the agricultural crop to be processed. The RFA will loan the farmer up to 45 percent of the cost of stock shares (not to exceed $24,000 per loan) at an interest rate of 4.0 percent. Contact: RFA; 651-296-4985. http://www.mda.state.mn.us/agfinance/stockloan.html.
Sustainable Agriculture Loan Program	The MDA manages a program of loans to facilitate the adoption of alternative farm management practices. Loans can be made for eligible capital purchases such as rotational grazing systems, low-cost livestock housing, soil-conserving equipment, and processing equipment. These loans can be up to $25,000 each at a fixed interest rate of 6 percent. Contact: MDA; 651-282-2261. http://www.mda.state.mn.us/esap/esaploan.htm.
Sustainable Agriculture Demonstration Grant Program	This MDA program began in 1989 and provides grants to farmers, nonprofit groups, researchers, and educators to explore ways of enhancing the sustainability of farming systems. Grants can be as large as $25,000 each, and can extend over three years. Contact: MDA; 651-296-1277. http://www.mda.state.mn.us/esap/default.htm#demo.
Value-Added Agricultural Cooperative Grant Program	The MDA manages this program of grants to facilitate the formation and development of value-added agricultural cooperatives. The maximum grant size is $50,000 per cooperative, and the applicant must match at least 25 percent of the project cost. Contact: MDA; 651-215-0368. http://www.mda.state.mn.us/ams/valueadded/default.htm.
Organic Agriculture Cost Share Program	The MDA provides grants to eligible applicants to partially defray the costs of inspection and recordkeeping necessary to become "certified organic" producers. Legislative funding for this program amounts to about $35,000 per year. Contact: MDA; 651-297-8916. http://www.mda.state.mn.us/esap/greenbook2002/2002greenbook.pdf.
Best Management Practices Loan Program	This multi-agency program supervised by MDA makes zero-interest loans to local units of government. These funds are in turn provided as low-interest loans to farmers and rural landowners to implement water pollution abatement projects. Loans may not exceed $50,000 each, and the maximum interest rate is set at 3.0 percent. Contact: MDA; 651-215-1018. http://www.mda.state.mn.us/AgBMP/moreinfo.html.
Sustainable Practices Shared Savings Loan Program	This MDA loan program uses a $1,000,000 revolving fund to make loans to farmers to support the transition to sustainable practices. Loans can be up to $15,000 per farmer, and the interest rate is 6.0 percent. Contact: MDA; 651-296-1277. http://www.mda.state.mn.us/esap/esaploan.htm.
Wind Energy Pilot Loan Program	This RFA program makes loans to full-time Minnesota farmers for the installation of a wind energy system. The RFA will carry up to 45 percent of the loan principal (maximum $500,000 per loan), and a local lender will service the balance. The current interest rate is 6.0 percent on the first $125,000 and 7.0 percent on the next $375,000. Contact: MDA; 651-282-2261. http://www.mda.state.mn.us/agfinance/energy.pdf.

For more information: Contact legislative analyst Sam Rankin at 651-296-5047.

HOUSE RESEARCH | Short Subjects

Sam Rankin

October 2002

The Ethanol Industry in Minnesota

Ethanol is an alcohol produced by the fermentation of starches. It can be used for beverages, industrial solvents and vehicles, sanitizers and disinfectants, and fuel. Ethanol can be blended in small proportions with petroleum gasoline as a fuel extender, and most unmodified engines can burn it. Advocates of the ethanol program cite numerous benefits from the increased production and use of ethanol in Minnesota. These include reduced air pollution from vehicles, less dependence on foreign oil, a market for some 122 million bushels of Minnesota grain, economic development in rural areas of the state, and employment opportunities both during plant construction and operation.

Due in large part to policy and financial support from the state and federal government, the production of ethanol in Minnesota has increased dramatically in recent years—from less than one million gallons in fiscal year 1987 to over 304 million gallons in fiscal 2002 (see figure 1). Starch from field corn is the principal feedstock for 13 ethanol plants in Minnesota.

Federal fuel tax discount for ethanol gasoline blend

In 1978, Congress enacted a law to eliminate the $0.04 per gallon fuel excise tax on blends of 10 percent ethanol and 90 percent gasoline. Because ethanol comprises only 10 percent of the fuel blend, the effective subsidy to the 200-proof ethanol component is $0.40 per gallon. The exemption for ethanol blends increased to $0.06 from 1987 to 1990, but since 1990 has remained at $0.054. In 1998, Congress extended the federal fuel tax exemption until 2008, but the rate of the incentive decreased to $0.053 in 2001, and is scheduled to decrease further to $0.052 in 2004, and to $0.051 in 2005.

Blender's tax credit

A 1980 Minnesota law reduced the state fuel tax on gasoline containing at least 10 percent ethanol by $0.04 per gallon. The fuel tax credit (usually called the blender's credit) was reduced over a period of years and finally phased out entirely in 1997. The blender's tax credit reduced revenues deposited in the highway user trust fund.

In 1983, the fuel tax on gasoline purchased for use in government vehicles or for school transportation was reduced by $0.08 per gallon. This credit also reduced revenues for highway construction and maintenance, and was repealed in 1998.

Producer payments

In 1986, the legislature created the "ethanol development fund" as a way to pay producers for ethanol produced. The original payment schedule was $0.15 per gallon of ethanol. The authorized amount has changed several times but typically has been $0.20 per gallon. Each plant is generally eligible for payments for ten years from the time a plant, or a plant expansion, comes on line, but not more than $3,000,000 per plant per year. The producer payment program is currently closed to new applicants, and payments to all plants are scheduled to terminate in 2010. The payment rate from 2004 to 2010 will be $0.19 per gallon.

Public education and ethanol promotion efforts

Each year from 1987 through 1998 the legislature appropriated funds (usually $100,000 per year) to the Department of Agriculture to educate the public about the benefits of ethanol fuel blends.

Direct state loans for start-up expenses

A 1993 law created the Ethanol Production Facility Loan Program to provide up to $500,000 in direct loans to assist new ethanol production facilities during the construction and production start-up phases. Seven of the plants currently operating in the state made use of these loans.

State loans for purchase of stock

A 1994 law authorized the Rural Finance Authority to make low interest loans to farmers for up to 45 percent of the cost of shares of stock purchased in a value-added agricultural product processing facility. Investors in seven of Minnesota's ethanol plants made use of these loans.

Tax increment financing arrangements

A number of communities have used tax increment financing (TIF) as an incentive for the construction of ethanol plants. In the early 1990s, the legislature enacted laws that made it easier to use TIF for ethanol projects.

Oxygenate mandate

The federal Environmental Protection Agency ordered the use of oxygenated gasoline in eight Minnesota counties during winter months beginning in 1992. In Minnesota the oxygenate of choice has been ethanol—rather than MTBE (methyl tertiary butyl ether), ETBE (ethyl tertiary butyl ether), and TAME (tertiary amyl methyl ether). The Minnesota Legislature linked several actions to the federal mandate in an effort to further promote the consumption of ethanol.

A 1991 law established mandatory use of oxygenated gasoline in air quality nonattainment counties after October 31, 1995. It also extended the mandate statewide after October 31, 1997. Later amendments of the law moved the oxygenate mandate up to 1992. In 1996, a further modification created exceptions to the statewide oxygenate mandate for motor sports racing, airports, marinas, motorcycles, off-road vehicles, small engines, and collector vehicles.

Direct costs to the state for the ethanol program derive primarily from the blender's tax credit and producer payments (see figure 2).

Figure 1
Ethanol Production in Minnesota

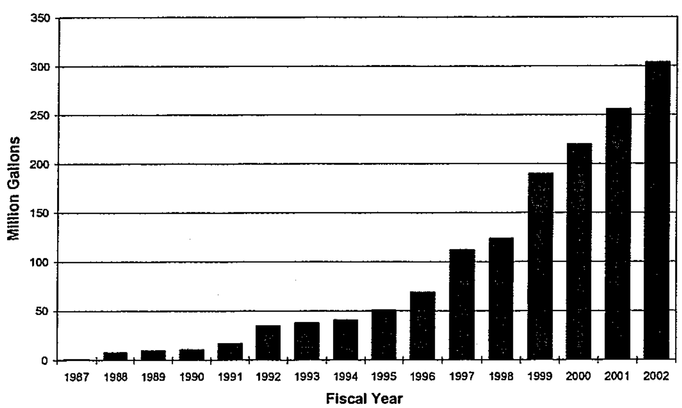
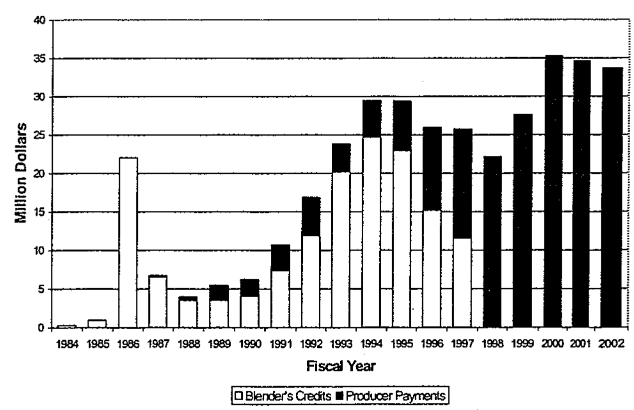


Figure 2
Direct Cost of Blender's Credit and Producer Payments



For more information: Contact legislative analyst Sam Rankin at 651-296-5047.

HOUSE RESEARCH | Short Subjects

John Williams

October 2002

Horse Racing and Pari-Mutuel Betting

Pari-mutuel betting on horse racing is one of the forms of gambling permitted in Minnesota.

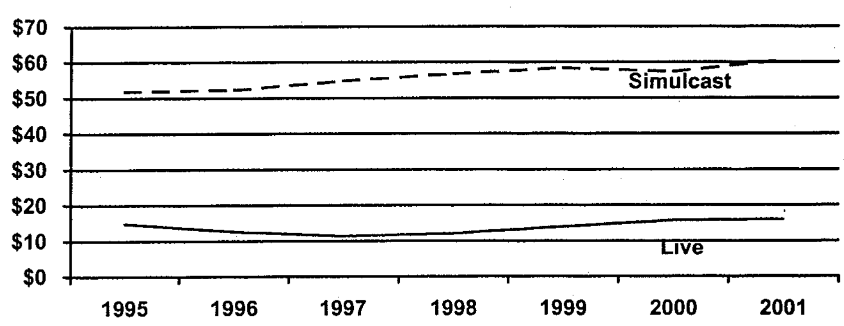
A brief history

Pari-mutuel betting on horse racing was authorized by a constitutional amendment approved by the voters in 1982. Implementing legislation was enacted in 1983 and Canterbury Downs opened near Shakopee as the state's first pari-mutuel racetrack in 1985.

The track was an early success, but subsequent expansions of legal gambling to include the state lottery and especially Indian casinos led to declines in attendance and betting. The track was sold by its original investors to Ladbroke Racing for much less than its original $80 million cost. Off-track betting was seen as the track's only long-term hope, but a 1991 law to allow it was declared unconstitutional by the Minnesota Supreme Court and a subsequent constitutional amendment to overturn the decision was defeated by the voters.

Canterbury Downs "went dark" in 1992 when the Minnesota Racing Commission refused to approve the 1993 simulcasting (betting on televised races from other states) calendar because of Ladbroke's refusal to guarantee live racing. The track stayed dark until 1995 when it was bought by local owners with a background in the Minnesota breeding industry. Since then the track (renamed Canterbury Park) has had slow but reasonably steady growth in attendance and betting, and both its profitability and its attractiveness to horse owners has been enhanced by the opening of the Canterbury card club in 2000.

Canterbury Park Pari-mutuel Handle
C. Y. 1995-2001 (in millions of dollars)



Kinds of betting allowed

The Minnesota Constitution allows the legislature to authorize "on-track pari-mutuel betting on horse racing." Pari-mutuel betting on dog racing or other kinds of racing is not allowed. As noted above, the courts have interpreted the constitutional language to prohibit off-track betting parlors and telephone account betting.

The pari-mutuel form of betting has bettors playing against each other, putting money into wagering pools. Minnesota allows traditional win-place-show betting, plus various "exotic" bets such as bets on multiple races in a day or multiple entries in a race.

Each type of bet in each race goes into a separate betting pool. The racetrack deducts a percentage called the "takeout" from each pool and distributes the remaining money to winning ticket-holders. In Minnesota the takeout is 17 percent on win-place-show pools and 23 percent on all other pools.

The racetracks

Canterbury Park is still Minnesota's only track with thoroughbred racing. It also conducts harness and quarterhorse racing. In recent years pari-mutuel betting on harness racing has also been conducted at the Traverse County Fair in Wheaton.

Card club

Since 2000 Canterbury Park has operated a card club where "nonbanking" card games, chiefly poker, have been played. Nonbanking games are games where the players play only against each other instead of against the house. Bets are limited to $30 on opening bets and $15 for raises.

From the racetrack's revenue from the card club, mainly derived from seat charges and a "rake" on wagers, ten percent of the first $6 million and 14 percent on amounts above $6 million are set aside for purses for live races at the track.. Ten percent of this set-aside goes to the Minnesota Breeders Fund (see below). In 2001 the card club raised $1.8 million for Canterbury purses and $200,000 for the Breeders Fund.

Taxes and contributions

State law imposes a tax of 6 percent on the takeout from all betting pools in excess of $12 million each year. Since the takeout at Canterbury Park has exceeded this figure by only a small amount in recent years, revenue from this tax has averaged less than $1 million annually since the track re-opened in 1995.

One percent of total pari-mutuel wagers (the pari-mutuel "handle") on live racing and 5.5 percent of handle on full-card simulcast racing are set aside for the Minnesota Breeders Fund, a fund established by law to promote the horse industry in Minnesota. The money is used for purse supplements for Minnesota-bred and Minnesota-foaled horses and for horse industry research and education. Money in the Breeders Fund is allocated among breeds in proportion to each breed's contributions to the fund. In 2001 total Breeders Fund revenue including card club contributions was just over $1 million.

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

HOUSE RESEARCH | **Short Subjects**

Linda Holmes **November 2002**

Minnesota's Do Not Call List

What is the Do Not Call list?

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

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

What calls will not be covered by the law?

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

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

How much do telemarketers pay for the list?

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

What else is covered under the bill?

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

What will happen if a federal Do Not Call list is established?

In that case, the Minnesota list will be provided to the federal agency administering the federal list so that these subscribers can be added to the federal list. Once that occurs, telemarketers who purchase the federal list do not need to purchase the state list.

What are the penalties for a violation?	The law is enforced by the Minnesota Department of Commerce, which has the authority to impose a civil penalty of up to $1,000 for each violation by a telemarketer. The law does not contain a private right of action that would allow a consumer to collect money from the telemarketer for a violation.
How does a consumer sign up?	Consumers can find additional information about signing up online on the Department of Commerce's web site, www.commerce.state.mn.us. Consumers can also sign up by calling the department at 1-800-921-4110.

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

HOUSE RESEARCH | Short Subjects

Judie Zollar

September 2002

Minnesota's Predatory Offender Community Notification Law

What is community notification?

Minnesota's community notification law requires assignment of risk levels to predatory offenders (i.e., sex offenders) who are required to register under Minnesota's predatory offender registration law. Based upon the risk level assigned to the offender, law enforcement must share certain information and may share other information about the offender with certain individuals and entities in the area where the offender lives, works, or attends school. This law aims to increase public safety by letting people know where these offenders are in the community.

Who is a predatory offender?

A predatory offender is an offender who is required to register under the predatory offender registration law, except for individuals who are required to register solely because of a juvenile delinquency determination. A person is treated as a predatory offender if the person has committed felony criminal sexual conduct or certain other designated sex crimes, kidnapping, or false imprisonment. These crimes are often referred to as predatory offenses. The law recognizes as predatory offenders those individuals who have committed these crimes under Minnesota law, federal law, or the law of other states. The law also requires registration of certain individuals who have been civilly committed as sexually dangerous persons or as mentally ill and dangerous, provided the person was charged with a predatory offense.

What are the various risk levels and what do they mean?

There are three risk levels, as follows:

- **Level I** offenders have a risk assessment score that indicates a low risk of reoffense.
- **Level II** offenders have a risk assessment score that indicates a moderate risk of reoffense.
- **Level III** offenders have a risk assessment score that indicates a high risk of reoffense.

What type of community notification occurs for the various risk levels?

The type of community notification that occurs depends on the risk level to which an offender has been assigned. The depth and breadth of the disclosure depends upon the level of danger posed by the offender, his or her pattern of offending behavior, and the need of community members for information to enhance individual and community safety. Notification for the three levels is as follows:

Level I Offenders. The law enforcement agency may maintain information about the offender within the agency and disclose it to other law enforcement agencies. The law enforcement agency also may disclose the information to any victims or witnesses to the offense committed by the offender. The agency must disclose information to victims of the offense who have requested disclosure and to adult members of the offender's immediate household.

Level II Offenders. The law enforcement agency may disclose the same information it may disclose on Level I offenders and it also may disclose information to agencies and groups the offender is likely to encounter. These agencies and groups include the staff members of public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender. The agency also may disclose information to individuals the agency believes are likely to be victimized by the offender based on the offender's pattern of offending or victim preference.

Level III Offenders. The law enforcement agency must disclose the information to the persons and entities who may receive notice about Level I and II offenders. In addition, the agency must disclose information to other members of the community whom the offender is likely to encounter, unless the agency determines that public safety would be compromised by the disclosure or that a more limited disclosure is necessary to protect the identity of the victim. When a Level III offender moves into a community, law enforcement typically holds a community meeting to provide information about the offender.

Are predatory offenders wanted" by the police?

Generally, no. Community notification is not part of the offender's punishment for an offense. Most sex offenders residing in the community have served the prison or jail time imposed on them and have been properly released to live in the community. Although many of these offenders are still under some form of correctional supervision (i.e., probation or supervised release), some are not.

Is it okay to take steps to try to get a predatory offender to leave the community?

No. The community notification law is a civil law aimed at furthering public safety and is not considered punishment. The harassment of individuals subject to community notification by community members could lead to a court deciding that the law is punishment and unconstitutional in certain cases; if this happened, Minnesota's ability to conduct community notification on predatory offenders would be significantly reduced.

How can I obtain information about level III offenders living in my community?

Information about Level III offenders is posted on the Department of Corrections website at www.doc.state.mn.us/level3/level3.asp. Your local law enforcement agency also may be able to provide you with information.

For more information: Contact legislative analyst Judie Zollar at 651-296-1554. Also see the House Research publication *Sex Offenders and Predatory Offenders: Minnesota Criminal and Civil Regulatory Laws*, October 2002.

HOUSE RESEARCH | Short Subjects

Judie Zollar

October 2002

Minnesota's Probation Delivery and Funding System

What is probation?

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

What is supervised release?

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

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

What is conditional release?

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

How are probation services provided and how are they funded?

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

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

The funding for counties participating in the CCA varies by jurisdiction. Services are paid for through a combination of state appropriations allocated according to a predetermined formula and county and other funds. In fiscal year 2001, the state contributed approximately 28 percent of funding in CCA counties and the county and federal government contributed 72 percent.

CPO Counties. Twenty-nine counties operate under a county probation officer model. In these counties, felony supervision is provided by the Department of Corrections, but the county supervises juveniles and misdemeanants. These counties supervise 13 percent of the state's offenders. In general, the county board appoints probation officers in these counties, but the court may appoint officers in some situations.

The state provides up to 50 percent of the funding for probation officer salary and benefits for supervision of misdemeanants and juveniles. Additional services may be purchased through the county board. The counties reimburse the state for 100 percent of the supervision costs in counties that contract for services with the DOC.

"DOC Counties." Fifty-six counties contract with the DOC for probation and supervised release services for all felons within the counties; 27 counties contract with the DOC for probation services for juveniles and misdemeanants. Thirteen percent of the state's offenders are supervised in this manner.

In those counties where the DOC provides services directly, the entire amount is funded by a direct state appropriation, without access to local funding. The DOC receives 100 percent reimbursement for supervision costs when counties contract with the DOC for services.

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

Judie Zollar **October 2002**

Minnesota's Racial Profiling Legislation

What is racial profiling?

The Minnesota Legislature defined racial profiling as any action initiated by law enforcement that relies upon the race, ethnicity, or national origin of an individual rather than:

- the behavior of that individual; or
- information that leads law enforcement to a particular individual who has been identified as being engaged in or having been engaged in criminal activity.

This definition includes use of racial or ethnic stereotypes as factors in selecting whom to stop and search. The definition of racial profiling specifically states that racial profiling does not include law enforcement's use of race or ethnicity to determine whether a person matches a specific description of a particular subject.

What is Minnesota doing to study racial profiling?

The 2001 Minnesota Legislature passed into law a voluntary statewide racial profiling study. Law enforcement agencies throughout the state are encouraged to participate through the use of incentives. The Commissioner of Public Safety is required to oversee the study, which focuses on traffic stops. The study requires collection of the following data for 12 months, the 2002 calendar year:

- the location of the stop;
- the date and time of the stop;
- the age, race/ethnicity, and gender of the driver;
- the traffic violation or reason for the stop;
- the disposition of a stop (arrest, citation, warning, or no action);
- whether a search was conducted of the driver, passengers, or vehicle;
- if a search was conducted, whether any contraband was discovered or seized and the nature of the contraband;
- whether the officer knew the race/ethnicity of the driver before the stop; and
- the law enforcement agency's code.

The Commissioners of Administration and Public Safety are required to retain a sufficiently experienced and independent organization or individual to oversee data collection, develop processes for analyzing the data, and analyze the data. This expert must report to the legislature by December 1, 2003, on its analysis of the data and its findings.

Are there any law enforcement policies in place to prevent racial profiling?

Yes. The 2001 legislation requires the Peace Officer Standards and Training Board (POST) to develop a model antiracial profiling policy. The policy must define racial profiling, identify the conduct that violates the law, and require officers to identify their department and provide their name or badge number during routine traffic stops. The 2001 law also requires state and local law enforcement agencies to establish and enforce written antiracial profiling policies that meet or exceed the requirements of the model policy. The POST board may inspect state and local agency policies to ensure compliance.

What else is the state doing to prevent racial profiling?

Learning Objectives for Peace Officers. The legislation requires the POST board to prepare learning objectives for training of peace officers (i.e., police officers) focused on avoiding racial profiling. Peace officer educational programs must include these learning objectives in their required curriculum. In addition, the POST board must evaluate and monitor in-service training courses to ensure they satisfy the learning objectives.

Training Materials for Supervisory Law Enforcement Officers. The POST board is required to prepare training materials to provide supervisory law enforcement officers with information on how to detect and respond to racial profiling by peace officers. These materials must include information on federal and state constitutional and statutory laws prohibiting discrimination by law enforcement. The training materials must address both the agency's antiracial profiling policy and procedural components aimed at eliminating racial profiling.

Regional Training Seminars. The law requires the POST board to conduct regional training seminars throughout the state on racial profiling issues unique to specific regions of the state. These seminars also must promote a community-oriented response to the issue of racial profiling.

Licensure Requirements for New Officers. The 2001 law prohibits an individual from taking a peace officer licensing exam on or after June 1, 2002, unless the individual has received preservice training on avoiding racial profiling, and the individual has completed a psychological evaluation demonstrating that the individual is not likely to engage in racial profiling.

Minority Recruitment and Law Enforcement Diversity. The 2001 legislation requires the chief of the state patrol to identify measures to recruit minorities and increase their representation in the state patrol. Other changes to the law aim to increase the diversity of law enforcement officers in the state. These changes allow a person with a baccalaureate degree from an accredited college or university who has successfully completed a board-certified practical skills-oriented basic training course to take the peace officer licensing examination. In addition, a person who has five or more years of active duty military police service who has been honorably discharged from the military is eligible to take the reciprocity exam for police officer eligibility.

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

Judie Zollar

October 2002

Overview of Criminal Sexual Conduct Crimes

What is "criminal sexual conduct"?

Minnesota law classifies the crime of criminal sexual conduct into five categories: first- through fifth-degree criminal sexual conduct, with first-degree carrying the most severe penalties and fifth-degree the least. Minn. Stat. §§ 609.342 to 609.3451. Generally speaking, the first-degree and third-degree crimes apply to sexual conduct involving sexual **penetration** of the victim; the second-, fourth-, and fifth-degree crimes apply to sexual conduct involving sexual **contact** with the victim without sexual penetration.

Criminal sexual conduct in the first and second degree typically apply to conduct involving personal injury to the victim; the use or threatened use of force, violence, or a dangerous weapon; or victims who are extremely young. Criminal sexual conduct in the third, fourth, and fifth degree typically address less aggravated conduct and apply to other situations in which the victim either did not consent to the sexual conduct, was relatively young, or was incapable of voluntarily consenting to the sexual conduct due to a particular vulnerability or due to the special relationship between the offender and the victim.

Penalties Applying to Criminal Sexual Conduct

Name of crime	Type of activity	Maximum penalty provided by statute	Presumptive Sentencing Guidelines sentence (no criminal history)
1st degree criminal sexual conduct	Sexual penetration; certain sexual contact with victim under 13 years old	30 years; $40,000 fine	86 months in prison for penetration; 48 months in prison for contact with victim under age 13. Statutory law presumes an executed sentence of 144 months for all violations
2nd degree criminal sexual conduct	Sexual contact	25 years; $35,000 fine	48 months in prison; 21 months stayed sentence for "statutory rape."* Statutory law presumes an executed sentence of 90 months for crimes where the perpetrator uses or threatens to use force or violence, causes injury, uses a dangerous weapon, or creates significant fear on the part of the victim of imminent great bodily harm
3rd degree criminal sexual conduct	Sexual penetration	15 years; $30,000 fine	48 months in prison; 18 months stayed sentence for "statutory rape"*
4th degree criminal sexual conduct	Sexual contact	10 years; $20,000 fine	21 months stayed sentence; 12 months stayed sentence for "statutory rape"*
5th degree criminal sexual conduct	Sexual contact; certain lewd conduct	One year; $3,000 fine (gross misdemeanor). Certain repeat violations punishable by 5 years; $10,000 fine	Sentencing guidelines do not apply to gross misdemeanor violations; felony violations are not ranked in sentencing guidelines and sentencing is left to court's discretion

* As used in this chart, "statutory rape" means a criminal sexual conduct crime that has the following elements: (1) sexual conduct; (2) a victim of a certain age; and, for certain crimes, either (3) a familial relationship between the actor and the victim; or (4) use of a position of authority by the actor. The term "statutory rape" is not a statutory term.

What other mandatory sentencing provisions apply?

Convicted predatory offenders also are subject to certain mandatory sentencing laws that are designed to minimize their recidivism risk.

Minimum Conditional Release Term. If a court sentences a felony-level sex offender to prison, the court must also sentence the offender to serve a minimum period of "conditional release" after release from prison. The mandatory conditional release periods are five years for first-time offenders and ten years for repeat offenders.

Mandatory Predatory Offender Assessment and Treatment. The court must order a predatory offender treatment assessment for any person convicted of criminal sexual conduct (any degree), surreptitious intrusion, obscene phone calls, or indecent exposure. The court may waive the assessment if the offender is eligible for a presumptive prison sentence or has already been assessed. If the assessment indicates the offender is in need of and amenable to treatment, the court must order the offender to undergo treatment if the court places the offender on probation.

What other laws are predatory offenders subject to?

There are a number of laws to which predatory offenders are subject. The purpose of these laws is to aid law enforcement in detection of crime and to further public safety.

DNA Analysis. The court must order persons convicted of or adjudicated delinquent for a sex offense to provide a biological sample for DNA analysis. This requirement also applies to persons convicted of other violent crimes listed in the law. If an individual was not ordered to provide this specimen at the time of sentencing, the offender must provide the specimen before release.

Predatory Offender Registration. The Predatory Offender Registration (POR) law is a system under which an individual convicted of predatory offenses (i.e., sex offense) is required to register with the Bureau of Criminal Apprehension (BCA) for a period of time, usually ten years. The law applies both to adults and juveniles.

Community Notification. The Community Notification law requires assignment of a risk level to predatory offenders (i.e., sex offenders) who are required to register under the Predatory Offender Registration law. Based upon the offender's risk level, law enforcement must share certain information and may share other information about the offender with certain individuals and entities in the area where the offender lives, works, or attends school.

For more information: Contact legislative analyst Judie Zollar at 651-296-1554. Also see the House Research publication *Sex Offenders and Predatory Offenders: Minnesota Criminal and Civil Regulatory Laws*, October 2002.

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**

Judie Zollar

October 2002

Predatory Offender Registration

What is the predatory offender registration law?

The Predatory Offender Registration (POR) law is a system under which an individual convicted of a predatory offense (i.e., sex offense) is required to register with the Bureau of Criminal Apprehension (BCA) for a period of time, usually ten years. Minn. Stat. § 243.166. The law applies both to adults and juveniles. The law's purposes include assisting law enforcement in keeping track of predatory offenders and protecting public safety.

Who must register?

The POR law requires registration of individuals who have committed certain crimes under Minnesota law, federal law, or the law of other states. The law also requires registration of individuals who have been civilly committed as sexually dangerous persons, sexual psychopathic personalities, or mentally ill and dangerous, provided the person was charged with one of the offenses listed below.

An offender must register under the law if charged with and convicted of one of the following offenses or another offense arising out of the same set of circumstances: murder while committing or attempting to commit criminal sexual conduct in the first or second degree with force or violence; kidnapping; criminal sexual conduct in the first, second, third, fourth, and fifth (felony only) degree; felony indecent exposure; false imprisonment of a minor; soliciting a minor to engage in prostitution or sexual conduct; using a minor in a sexual performance; and possessing pictorial representations of minors.

What information must a predatory offender provide under the POR law?

An individual who is required to register must provide the following information to the person's corrections agent or to law enforcement:

- the address of the person's primary residence;
- the addresses of all of the person's secondary Minnesota residences, including all residences used for residential or recreational purposes;
- the addresses of all Minnesota property owned, leased, or rented by the person;
- the addresses of all locations where the person is employed;
- the addresses of all residences where the person resides while attending school; and
- the year, model, make, license plate number, and color of all motor vehicles owned or regularly driven by the person.

How does law enforcement know if a person is providing accurate information?

The POR law aims to ensure information on offenders is current and accurate by requiring offenders to notify their corrections agents or law enforcement whenever any of the registration information they have provided changes. In addition, the BCA sends out verification letters to offenders annually. The offender must sign and return the form within ten days of receipt of the form, stating the offender's current and last address. For offenders who are required to register because they were committed as sexually dangerous persons or sexual psychopathic personalities, the BCA must verify residence four times a year. In addition to these requirements, many local law enforcement agencies send police officers out to check on offenders in person to ensure they are living where they say they are.

Is there a penalty for an offender's failure to follow the POR law?

Yes. A person who knowingly violates any of the provisions of the registration law or who intentionally provides false information to a corrections agent, law enforcement authority, or the BCA is guilty of a five-year felony. The POR law provides a mandatory prison sentence of one year and one day for a first offense and not less than two years for a subsequent offense.

For how long must an offender register?

Except for those persons subject to lifetime registration, a person who is required to register is subject to the law for ten years from the time he or she initially registered in connection with the offense, or until the probation, supervised release, or conditional release period expires, **whichever occurs later**. For individuals who have been civilly committed, the ten-year registration period does not include the period of commitment. In addition, a new ten-year registration period applies to a person subsequently incarcerated for a violation of supervised release, conditional release, or probation for the offense for which he or she is required to register or for any new offense. These individuals must continue to register until ten years have elapsed since they were last released from incarceration, or until their probation, supervised release, or conditional release expires, whichever occurs later.

Who is subject to lifetime registration?

Lifetime registration is required for three categories of individuals.

- **Recidivists.** This category includes a person convicted of or adjudicated delinquent for any offense for which registration is required who has a prior conviction or adjudication for an offense where registration was or would have been required under the law.

- **Individuals Who Commit Aggravated Offenses.** This category includes a person who commits a sexual act, including, but not limited to penetration, with a victim of any age through the use of force or the threat of serious violence and a person who commits a sexual act, including but not limited to penetration, with a victim under the age of 13.

- **Sexual Predators.** This category includes a person who is required to register following commitment as a sexual psychopathic personality or sexually dangerous person.

For more information: Contact legislative analyst Judie Zollar at 651-296-1554. Also see the House Research publication *Sex Offenders and Predatory Offenders: Minnesota Criminal and Civil Regulatory Laws*, October 2002.

Judie Zollar

October 2002

Prohibition Against *Ex Post Facto* Laws

What is an *ex post facto* law?

The state is expressly prohibited from enacting an *ex post facto* law by article I, section 10 of the United States Constitution and article 1, section 11 of the Minnesota Constitution.. An *ex post facto* law is one that (1) applies to events occurring before its enactment, and (2) disadvantages the person affected by it. The purpose of this limitation is to ensure that individuals have fair warning of legislative acts that could operate to their disadvantage.

An *ex post facto* law is one that has the purpose or effect of creating a new crime, increasing the punishment for an existing crime, depriving a defendant of a defense available at the time the act was committed, or otherwise rendering an act punishable in a different, more disadvantageous manner than was true under the law at the time it was committed.

A law is not *ex post facto* if it merely changes trial procedures or rules of evidence and operates in only a limited and unsubstantial manner to the accused's disadvantage. In addition, a law is not *ex post facto* if it is a civil, regulatory law and is not sufficiently punitive in purpose or effect to negate the civil label.

How do courts determine whether a law is punitive?

A law is punitive if the legislature intended to punish an offender for a past act and the law indeed functions as punishment. In situations where the legislature does not state whether a statute is intended to be punitive or regulatory, the court considers a number of factors. These factors are whether:

- the sanction involves an affirmative disability or restraint,
- the sanction has historically been regarded as a punishment,
- the sanction comes into play only on a finding of scienter,
- the sanction's operation will promote the traditional aims of punishment—retribution and deterrence,
- the behavior to which the sanction applies is already a crime,
- an alternative purpose to which the sanction may rationally be connected is assignable for it, and
- the sanction appears excessive in relation to the alternative purpose assigned.

Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168-69 (1963). In the criminal context, "scienter" refers to a person's state of mind or knowledge of wrongdoing.

What types of laws have been found to violate the *ex post facto* clause?

The following cases are examples of laws found by Minnesota courts to violate the *ex post facto* clause or potentially raise *ex post facto* concerns:

- An 18-year-old may not be prosecuted in adult court for a crime committed before the effective date of a law eliminating juvenile court jurisdiction over offenders between the ages of 18 and 21.
- An offender's "criminal history score" under the sentencing guidelines may not include a felony point for a previous out-of-state crime which, at the time it was committed, was equivalent to a gross misdemeanor crime under Minnesota law.

- An offender's sentence may not include court-ordered restitution in addition to an executed sentence because the law in effect at the time of defendant's crime did not authorize the imposition of both these sanctions together.

- A statutory defense to a crime may not be eliminated retroactively.

What types of laws have survived an *ex post facto* challenge?

The following cases describe situations where the court found no *ex post facto* violation.

- Previous DWI convictions may be used to elevate a defendant's current DWI offense from a misdemeanor to a gross misdemeanor under a new law increasing penalties for repeat offenders.

- Criminal statute of limitations may be lengthened and applied to crimes committed before the effective date of the change if prosecution of that crime was not time-barred as of the new law's effective date.

- A new law allowing the docketing of court-ordered restitution orders as civil judgments may be applied constitutionally to a defendant who committed the crime before the new law's effective date but who was sentenced after the effective date.

- A new law eliminating the applicability of the medical privilege to certain evidence in child abuse cases is not *ex post facto* as applied to proceedings concerning crimes committed before the law's effective date. The law merely affects the type of evidence that is admissible; it neither creates a new crime nor changes the standard of proof.

- Application of a new law providing state procedures for imposing federal firearms restrictions on convicted offenders does not violate the *ex post facto* clause because (1) the provision does not create a new crime or impose a harsher punishment, and (2) the defendant was on constructive notice before the new law was enacted that he would be subject to even harsher federal restrictions if convicted for his ongoing criminal acts.

- A new law requiring a defendant to pay extradition costs does not violate the *ex post facto* clause because its purpose is to reimburse the state for its expenses, not to punish the defendant.

- Laws permitting the civil commitment of sexually dangerous persons and requiring sex offenders to register their living address with law enforcement authorities do not violate the *ex post facto* clause because these laws are civil, regulatory laws that are not sufficiently punitive in purpose or effect so as to negate their civil label.

For more information: Contact legislative analyst Judie Zollar at 651-296-1554 for information on *ex post facto* issues, including case law citations for the examples provided in this document.

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

Judie Zollar

October 2002

The Fourth Amendment: Search and Seizure Law

What is the Fourth Amendment?

The Fourth Amendment of the United States Constitution protects individuals against unreasonable searches and seizures by law enforcement officers. The Fourth Amendment of the United States Constitution provides:

> *The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*

Article I, section 10, of the Minnesota Constitution is nearly identical to the Fourth Amendment, but the Minnesota Supreme Court has at times afforded individuals greater protection against unlawful searches and seizures under the Minnesota Constitution than that available under the Federal Constitution. Protection of the home is at the core of the Fourth Amendment, but protection also applies to persons, papers, and effects.

To what conduct does the Fourth Amendment apply?

The Fourth Amendment applies only to certain situations. In general, the question of whether the Fourth Amendment applies turns on whether a person has a reasonable expectation of privacy in a particular situation. Whether a person has a reasonable expectation of privacy turns on both a subjective and objective analysis. First, the individual must have a subjective intent to keep something private. Second, and more importantly, the expectation must be one that society is willing to recognize as reasonable.

To analyze further whether the Fourth Amendment applies, the analysis must address the place searched, the person doing the search, the person being searched, and the reason for the search.

What protection does the Fourth Amendment provide?

Central to the Fourth Amendment is its charge that police act reasonably when they engage in search or seizure activities. In general, for a search or seizure to be reasonable, it must be supported by a warrant issued by a neutral and detached magistrate or judge who has determined probable cause exists to support a particular search or seizure. As defined by the United States Supreme Court, "[p]robable cause exists where 'the facts and circumstances within [the police officer's] knowledge, and of which they had reasonable trustworthy information, [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed." *Brinegar v. United States*, 338 U.S. 160 (1949).

In some cases, the Supreme Court has found searches and seizures to be constitutional absent a warrant, provided the conduct passes a reasonableness test. Under this test, the Court balances the government interest in investigating crime against the extent of the intrusion into a person's privacy. Because the sanctity of the home is given significant Fourth Amendment protection, the Court is more inclined to require a warrant for a search of a home. When the Court is dealing with encounters on the streets or in public places, however, the Court often applies a reasonableness test to assess whether a search or seizure is constitutional. This approach provides greater investigational efficiency, but less Fourth Amendment protection.

The United States Supreme Court has recognized many clear exceptions to the warrant requirement; in these cases, a search or seizure is deemed reasonable and constitutional absent a warrant provided probable cause and certain circumstances exist. In some situations, a limited search or seizure is deemed reasonable absent a warrant and with a level of suspicion lower than probable cause, provided the police have an articulable suspicion to believe criminal activity is afoot.

What are the exceptions to the warrant requirement?

Courts have recognized numerous exceptions to the warrant requirement, including:

- *exigent circumstances*, or the need to engage in a search or seizure immediately due to an emergency situation where life and/or safety is at risk;
- *search incident to a lawful arrest* to locate and seize weapons and thereby protect the arresting officer and prevent the destruction of evidence;
- the *automobile exception* to seize and search an automobile based upon the exigency present due to the mobility of a vehicle before a warrant can be obtained;
- the *container exception* to search a container in an automobile based upon the same exigency present with the automobile exception, but if the container is not in an automobile, the police may seize (based on exigency due to mobility of container), but may not search, the container;
- *consent* when the police have a reasonable assumption that the party granting consent has lawful authority to do so and the consent is voluntary; and
- the *plain view/plain feel doctrine*, which allows the seizure of evidence when there has been a prior valid intrusion into a constitutionally protected area, an item is spotted in plain view or is within "plain feel," and there is probable cause to believe the item is evidence.

In what situations will an articulable suspicion support a search or seizure?

Limited searches and seizures based upon articulable suspicion are really exceptions to the warrant requirement. In order to exercise the exception, law enforcement must have an articulable suspicion that criminal activity is afoot. This exception stems from the United States Supreme Court case, *Terry v. Ohio*, and is referred to as the *Terry* exception. *Terry v. Ohio*, 392 U.S. 1 (1968). The exception authorizes a limited seizure or stop, usually briefer than a full-blown arrest and at the location where the stop occurred. The search authorized under *Terry* is based on officer safety. For the search to be justified, the officer must have some articulable suspicion that the individual may be armed, and the officer may conduct only a pat-down of the person's clothing (i.e., a "frisk").

What is the remedy for violation of a person's Fourth Amendment rights?

A person who has been subjected to an unreasonable search or seizure may challenge the action and seek suppression of any evidence obtained as a result of the unlawful action. With limited exceptions, the evidence that may be suppressed includes both the evidence directly discovered as well as any other evidence police are led to as a result of obtaining information unlawfully. A person whose Fourth Amendment rights have been violated may also bring a civil rights lawsuit under federal law for damages and/or injunctive relief, provided the person can satisfy certain requirements.

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

HOUSE RESEARCH | Short Subjects

Jeffrey P. Diebel

October 2002

The Minnesota Anti-Terrorism Act of 2002

What anti-terrorism laws did the legislature enact during the 2002 legislative session?

During the 2002 legislative session, the Minnesota Legislature enacted the Minnesota Anti-Terrorism Act of 2002. The act:

- creates a Homeland Security Advisory Council;
- permits counties to issue bonds for the purchase of public safety radio equipment;
- increases the fee for 911 service in order to fund statutory obligations, public safety access points (PSAPS), and an interconnected state radio system;
- creates a governance structure for administering funds for the interconnected state radio system;
- requires collection of DNA samples from certain felons;
- amends the murder in the first degree statute to include causing death while furthering terrorism;
- amends the criminal damage to property statute by adding a specific offense for damage to critical public service facilities;
- creates the new crimes of trespass on critical public service facilities, weapons of mass destruction, and furthering terrorism; and
- appropriates money for anti-terrorism training and terrorism response-related purposes.

What are the major policy provisions in the act?

Homeland Security Advisory Council. The act establishes the Homeland Security Advisory Council to advise the Department of Public Safety on issues relating to homeland security, to review and recommend changes to all terrorism preparedness and anti-terrorism policies and procedures, and to ensure coordination of and accountability for all state and federal anti-terrorism and terrorism preparedness-related funding.

Public safety radio system planning committee. The act requires the Commissioner of Public Safety to convene and chair a public safety radio system planning committee. The committee must implement a project plan and establish a statewide, shared trunked radio system. The committee must submit a status report by November 15, 2002, and a project plan by January 15, 2003.

Murder in the first-degree. The act expands the murder in the first-degree crime to include causing the death of a person while committing, attempting to commit, or conspiring to commit a felony crime to further terrorism and the death occurs under circumstances manifesting an extreme indifference to human life.

New crimes. The act creates the crimes of:

- causing damage to property of critical public service facilities, utilities, and pipelines;
- trespassing on property of critical public service facilities, utilities, and pipelines;
- real and simulated weapons of mass destruction; and
- crimes committed in furtherance of terrorism.

What are the major funding provisions in the act?

The act appropriates $13 million to the Commissioner of Public Safety. The major funding provisions cover:

Equipment. Allocates $3,750,000 to purchase terrorism response-related equipment. The allocation is for grants to local and state response units for the purchase of personal protection equipment, chemical detection and measurement equipment, and decontamination equipment. Grant applicants must provide a 25 percent match.

Training. Allocates $7,500,000 to terrorism response-related training.

Bomb disposal squads. Allocates $250,000 for the reimbursement of bomb disposal units.

Hazardous materials emergency response teams. Allocates $240,000 for the conversion of the Rochester, Moorhead, and Duluth chemical assessment teams to combination emergency response/chemical assessment teams.

Capitol security. Allocates $600,000 to fund increased security of the Capitol Complex.

Minnesota Emergency Medical Services Regulatory Board. Allocates $400,000 to medical resource control centers.

What major issues did the legislature consider but ultimately not enact?

As part of the anti-terrorism act debate, the legislature considered changes to the laws regulating wiretaps, drivers licenses for foreign visitors, open meetings, and the governor's emergency powers, but elected to leave the laws as they stand. The legislature also debated the merits of, but did not act upon, background checks for crop dusters, a biological agents registry, and registration of drivers of hazardous materials

Did the legislature enact any other legislation related to terrorism?

Yes. The legislature enacted the Minnesota Emergency Health Powers Act. The act specifies the powers and duties of the governor and the Commissioner of Health during public health emergencies. See the House Research publication, The Minnesota Emergency Health Powers Act, September 2002.

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

HOUSE RESEARCH | Short Subjects

Don Hirasuna

October 2002

Explanations for Economic Growth

Various theories have been advanced to explain the growth of state or regional income and employment. These theories have been used to justify economic development-related state and local policies.

Export base and traded industries

Some have suggested that exports are a key contributor to economic growth. Goods and services sold outside the state (whether to another state or internationally) bring in dollars that can be used to purchase other goods and services. Traditionally, the agriculture, mining, and manufacturing sectors were commonly recognized as export industries. Recently, several services-producing industries are increasingly recognized as export capable. Also, international trade economists suggest that increased trade, both exports and imports, may lead to income growth.

Local specialization and a high-tech economy

Some suggest local specialization through large-scale employment or production might result in faster economic growth. This specialization may be in a single similar grouping of industries or in several industry clusters. Clustering may result in faster economic growth for several reasons including:

- Increasing face-to-face communication by employees from nearby businesses (e.g., exchanging information on innovative products)
- Fostering collaboration or increasing competition
- Attracting input suppliers and thereby lowering transportation costs

Discussions on local specialization often include high technology and biotechnology industries. Silicon Valley and other regions that specialized in highly skilled economic activities might have produced higher increases in income. However, there is some evidence, at least for Minnesota, that a diverse set of industries resulted in greater economic growth. This does not imply that Minnesota regions would not benefit from more employment in high-skill, high technology production. It does suggest that too much specialization may not result in sustained economic growth.

Global cities and the changing role of central places

Geographers have long discussed the interconnected roles of larger and smaller cities. Larger urban cities provide goods and services to smaller cities. Larger cities cover a broader market area and can sell those rare, hard-to-find goods and services. Smaller cities distribute more commonly consumed items.

Recent discussions suggest that the role, at least for the largest cities, may be changing. *There may have been an emergence in economic activity for world-class cities.* Cities like New York, Chicago, and Los Angeles that trade with one another across the globe and provide goods and services over a larger market area. Companies actively engaged in international trade locate in these cities because they have access to a large number of highly skilled workers. To the extent that these global cities are developing, there may be implications for smaller cities as well. Trade of a different type may be occurring in these smaller cities.

Skilled occupations and career ladders

Some suggest that public policies should focus on increasing the number of highly skilled workers based on trends in the economy, including:

- The increased demand for skilled workers
- Growth in services-producing employment
- Growth in high-technology employment which cuts across goods and services
- Large cities with large pools of skilled labor may have a prime economic advantage
- Evidence that the proportion of highly educated workers within a region results in a faster rate of economic growth.

Also, persons with higher educational attainment rates usually have higher incomes. However, research is needed to identify cost-effective ways to increase the skills of workers already in the labor force.

The rise of the creative class

Some prominent economic development scholars have suggested that it's not just knowledge, but creativity that is needed for economic growth. The creation of innovative ways to manufacture a good, manage a team, or produce a new product is what generates income and jobs. *Some suggest that communities that foster creative efforts in the arts and other endeavors will more likely adopt creative innovations in business.* This is a relatively new idea, which is beginning to be researched by economic development experts.

Colleges and universities

Universities and colleges may serve as centers for research, private-sector collaboration, and labor training. Research conducted within a university might result in new production processes, or new products, which generate income and jobs for the local economy. Some of this research might even be done in collaboration with private sector businesses. Labor training might also increase income by increasing the productivity of workers. There is evidence, although somewhat contested, that the benefits of research may first go to local areas.

Roads, telecommunications, and other infrastructure

Historically, many cities grew at the intersection of transportation routes. Minneapolis served as a useful intersection between railroad and barge traffic. Duluth is the westernmost port of the Great Lakes. More recently, the interstate highway system may have enhanced growth in some Minnesota cities. *Today some suggest that besides roads, access to telecommunications may enhance economic growth.* There is some evidence that roads can increase productivity, but more research is needed for how telecommunications affects productivity.

Amenities—Making the area an enjoyable place to live

Access to parks, restaurants, musical events, casinos, theatres, museums, and festivals may make a difference. Some suggest that persons migrate because of the amenities offered in the area. Also, such amenities may help bring tourists into the region. As in other policies, the benefits of creating and maintaining these amenities must be weighed against their costs.

For more information: Contact legislative analyst Don Hirasuna at 651-296-8038.

HOUSE RESEARCH | Short Subjects

Don Hirasuna

October 2002

Rural and Urban Economic Growth in Minnesota

Minnesota's economy underwent many changes in the 1990s. Two important indicators of economic growth are per capita incomes and poverty. This short subject summarizes county level changes in these economic measures.

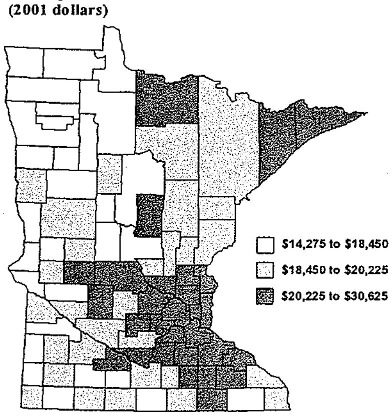
Growth in per capita income

Minnesota per capita real income increased from $20,551 in 1990 to $24,660 in 2000, a 20.0 percent increase. The five counties with the highest per capita incomes in 2000 were: Hennepin ($30,603), Carver ($30,281), Washington ($29,922), Dakota ($28,710), and Scott ($28,083).

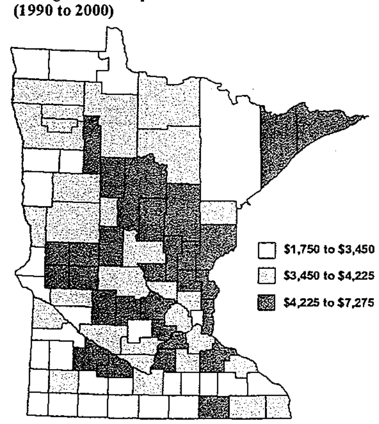
On average, per capita incomes in nonmetropolitan counties grew by a larger percentage than in metropolitan counties (nonmetro 25.9 percent, Twin Cities 19.4 percent, other metro 23.1 percent). The five counties with the highest percentage change in real per capita income are: Pope (up 49.7 percent to $20,231), Aitken (up 43.1 percent to $18,973), Cass (up 42.3 percent to $18,272), Hubbard (up 41.5 percent to $19,257), and Clearwater (up 39.7 percent to $16,683).

In pure dollar amounts, the opposite is true. Metropolitan counties increased by the largest amount (Twin Cities by $4,444, other metropolitan counties by $4,039, and nonmetropolitan counties by $3,879). The five counties with the highest increase in real per capita incomes were: Carver (up $7,264 to $30,281), Pope (up $6,713 to $20,231), Scott (up $6,173 to $28,083), Cook (up $5,913 to $23,147), and Aitken (up $5,718 to $18,973).

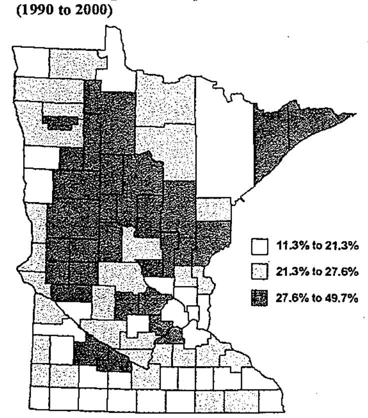
Per Capita Real Income in Year 2000 (2001 dollars)



Change in Per Capita Real Income (1990 to 2000)



Percent Change in Per Capita Real Income (1990 to 2000)

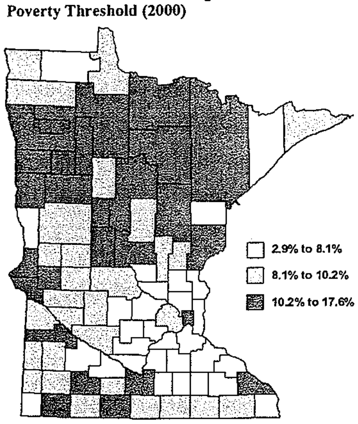


Changes in the rate of poverty

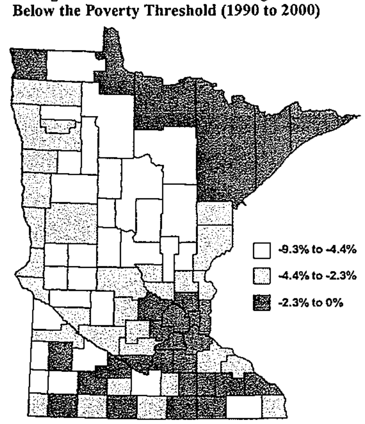
In 2000, the percentage of individuals living below the poverty threshold was 7.9 percent. This is a 2.3 percentage point reduction from 1990. The counties with the five highest rates of poverty were: Beltrami (6.8 percent), Mahnomen (16.5 percent), Clearwater (14.8 percent), Wadena (13.7 percent), and Cass (13.4 percent).

Nonmetropolitan counties experienced larger percentage point reductions in poverty than metropolitan counties (nonmetropolitan, 3.9 percentage points; Twin Cities, 1.4 percentage points; other metropolitan counties, 2.3 percentage points). The counties with the five largest reductions in the percentage of persons living in poverty were: Mahnomen (9.0 percentage points), Cass (7.8 percentage points), Wadena (7.5 percentage points), Hubbard (7.4 percentage points), and Clearwater (7.3 percentage points).

Percent of Individuals Living Below the Poverty Threshold (2000)



Change in Percent of Persons Living Below the Poverty Threshold (1990 to 2000)



Data comes from the 1990 and 2000 censuses. Incomes were updated to 2001 dollars using the consumer price index for all urban consumers in the United States for the years 1999 and 1989. The census lists incomes from the previous year. The Twin Cities is the seven-county definition of the metropolitan area.

For more information: Contact legislative analyst Don Hirasuna at 651-296-8038.

HOUSE RESEARCH | Short Subjects

Lisa Larson

October 2002

Access to Student Records

Public schools collect a lot of student information

Public schools collect a lot of information about students. School records often contain detailed information about a student's health and physical condition, aptitude scores, achievement and psychological tests, comments by school counselors and teachers, notes on interviews with parents and students, reports by social workers, delinquency reports, samples of students' work, and autobiographies. Some records may indicate a student's race, religion, and national origin or include completed questionnaires for research projects.

Federal Family Educational Rights and Privacy Act protects the privacy of students' education records

The Federal Family Educational Rights and Privacy Act (FERPA) generally provides that education data in students' records are private, and parents largely control access to the data. Parents' rights regarding their children's records often transfer to the student at age 18 unless the student remains a dependent for tax purposes. Schools must notify parents and students of their rights under the law. FERPA allows schools to disclose education data without parents' consent under some circumstances. It sets minimum data practices standards that states may make more stringent if there is no conflict with federal law. FERPA applies to all public and private schools that receive applicable federal education funds, and schools that violate FERPA can lose their funds. Individuals cannot sue under the act.

Parents must consent to disclosing students' records

FERPA generally prohibits schools from disclosing education records or other personally identifiable information about a minor student without the parent's written consent. An effective written consent requires the parent to state that the student's education record may be disclosed, the purpose of disclosing the record, and the person(s) to whom the disclosure may be made. A parent may consent to release the education records of a minor student to anyone the parent indicates.

Parents may inspect and review students' records

FERPA gives parents the right to inspect and review their students' education records. School districts annually must publish and distribute or post the procedures by which parents may access a student's records. Schools need not provide copies of materials in education records unless a parent cannot inspect the records personally. Schools may charge a fee for providing copies of records.

Parents may ask a school to correct inaccurate records

FERPA allows parents to ask a school to correct education records they believe are inaccurate or misleading. If the school refuses to change the records, parents have the right to a formal hearing. If the school refuses to correct the records after the hearing, a parent may place written comments about the contested information in the records.

Schools may disclose records without consent if a statutory exception applies

FERPA allows schools to disclose education records without parents' consent to:

- school officials in the student's school district who have a legitimate educational interest in the information
- another school to which a student is transferring
- parents when a student over 18 is still a dependent
- certain government officials in order to carry out lawful functions
- appropriate parties in connection with financial aid to a student
- organizations doing certain studies for the school
- accrediting organizations
- individuals who have obtained court orders
- persons who need to know in cases of health or safety emergencies
- juvenile justice system

Schools may disclose directory information to anyone

Directory information such as a student's name, address, and telephone number is public information that generally is not considered harmful or an invasion of privacy if disclosed. Schools may disclose directory information to anyone without a parent's consent. Schools decide what information to designate as directory information. Schools must tell parents that they can refuse to let the school designate information about their student as directory information. A school may not charge for access to directory information but may charge for a copy of the information.

The Government Data Practices Act regulates data practices in Minnesota

FERPA sets only minimum data practices standards and allows states to enact more stringent laws that do not conflict with FERPA. The Minnesota Government Data Practices Act under Minnesota Statutes, chapter 13, regulates government practices involving data. Minnesota law adopts FERPA provisions and includes some additional restrictions and requirements on the sharing of educational data. Under the data practices law, "educational data" is "private data on individuals" and is available only to its subject, the student. Schools cannot disclose education records or other personally identifiable information unless a sufficiently mature student or the student's parent gives written consent or a federal or state exception applies.

There are several differences between federal and state law

The Minnesota Government Data Practices Act differs from FERPA in several ways, by:

- requiring a school to give its students a warning, often called the Tennessen warning, any time it collects private or confidential data about the student
- allowing a minor student to give informed consent to disclose educational data in some circumstances
- allowing a minor student to request that a school deny the student's parents access to educational data about the student
- releasing education records subject to a court order but not a subpoena
- prohibiting parents from inspecting teachers' desk notes but allowing parents to inspect the desk notes of other school personnel

For more information: Contact legislative analyst Lisa Larson at 651-296-8036. Also see the House Research publication *Federal and State Laws Governing Access to Student Records*, November 2000.

Danyell Punelli

September 2002

Adult Basic Education

What is adult basic education?

Adult basic education (ABE) is a day or evening program offered by a school district or consortium of districts. ABE programs offer academic instruction necessary to earn a high school diploma or equivalency certificate.

ABE is a program for people over 16 years of age who do not attend an elementary or secondary school.

Total ABE enrollment was 82,778 in fiscal year 2002.

How is ABE funded?

Tuition and fees may not be charged to a learner for ABE instruction, except for a security deposit to ensure the return of materials, supplies, and equipment.

ABE programs receive federal funds and state general funds. In fiscal year 2003, state general funds accounted for about 85% ($32.2 million) of ABE funding. The state funds are distributed to programs by a formula based on basic population aid, contact hours, enrollment of students with limited English proficiency, and the number of adults age 20 or older with no diploma residing in the district. State total ABE aid is limited to 8 percent growth per year and individual program growth is limited to the greater of 17 percent or $20,000 per year.

School districts, school district consortia, the Department of Corrections, and private nonprofit organizations may receive ABE funding. In fiscal year 2002, 60 consortia and organizations received ABE funding.

What are some potential legislative issues?

During the 2002 legislative session, there was an attempt to reduce the total state aid and individual program growth caps. Currently, the total state ABE aid growth cap is set at 8 percent and the individual program growth cap is set at the greater of 17 percent or $20,000.

There is an ABE Policy Task Force that is mandated to make recommendations to the legislature by December 1, 2002. The recommendations will include:

- a mission statement for a statewide system of ABE programs;
- standard policies and procedures;
- an outcome-based funding system; and
- an appropriate weight for contact hours for nonschool district programs.

For more information: Contact legislative analyst Danyell Punelli at 651-296-5058. Also see the House Research publication *2000 Adult Learner Legislation*, August 2000.

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 Department | 600 State Office Building | St. Paul, MN 55155 | 651-296-6753 | www.house.mn/hrd/hrd.htm

Danyell Punelli September 2002

Child Care Assistance

What is child care assistance?

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

What are the eligibility requirements for child care assistance?

To be eligible for child care assistance, both parents (or one parent in single-parent households) must participate in an authorized work, education, or training activity, cooperate with child support enforcement, and meet income eligibility guidelines. The maximum income limit to be eligible for child care assistance is 75 percent of state median income.

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

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

What is the average annual subsidy a family receives?

In fiscal year 2001, the average annual subsidy for a family receiving MFIP child care assistance was $7,323 and the average annual subsidy for a family receiving BSF child care assistance was $5,762.

The maximum reimbursement rate for child care assistance is capped at the 75th percentile of the cost of similar care in each county, based on a survey of providers. Accredited providers receive a 10 percent bonus above the maximum rate established, up to the actual rate of care.

Are families required to pay for some child care expenses?

There is a family co-payment requirement based on family size and income. The maximum family co-payment is about 20 percent of gross monthly income. Families with incomes below 75 percent of the federal poverty level are exempt from making co-payments.

How is child care assistance funded?

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

How many families receive child care assistance?

During fiscal year 2001, there were an average of 11,938 families receiving MFIP child care assistance and 14,617 families receiving BSF child care assistance per quarter.

Not all families who apply for child care assistance receive it. MFIP child care is a forecasted, fully-funded program, while BSF child care receives a capped allocation. As of June 30, 2002, there were 5,149 families on the waiting list for BSF child care assistance.

What are some potential legislative issues?

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

There have been several legislative attempts to lower the maximum income eligibility level. Currently, maximum income eligibility is set at 75 percent of state median income, which is approximately $44,450 for a family of three.

The BSF waiting list has grown substantially over the past 12 to 18 months. As of June 30, 2002, there were more than 5,000 families waiting for child care assistance. The legislature has increased BSF funding allocations in the past in attempts to eliminate the waiting list; however, the need for a waiting list always returns.

For more information: Contact legislative analyst Danyell Punelli at 651-296-5058. Also see the House Research publication *Child Care Assistance Comparison*, December 2000.

Kathy Novak

October 2002

Child Care Assistance for Post-Secondary Students

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

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

Who is eligible for the HESO child care assistance grant?

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

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

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

No, for-profit institutions are not eligible to participate. State law limits the child care grant program to Minnesota institutions that are:

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

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

What is the size of the grant award?

The maximum grant is set in statute at $2,600 per student for a nine-month grant. A student may also receive a separate summer grant. The actual grant award depends on the availability of appropriations, the student's income, number of children, child care costs, and financial need.

The average child care grant in 2001-2002 was $1,956.

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

Appropriations over the last five years have been stable at about $4.7 million per year. Student participation peaked in 2000-2001 when 2,736 students received grants. The legislature has increased the maximum grant from $1,500 in 1994-1995 to $2,600 beginning with the 2001-2002 school year.

The amount available for grants in 2002-2003 is significantly less than previous years. Legislation passed in 2002 resulted in a transfer of $3.6 million of child care appropriations to contribute to full funding of the state grant program.

Trends in Childcare Grant Program

Year	Maximum Award	Appropriation*	Number of Students	Average Award
98-99	2,000	4,710,000	2,704	1,533
99-00	2,000	4,710,000	2,659	1,501
00-01	2,000	4,710,000	2,736	1,618
01-02**	2,600	4,743,000	2,429	1,956
02-03***	2,600	4,743,000		

* 98-99 to 00-01 appropriation excludes set aside for HESO administration.
** FY 02 expenditures exceeded appropriations because of carry forward
*** $3,610,000 of FY 03 appropriation transferred to state grant program

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

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

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

Many more families are eligible for BSF assistance than can be served with the state and federal appropriations. Students tend to be a lower priority for assistance than working families. Over 4,400 families were on the most recent waiting list for BSF assistance. Most of them were in the counties of Hennepin, Ramsey, Anoka, and Washington.

The two child care assistance programs have been funded through different legislative committees. The committee with responsibility for higher education appropriates money for the HESO grant program, but does not fund the BSF program. BSF received a general fund appropriation of $48.5 million for fiscal year 2003.

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

Lisa Larson

November 2002

Conditions of Continuing Employment for K-12 Teachers

"Continuing contract rights" and "tenure rights" offer equivalent procedural protections

Two sections of Minnesota Statutes govern conditions of continuing employment for licensed K-12 teachers in Minnesota's public schools. Section 122A.40 contains general provisions for all teachers' continuing contract rights except those teachers teaching in the three first-class city school districts of Minneapolis, St. Paul, and Duluth. Section 122A.41 contains similar provisions governing the tenure rights of teachers teaching in the three first-class city school districts. The terms "continuing contract rights" and "tenure rights" mean that a school district may not dismiss a teacher from a teaching position without first demonstrating the cause for that dismissal. The two terms are equivalent in the procedural protections they afford and are used interchangeably by educators, the courts, and others.

A newly licensed probationary teacher must successfully complete three consecutive years of continuous employment

Under state law, after a newly licensed probationary teacher successfully completes three years of continuous employment, she or he becomes a continuing contract teacher if employed by a nonfirst-class city school district, or a tenured teacher if employed by a first-class city school district. During the probationary period, a school district has considerable discretion in deciding whether or not to renew the probationary teacher's employment contract. A school district must notify a probationary teacher before July 1 that it will not renew the teacher's contract. Once a teacher receives a continuing contract or tenure, the teacher becomes entitled to a number of employment-related protections, including bumping rights and just cause and due process guarantees.

Teachers' continuing contracts remain in effect unless a specified circumstance arises

The continuing contracts of teachers in nonfirst-class city school districts remain in full force and effect unless:

- the school board and the teacher modify the contract
- the school board terminates the teacher before April 1 for inefficiency, neglect of duty, conduct unbecoming a teacher, or other grounds making the teacher unfit
- the school board places the teacher before June 1 on an unrequested leave of absence
- the school board temporarily suspends the teacher and places the teacher on a leave of absence for health reasons
- the school board immediately discharges the teacher for immoral conduct, conduct unbecoming a teacher, failure to teach, gross inefficiency, willful neglect of duty, or continuing physical or mental disability
- the teacher resigns before April 1 or, if a collective bargaining agreement is not settled, the teacher resigns within 30 days of when an agreement is ratified or July 15, whichever is first

Tenured teachers cannot be discharged or demoted except for cause

Tenured teachers in first-class city school districts may be discharged or demoted for:

- immoral character, conduct unbecoming a teacher, or insubordination
- failure to teach
- inefficiency in teaching or in management of a school
- affliction with a communicable disease
- discontinuance of position or lack of pupils

School boards must follow procedures when terminating, discharging, or demoting a teacher

A teacher facing termination or immediate discharge in a nonfirst-class city school district can request a public or private hearing before the school board or an arbitrator. The board and the teacher may have counsel, who can examine witnesses and present arguments. A school board must base a decision to dismiss a teacher upon substantial and competent evidence in the hearing record. The teacher may appeal a board decision to the state courts.

The Minneapolis, St. Paul, and Duluth school boards can discharge or demote a teacher only after a full public or private hearing before the board or an arbitrator, at the teacher's election. The board may suspend a teacher against whom it has filed charges. The board and the teacher may have counsel, who can examine witnesses and present arguments, and both parties have the right to a written record. A vote by a majority of school board members is needed to discharge or demote a teacher. The teacher may appeal a board decision to the state courts.

An arbitrator who conducts a hearing must decide, based upon a preponderance of the evidence, whether to terminate, discharge, or demote the teacher. The arbitrator's decision is final and binding on the parties, and may not be appealed except on technical grounds.

Teachers may be placed on an unrequested leave of absence according to a negotiated or statutory plan

A school board may place a teacher on an unrequested leave of absence, without pay or fringe benefits, when the board discontinues the teacher's position, lacks sufficient students, faces financial limitations, or merges classes as a result of consolidating districts. If the school board and the teachers' exclusive bargaining representative fail to negotiate an unrequested leave of absence plan, then statutory terms control. A board must hold a public hearing on unrequested leaves before July 1. A majority roll call vote of the full board is needed to place teachers on leave. Teachers are placed on leave based on the inverse order of their employment and on their areas of certification. Teachers' seniority applies to each area in which the teacher is certified. Teachers must be recalled to their positions, or other available positions, in the inverse order in which they were placed on leave; most senior teachers are recalled first. This seniority-based system rewards teachers with the longest service by giving them maximum employment security. Statutory terms governing resignations, leaves, certification, seniority and part-time experience, teachers' bumping rights, and districts' ability to realign positions also affect staff reduction decisions.

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

HOUSE RESEARCH | Short Subjects

Danyell Punelli

September 2002

Early Childhood Education Programs

What are early childhood education programs?

Early childhood education programs provide education for the state's youngest children. The goal of many of the programs is to ensure that families with young children have the opportunity to participate in developmental programs that promote the skills and behaviors necessary for children to succeed in school. While these programs share certain characteristics, they differ on the specific program purposes, delivery mechanisms, eligibility factors, and the level and type of funding for the program.

The Department of Children, Families and Learning administers Minnesota's early childhood education programs. The programs are supported by federal funds, state appropriations, local funds, and user fees.

What programs are offered in Minnesota?

More than 200,000 children participate in early education and development programs that serve children from before they are born until they are enrolled in school. The following programs are the primary early childhood education programs offered in Minnesota:

- **Early Childhood Family Education (ECFE):** School districts and tribal schools operate classes to strengthen families with children from birth to age five.
- **Way to Grow:** State matching grant program that promotes development and school readiness in children ages three to six.
- **School Readiness:** School districts operate child development programs to enable children ages three-and-one-half to five, after developmental screening, to enter school with the skills and behaviors necessary for success.
- **First Grade Preparedness:** State aid funds the program at qualifying school sites to ensure children ages four to five have the skills necessary to succeed in school. Eligibility is based on percent of free and reduced lunch enrollment in four areas (Minneapolis, St. Paul, Twin Cities suburbs, and Greater Minnesota).
- **Head Start:** Federal program that provides early education and health and social services for families in poverty. Families at or below the federal poverty guidelines with children ages three to five are eligible to participate.
- **Even Start Family Literacy Program:** Money from "federal share" state grants funds programs that integrate early childhood education and adult literacy or basic education classes.

- **Interagency Early Intervention (Part C):** Federally funded comprehensive, coordinated interagency program to provide services to eligible children with disabilities from birth to age two, and their families.

What are some potential legislative issues?

During the 2002 legislative session, there was a proposal to eliminate state aid for ECFE and increase the levy limit to offset the elimination of state aid. This proposal may be discussed again in the future.

There have been past proposals to eliminate the Way to Grow program because it is viewed by some as duplicative of ECFE. This may be discussed again in the future.

Based on a Legislative Auditor's report, there was a proposal during the 2001 legislative session to change the way state funds are distributed to Head Start grantees. This may also be discussed again in the future.

For more information: Contact legislative analyst Danyell Punelli at 651-296-5058. Also see the House Research publication *Early Childhood Development and Care Programs*, June 2000.

Lisa Larson

November 2002

Education for Children with Disabilities

Federal laws obligate Minnesota to provide a free appropriate public education to disabled children

The Individuals with Disabilities Education Act (IDEA) provides federal funding to states and local school districts for expenses incurred in providing federally mandated special education and related services to those disabled children covered by the act. To be eligible to receive federal special education funding, Minnesota and other states must provide a "free appropriate public education" (FAPE) in the least restrictive environment (LRE) and guarantee related procedural safeguards for all children with certain disabilities.

Section 504 of the Rehabilitation Act of 1973 (Section 504) is a broader, less prescriptive federal civil rights statute that covers some disabled children not served under IDEA. States and local school districts must serve eligible disabled children regardless of the cost or severity of the disability, although IDEA requires only that children benefit from an education, not that they receive the best possible instruction. Minnesota has enacted statutes and rules to comply with the federal law and in some cases goes beyond what the federal government requires for serving children with disabilities.

Serving disabled students can be complex and costly

State and federal laws and regulations, combined with court decisions interpreting the laws, make serving disabled students complex and costly for Minnesota and local school districts. Compounding the difficulty of ensuring that disabled students receive FAPE is the federal government's failure to fulfill its commitment to fund 40 percent of the costs of certain IDEA services. The federal government currently contributes only 17 percent of such costs, and the state and school districts must reallocate existing funds or allocate new funds in order to provide the programs and services to which eligible disabled children are entitled.

Special education law guarantees due process procedures and procedural safeguards

Federal and state special education law guarantees due process procedures and procedural safeguards, including parents' participation in the assessment and educational placement of disabled children from birth until age 21. To receive special education services, a child must be found

- eligible for special education services according to statewide eligibility criteria
- in need of such services.

A lack of progress in reading or math or limited English proficiency is not a disability. After a comprehensive evaluation, a team that includes the child's parents and trained school personnel will develop an individualized education plan (IEP) that contains, among other things, annual educational goals for the child. Under IDEA, it is important to have disabled children participate in the general curriculum to the extent appropriate and to involve regular education teachers in the IEP process. The child's IEP team may authorize certain Medical Assistance services for the child.

Disabled students must participate in state and district-wide assessments

Federal and state special education law requires school officials to include disabled children in state and district-wide assessment programs, with appropriate accommodations where needed. Accommodations may include variations in the setting, timing, response, and scheduling that take into account a child's disabilities. Title I of the 2001 Elementary and Secondary Education Act requires states, school districts, and schools to assess all public school students for accountability purposes. Title I also allows alternative assessments only for those disabled students with the most significant cognitive disabilities who are unable to participate in a regular assessment even with accommodations or modifications. Under a current federal Title I proposal, no more than 0.5 percent of all students in a state or school district should be assessed using an alternative assessment.

Disabled children must be educated in the least restrictive environment

Disabled children must be educated in the least restrictive environment (LRE) to the maximum extent appropriate. School districts bear the burden of showing that a disabled child should not participate in the regular education program. Criteria for determining whether the regular classroom is the LRE include the potential benefits to the child, the potential disruption to the classroom, and the cost of aids and services.

School officials can't cut off educational services to a disabled child for disciplinary reasons

When a child with an IEP is suspended from school for more than ten days for misbehavior that is unrelated to the child's disabilities, the district must continue to provide the child with special education and related services. A district must begin reviewing a child's IEP and the relationship between the child's disability and behavior, and determine the appropriateness of the child's IEP before dismissing the child. A district must review a child's IEP after five days of suspension at the parents' request or within ten days if the child is cumulatively suspended for ten or more days. A district may unilaterally place a disabled child in an alternative setting for up to 45 days if the child brings firearms or illegal drugs into the school.

In certain circumstances, children who are in the regular education classroom and have not been determined to need special education may still be covered by IDEA procedural protections relating to suspensions and expulsions.

School districts must provide disabled children with related services

School districts must provide disabled children with related services, which encompass supportive services that may be required to assist a disabled child to benefit from special education. Services provided by a physician that are not provided for diagnostic or evaluation purposes are subject to a medical services exclusion, but services that can be provided by a nurse or qualified layperson are not. For example, a district may be obligated to pay for a residential treatment setting as a related service in order to ensure that an emotionally disturbed child receives the educational benefit to which the child is entitled under IDEA.

For more information: Contact legislative analyst Lisa Larson at 651-296-8036. Also see the House Research publication *Youth and the Law,* January 2002.

HOUSE RESEARCH | Short Subjects

Kathy Novak

October 2002

Financial Aid for Higher Education: Minnesota State Grant Program

What is the state grant program?

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

Who is eligible for a state grant?

Students must apply for a state grant. An eligible student must be a Minnesota resident who is a high school graduate or age 17 or older and able to meet the admission requirements of an eligible post-secondary institution. The student must have demonstrated financial need and must not be in default on student loans or in arrears for child support.

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

How much aid is available through the state grant?

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

- students are required to pay 46 percent of the cost;
- the amount of any Pell grant is deducted from the cost;
- the family's responsibility for the cost is determined through the federal needs analysis with an additional state deduction for a family's net worth.

The cost of attendance is equal to the amount of tuition and fees up to the private college cap set in law plus an allowance, also set in law, for living and miscellaneous expenses. For this year, the maximum tuition and fees are $8,983 for four-year institutions and $6,913 for two-year institutions. The living allowance is $5,405 per year.

The state grant is provided as the last contribution to the cost of attendance. The average state grant for the 2000-2001 year was $1,744.

Are part-time students and independent student eligible?

Part-time students are eligible for the state grant based on their actual tuition and fees and a prorated amount for the living allowance. Independent students (generally students who are not considered dependents for tax purposes) are eligible for the state grant program. Independent students are responsible for a larger portion of the cost of attending than dependent students.

How is the state grant program funded?

The legislature appropriates money from the general fund to HESO for the state grant program based on HESO's estimate of the amount needed for full funding. State law allows HESO to carry a balance from the first year of the biennium to the second year or to transfer to other financial aid programs. Any balance remaining at the end of the biennium must cancel to the general fund. For several funding cycles, the grant program canceled money to the general fund. This biennium, the legislature appropriated and transferred additional money to cover projected shortages in the state grant program.

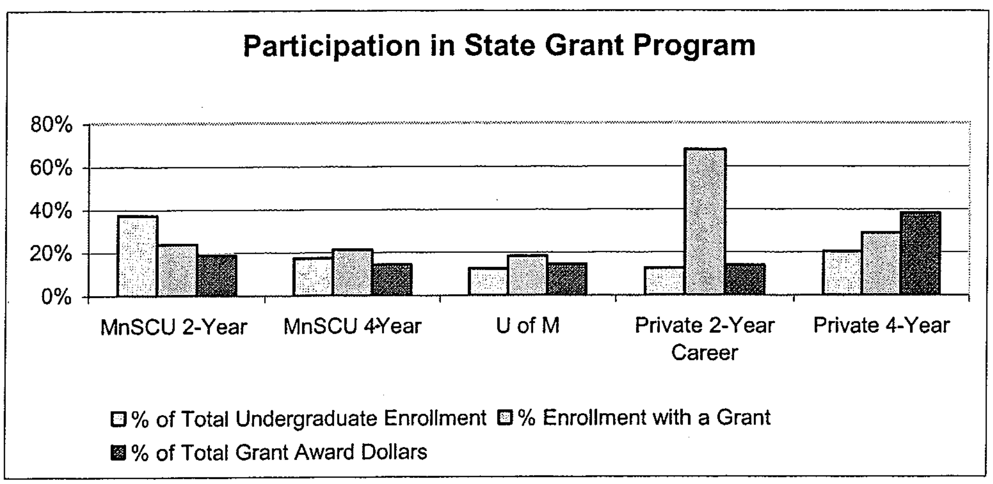
Are eligible students entitled to a state grant?

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

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

The graph below shows participation in the state grant program in fiscal year 2001. Minnesota had 257,607 undergraduate students in 2000-2001—29 percent received a state grant. The percentage of students at private institutions who receive grants is higher than at public institutions—68 percent of students at two-year private career institutions received grants compared to 24 percent of students at two-year Minnesota State Colleges and Universities (MnSCU) institutions.

The amount of grant dollars going to students at private institutions is also higher than the amount at public schools. Of the $116 million in grants in fiscal year 2001, 38 percent went to students at private four-year colleges compared to 29 percent at public four-year colleges.



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

HOUSE RESEARCH | Short Subjects

Kathy Novak October 2002

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

Minnesota's public post-secondary systems and agencies

Minnesota has two public post-secondary systems:

- The **Minnesota State Colleges and Universities (MnSCU)** system has seven four-year universities and 27 two-year colleges located throughout Minnesota. MnSCU institutions provide occupational, general, baccalaureate, and graduate education. The MnSCU system office is in St. Paul.
- The **University of Minnesota** is a major research institution with four campuses providing undergraduate, graduate, and professional education. The main campus and central administration are in the Twin Cities.

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

Governing the Minnesota State Colleges and Universities

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

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

Board of Trustees. Under state law, the 15 trustees are appointed by the governor with the advice and consent of the Senate. At least one member of the board must be a resident of each congressional district and three members must be a MnSCU student or recent graduate. Trustees serve staggered six-year terms. Trustee candidates are recruited and screened by Trustee Advisory Council established in state law. The council makes its recommendations to the governor.

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

Governing the University of Minnesota

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

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

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

Higher Education Services Office

Minnesota Law. Minnesota Statutes create the Higher Education Services Office (HESO) and assign all responsibilities to the office. The statutes establish a nine-member council, the position of director, and the qualifications for the director.

Higher Education Services Council. Under Minnesota Statutes, the nine council members are appointed by the governor. One member must be a full-time student at a Minnesota post-secondary institution. In making appointments, the governor must consider the geographic, gender, and ethnic diversity and political affiliation of the council. Under the statutes, the council is responsible for appointing the director, establishing the director's salary within the limits set in law, prescribing the director's duties, and making recommendations to the governor and the legislature. The statutes do not give the council responsibility or power to manage the office or carry out its statutory responsibilities.

Director of the Higher Education Services Office. The statutes give the director the powers to perform the duties assigned by the council, including signing contracts for the office. The statutes specify that the director must be qualified in financial aid or higher education administration.

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

HOUSE RESEARCH | Short Subjects

Lisa Larson

November 2002

Minnesota's High School Graduation Requirements

In 1992, the Minnesota Legislature stated its intent to establish "rigorous, results-oriented" high school graduation requirements for the state's public school students. The legislature directed the then-existing State Board of Education to adopt in rule two types of graduation requirements: basic skills tests that required students to demonstrate minimum competency in basic subject areas; and a profile of learning that contained high academic standards and required students to expand their knowledge and skills beyond the state's basic skills requirements.

Basic skills tests require students to demonstrate minimum competencies in reading, math, and writing

The rules for the basic skills tests in reading and math became effective for students entering the ninth grade in the 1996-1997 school year and later. The rule for the basic skills test in written composition became effective for students entering the tenth grade in the 1997-1998 school year and later.

To ensure fairness and consistency in reading and math tests over time, the state uses a scale scoring system to establish passing scores. Students must receive a passing scale score of 600 on the reading and math basic skills tests and three points out of a possible six points on the written composition basic skills test in order to graduate from high school. Passing scores are based on statewide standards requiring skills that most students should be able to master.

- The math test requires students to understand math through pre-algebra
- The reading test requires students to be able to read at a degree of difficulty equal to popular adult nonfiction
- The written composition test requires students to respond to an adult reader by writing a composition in response to a request for information

Students who fail to receive a passing score on a basic skills test may retake the test with students who are taking the test for the first time or during the summer. High school seniors may retake basic skills tests during the spring of their senior year. Test waivers are available only for disabled students who are exempted as part of their individualized education plan or Section 504 plan and students with limited English proficiency who have been in the United States for less than one year.

The profile of learning requires students to expand their knowledge and skills among ten learning areas

The profile of learning, which is also a requirement for high school graduation, requires public school students to expand their knowledge and skill beyond the minimum competencies reflected in the state's basic skills tests. The rules for the profile of learning became effective for students entering the ninth grade in the 1998-1999 school year and later. The profile of learning contains 56 preparatory content standards applicable to students in grades K-8 and 48 content standards divided among 11 learning areas applicable to students in grades 9-12 (only learning area 10, world languages, is optional for students; learning area 11, technical and vocational education, currently has no content standards).

The 1999 Legislature struggled to address the tension between local autonomy and state mandates under the profile of learning

The 1999 Legislature tried without success to reach a compromise on a number of issues that profile of learning critics raised about the tension between local autonomy and state mandates, the complexity of profile administration, the substance of profile performance requirements, and the lack of staff development opportunities. Issues raised included:

- a lack of local and school district control
- efforts by the federal government to impose federal Goals 2000 and School-to-Work Programs on school districts
- school districts' need to use state-designed performance packages
- the complexity of a system in which students must pass basic skills tests and complete 24 of 48 high standards organized into 10 learning areas in order to graduate
- the difficulty of obtaining waivers for rigorous courses
- the additional paperwork and record keeping related to monitoring student progress
- the absence of a state-supported common record keeping system
- the substance of state-developed performance packages
- the lack of staff development opportunities for teachers to learn how to write performance packages and score them reliably.

The 2000 Legislature compromised on a number of profile of learning issues

On the last day of the session, the 2000 Legislature succeeded in reaching a compromise on a number of profile of learning issues. Among other changes, the 2000 Legislature allowed school sites within a school district and charter schools to determine the preparatory and high school content standards that students must complete, including the number of high school content standards needed for graduation. This determination must be made by vote of the licensed teachers, school administrators, and the governing board of the district or charter school. Students at a school site must complete all state-required preparatory or high school content standards if teachers, administrators, and governing board members are unable to agree. The content standards that students must complete vary between schools and districts throughout the state.

The 2000 Legislature also addressed teachers' need for staff development opportunities for implementing the profile of learning. Previously, the legislature had added three days to the school calendar for student instruction. The 2000 Legislature allowed school boards to instead use these three days for improving curriculum and instruction or for developing alternative student assessments. The amended law directs the Commissioner of Children, Families and Learning to maintain an interactive library for teachers.

For more information: Contact legislative analyst Lisa Larson at 651-296-8036. Also see the House Research publications *Proposals to Amend the High school Graduation Rule, December 1992; Profile of Learning and the High School Graduation Rule*, September 1998; *Profile of Learning: Legislative Action in 1999 and 2000*, November 2000.

Danyell Punelli **August 2002**

Minnesota Pupil Transportation

Who has responsibility for pupil transportation?

School boards are required to provide transportation to and from school, or to provide board and lodging, for all students who live two miles or more from schools. School boards are required to provide equal transportation for nonpublic school students.

School districts may provide pupil transportation services by operating a district-owned school bus fleet, contracting with a private vendor of transportation services, or a combination of district operated and contracted services.

How are pupil transportation services funded?

The 1995 Legislature made substantial changes to the pupil transportation funding programs. Categorical funding programs were replaced with an across-the-board increase in the general education allowance of $170 per pupil and the remaining categorical transportation formulas were reduced in size and scope. These legislative changes attempted to clarify the state mandate as well as eliminate a series of formulas that were seen by some as creating disincentives for cost efficiency in pupil transportation.

What school bus safety standards exist?

School districts must provide school bus safety training for public school students in kindergarten through tenth grade. Age-appropriate training must take place both in the classroom and on a school bus.

All Type A, B, C, and D school buses used for the transportation of school students are required to meet the requirements of the 1995 revised edition of the *National Standards for School Buses and School Bus Operations,* adopted by the Twelfth National Conference on School Transportation. In addition, Minnesota requires school bus equipment standards beyond the standards adopted by the Twelfth National Conference on School Transportation.

The Department of Public Safety has primary responsibility for school transportation safety. The Minnesota State Patrol is required to annually inspect every school bus to ensure that construction, design, equipment, and color comply with the law. The Minnesota State Patrol is also authorized to conduct random spot inspections of school buses.

What qualifications must school bus drivers meet?

There are five different classifications of school buses in Minnesota: Type A, B, C, D, and III. Types A through D are different sizes of yellow school buses. Type III school buses are restricted to passenger cars, station wagons, vans, and buses.

In order to become a driver of a Type A, B, C, or D school bus, an individual must take both written and driving tests. In addition, the individual must have a background check, drug testing, and submit to a physical exam every two years (upon renewal of the school bus endorsement).

Individuals who drive Type III school buses can do so with a Class D license, without any additional endorsements. However, the local school board may adopt additional requirements for Type III school bus drivers.

What are some potential legislative issues?

During the 2002 legislative session, the Commissioner of Children, Families, and Learning submitted a legislatively mandated report to the legislature that identified funding inequities in pupil transportation and made recommendations for providing equitable transportation funding. This report may be discussed during the budget process.

The National Highway Transportation Safety Administration is due to release a report with the results of a research program that considered alternative methods for potentially improving federal school bus passenger crash protection requirements, including requiring seat belts on school buses. The results of this report may require changes in state school bus safety standards to conform to federal standards.

There have been several studies indicating that diesel fumes cause increased health risks to children riding in school buses. Other issues related to this are the placement of school bus loading and unloading areas in relation to school building air intake valves and school bus loading and unloading areas configured so that school buses are forced to line up end-to-end with the exhaust fumes from one bus flowing into the next bus.

Officials with the U.S. Environmental Protection Agency (EPA) estimate that nationwide, 8,300 premature deaths, 5,500 cases of chronic bronchitis, and 17,600 cases of acute bronchitis in children would be prevented annually by the use of low-sulfur fuel technology. Recently, the EPA has required that almost all heavy-duty trucks and buses switch to ultra-low-sulfur fuel beginning in June 2006. In addition to low-sulfur diesel fuel, other alternative fuels include natural gas, liquefied petroleum gas, methanol, and ethanol.

For more information: Contact legislative analyst Danyell Punelli at 651-296-5058. Also see the House Research Publication *Minnesota Pupil Transportation*, November 2001.

HOUSE RESEARCH | Short Subjects

Lisa Larson

October 2002

Minnesota's Charter School Law

Academic content and accountability

A charter school is a public school, which is part of the state's system of public education, and subject to the requirements of the state's high school graduation rule. It must be nonsectarian and provide a comprehensive instructional program for at least one grade or age group of students. A charter school's purpose is to enhance students' learning opportunities, improve teaching opportunities and methods, or improve school accountability measures. The instructional calendar must meet or exceed the number of instructional days provided to other public school students. A charter school may offer instruction throughout the school year under the flexible learning year or learning year program.

A charter school is exempt from statutes and rules applicable to a school, a school board, or a school district, except as provided in the charter school law.

Sponsors

Any one of six entities may sponsor one or more charter schools: a school board, an intermediate school board, certain charitable organizations, a private college, a college or university that is part of the Minnesota State Colleges and Universities (MnSCU) system, and the University of Minnesota. The Commissioner of Children, Families and Learning (CFL) must approve a sponsor's authorization of a charter school. A sponsor annually must monitor and evaluate the financial and student performance of any charter school it authorizes. The CFL commissioner must review these evaluations. The sponsor may charge a capped amount for the evaluation. A sponsor may renew or not renew a charter school contract at the end of the term and may unilaterally terminate a contract during the term for cause. A sponsor is immune from civil and criminal liability for sponsoring a charter school or approving charter school activities.

A seven-member advisory council brings charter school matters to the attention of the CFL commissioner.

Charter school contract

A sponsor and a charter school board of directors must enter into a signed written contract that at least specifies the program purpose, student outcomes, admissions requirements, management and administration structure, audit requirements, compliance with applicable state and local requirements including the instructional calendar and transportation agreements, liability and insurance, contract length up to three years, and any applicable special education agreements. The board of directors may sue and be sued.

Application and start-up process

Interested teachers and parents may form and operate a charter school or a school board may convert a school to a charter school if 60 percent of the school's full-time teachers petition the board. A charter school operator must incorporate as a cooperative or a nonprofit corporation. An initial board of directors must adopt articles and bylaws and hold an election for the board of directors, who are elected by school staff and parents. Generally, teachers must be a majority of board members. Board meetings are subject to the open meeting law. A charter school may be located in any school district unless the local school board objects. A charter school is eligible to receive state and federal start-up funds.

Financing and financial management

A charter school receives general education and transportation revenue, special education and building lease aid, and other funds as though it were a school district. A charter school may use total operating capital revenue, accept funds for capital facilities needs, and apply for integration aid. It may not use state funds to purchase land or buildings. A charter school in statutory operating debt must have a plan to eliminate the debt. A charter school that notifies the CFL commissioner by July 1 that it will transport students receives state transportation aid. A charter school need not transport students between a nonresident student's home and the border of the school district in which the charter school is located. A board of directors may not levy taxes or issue bonds. Conflicts of interest are prohibited and any board member who violates the prohibition is individually liable. A charter school is subject to the same financial audits and audit procedures as a school district. The CFL commissioner must provide board members with financial management training.

Use of facilities

A charter school may purchase land or buildings with nonstate funds and may lease instructional space from an eligible school board, a public or private nonprofit nonsectarian organization or other nonsectarian organization, or from a sectarian organization in some cases. A charter school with insufficient total operating capital revenue may receive state building lease aid to rent or lease a building or land. To avoid any conflict of interest, a charter school may not enter into a lease with a related party unless the lessor is a nonprofit corporation or a cooperative and the lease cost is reasonable. The CFL commissioner may recover excess lease payments when a charter school enters into a lease with a related party and later closes.

Causes and process for closing a charter school

When a sponsor terminates or does not renew a charter school contract after notifying the board and conducting an informal hearing if requested, the charter school must be dissolved unless the CFL commissioner allows a different eligible sponsor to authorize the charter school. The CFL commissioner also may terminate a charter school contract for financial mismanagement or violations of law. Students enrolled in a charter school that is closed may enroll in the resident district or apply to a nonresident district under the open enrollment program; open enrollment application and notice deadlines do not apply in this case. Although not specified in law, properly closing a charter school requires an accurate final financial accounting, decisions about distributing school assets purchased with public funds, final payment of employee compensation and other benefits, and preparation of final tax returns and other forms.

For more information: Contact legislative analyst Lisa Larson at 651-296-8036. Also see the House Research publication *Charter Schools*, September 2001.

Danyell Punelli

September 2002

Minnesota's Regional Public Library System

What is the regional public library system?

The regional public library systems are regional collaboratives of public libraries. By state law, every county must be a member of a regional system.

There are twelve regional public library systems in Minnesota: Arrowhead Library System, East Central Regional Library, Great River Regional Library, Kitchigami Regional Library, Lake Agassiz Regional Library, Metropolitan Library Service Agency, Northwest Regional Library, Pioneerland Library System, Plum Creek Library System, Southeastern Libraries Cooperating, Traverse des Sioux Library System, and Viking Library System.

The Department of Children, Families and Learning (CFL) oversees the regional public library system.

What services are available through the regional public library system?

Some of the services available through the regional public library system include:

- Use of a public library card at any public library and many academic libraries in the state;
- Regional consulting services to local libraries for building projects, administrative issues, and grant opportunities;
- The ability to borrow materials within a region and between regions through Interlibrary Loan; and
- Regional library management of Internet connectivity for local libraries.

How are the regional public library systems funded?

The regional public library systems receive federal, state, and local tax funds. State funds are allocated to library regions through a formula based on population, area, equalized valuation of property, and a base grant for systems support.

Some of the objectives of the state funding include:

- Providing incentives for cities and counties to work together in regional public library systems;
- Maintaining and improving the infrastructure for reading and lifelong learning; and
- Strengthening library materials and media collections.

What are some potential legislative issues?

The Regional Library Telecommunications Grant program expires on July 1, 2003. In February 2002, CFL submitted a report to the legislature recommending a permanent method of funding telecommunications access as part of the Basic Support Grants for public libraries.

Due to the budget cuts enacted in 2002, several positions were eliminated from the CFL's Library Development and Services Division. The Institute for Museum and Library Services (the federal agency that oversees libraries) has expressed concerns about the situation in Minnesota. This has put Minnesota's federal library funding in jeopardy.

Also due to the budget cuts enacted in 2002, CFL has closed the state library collection and is in the process of trying to find another organization or institution to whom the department can transfer the collection.

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

HOUSE RESEARCH | Short Subjects

Tim Strom

October 2002

School District Referendum Elections

School districts may supplement operating and capital revenue amounts by bringing requests directly to the voters. This short subject answers some frequently asked questions regarding the referendum process.

For what may a referendum be held for?

A school district may hold a referendum for one of three purposes:

- **General operating purposes:** These types of referenda are commonly called the excess levy, the override levy, or the operating referendum.
- **Building needs:** These referenda authorize the sale of bonds. The bond proceeds are used to pay for school construction projects. The bond referenda are commonly considered approval of building projects, though technically the voter is approving the sale of bonds.
- **Down payment program:** A school district may hold an election that authorizes the district to raise cash "up-front" for a building project that will take place in the next several years.

When may an election be held?

An election for a general operating referendum may only be held on the first Tuesday in November, unless the district is in statutory operating debt (has a negative fund balance) or the district holds the election by mail ballot. In these cases, an election may be held on a day that otherwise qualifies according to the state's regular election laws. A district may hold only one election for an operating referendum per year.

An election for the sale of bonds to finance a building project may be held at any time that is allowed under the state's regular election laws.

A down payment levy may also be held at any time that is allowed under the state's regular election laws.

How many elections may be held in any one calendar year?

Only one election may be held in a calendar year for an operating referendum. An election to approve the sale of bonds may be held more than once in a year.

However, the same question authorizing the same amount of bonds must not be submitted to the voters until 180 days have passed since the date the election failed. If the election fails a second time, the same question for the same project and the same amount of bonds may not be submitted within one year of the second election.

There are no statutory limits on how many times during a calendar year a school district may conduct a referendum for a down payment levy.

What is the maximum length of a referendum?

An operating referendum is limited by statute to no more than ten years. An election to approve the sale of bonds generally does not specify the term of the bond. However, most school districts issue 20-year bonds for major building projects. School bonds may be issued for up to 30 years. It is not uncommon for school districts to refund bonds and refinance school building projects.

What are the caps on the amount of referendum that a district may have?

Operating referenda are capped at a per pupil amount. For fiscal year 2003 and later, the cap is set at 18.2 percent of the formula allowance for that year. For fiscal year 2003, this amounts to $837 per pupil (.182 x $4,601). A small group of school districts are grandfathered in at higher amounts per pupil unit, and school districts eligible for sparsity revenue are exempt from the referendum cap.

A school district's net debt limit caps the amount of building bonds that a district can issue. Currently, the net debt limit limits a school district to net debt of not more than 15 percent of the market value of all taxable property located in the school district.

There is no cap on the amount of money a district may request under the down payment levy program.

For more information: Contact legislative analyst Tim Strom at 651-296-1886.

HOUSE RESEARCH | **Short Subjects**

Danyell Punelli

September 2002

School Indoor Air Quality

What is indoor air quality?

Indoor air quality (IAQ) is the quality of air inside an enclosed space, such as a building or a school bus. Air quality can be adversely affected by several factors including chemicals present in building materials, mold due to water damage, and dirty air filters.

What are the IAQ responsibilities of CFL and local school boards?

The Department of Children, Families and Learning (CFL) must provide each school district with information concerning IAQ as part of the consultation required for any school district building project for which the estimated cost exceeds $250,000.

A school board proposing to construct a facility that requires an expenditure in excess of $500,000 must submit information to CFL describing how IAQ issues have been considered and certifying that the architects and engineers designing the facility will have professional liability insurance.

Prior to occupying or reoccupying a school facility in which the heating, ventilation, or air conditioning (HVAC) systems have been installed or retrofitted, a school board or its designee must submit a document prepared by a system inspector to the local building official or to CFL verifying that the facility's HVAC system has been installed and operates according to design specifications and code.

If the document submitted by the school board to the local building official or CFL does not demonstrate to that official's satisfaction that the HVAC system has been installed correctly or that the system is not operating at a level to meet design specifications, the official or CFL may allow up to one year of occupancy while the HVAC system is improved to a level that is considered satisfactory by the system inspector.

Does the federal government provide any IAQ information or assistance?

The Environmental Protection Agency provides free *IAQ Tools for Schools* kits to schools. The kit is a flexible, comprehensive resource for school building health and includes easy-to-follow checklists, videos, sample memos and policies, a recommended management plan, and a unique IAQ problem-solving wheel.

How are school IAQ projects funded?

School district IAQ projects are funded primarily through capital budgets and health and safety revenue. Major capital projects are generally approved by the local taxpayers; however, on a few occasions, the legislature has responded with special legislation for a school district with IAQ problems.

What are some potential legislative issues?

There are two IAQ issues related to school buses that were discussed during the 2002 legislative session and may be discussed again. The first IAQ issue is concern about the air quality on school buses due to several reports indicating that diesel exhaust fumes are harmful to children's health. The second IAQ issue is concern over the placement of school building air intake valves in relation to the school bus loading and unloading area.

Another potential legislative issue is mandating in statute certain minimum standards for air flow or prohibiting certain building or furnishing materials, since these factors are known to affect IAQ.

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

HOUSE RESEARCH | Short Subjects

Lisa Larson

November 2002

School Vouchers

Many states are looking at education vouchers and asking whether a market solution can improve the quality of public education. In *Zelman v. Simons-Harris* (2002), the U.S. Supreme Court ruled that the federal Establishment Clause of the First Amendment permits education voucher plans to include religious schools. This decision upholds the right of Cleveland parents to use publicly funded vouchers to send their children to private religious schools and provides constitutional support for existing voucher programs in Wisconsin and Florida. The school voucher debate now moves to state legislatures and state courts where many state constitutions specifically prohibit using public funds to support or benefit religious schools or institutions.

The Court majority characterized the decision as a logical outgrowth of earlier cases involving individuals choosing to use public money to indirectly support private religious schools

The U.S. Supreme Court decided that Cleveland's voucher program, which provides private and religious school tuition and tutorial aid to low-income families residing in a failing school district, did not violate the Establishment Clause prohibition against government support of religion because the program:

- was entirely neutral with respect to religion
- provided benefits directly to a wide spectrum of individuals defined only by financial need and residency
- permitted individual parents to exercise genuine choice among public and private, religious and secular school option.

The Court relied on three earlier Establishment Clause cases in reaching its decision, including *Mueller v. Allen* (1983) in which the Court ruled permissible Minnesota's tax deduction for parents paying school expenses where, as a practical matter, primarily parents with children in religious school incurred those expenses (then-Associate Justice Rehnquist authored the Court's opinion in *Mueller*).

The Court majority found that Cleveland's voucher program did not give any preference to religious schools and, in fact, created a disincentive to attend religious schools by providing, at most, half the aid provided for students attending public charter and magnet schools. The majority did not attach constitutional significance to the preponderance of religious schools participating in the program because many American cities have relatively large numbers of religious schools. The majority believed that the number of public and private educational choices available to parents was sufficient to insulate the government from concerns about violating the prohibition against government subsidizing or endorsing religion.

Dissenting justices characterized the decision as a major devaluation of the Establishment Clause

The Court's dissenting justices were troubled by the scale and kind of government aid being shifted from public secular schools to private religious schools. The dissent argued that the voucher program was a dramatic departure from prior church-state decisions in which the Court declared that no public money could be levied to support any religious activities or institutions. The dissent also was troubled by upholding government aid that provides public money "to a core function of the church: the teaching of religious truths to young children" since

Cleveland's voucher program does not require tuition money to be spent only on the nonreligious aspects of a student's education. The dissent argued that eligible students had no real choice because most of the participating schools were religious schools, and the $2,250 tuition cap steered students toward religious schools charging tuition below the cap. The dissent warned that the decision would increase government regulation of religion and dilute religious freedom by attaching strings to government funding.

School voucher decision moves the school voucher debate to state legislatures and state courts

The expansion of school choice programs, the public's interest in private schools for safety and academic reasons, and a clarification of constitutional issues may encourage state legislatures to explore school voucher plans that base students' eligibility on family income and residency, similar to Cleveland and Milwaukee, or enrollment in failing schools, similar to Florida. Many state constitutions prohibit using public funds to support or benefit religious schools or institutions. The language of these state constitutional provisions varies widely and in many cases appears more restrictive than the First Amendment Establishment Clause.

Minnesota's constitution prohibits using public money to support religious schools

Minnesota's Constitution, article XIII, section 2, reads: "In no case shall any public money or property be appropriated or used for the support of schools wherein the distinctive doctrines, creeds or tenets of any. . .religious sect are promulgated or taught." Although the prohibition appears more restrictive than that of the federal Establishment Clause, voucher proponents may argue that Minnesota's constitution prohibits support of religious schools but does not prohibit aid to students attending a religious school. If a Minnesota court interprets the state's constitutional prohibition restrictively, voucher proponents may have to seek to amend the state constitution or challenge the prohibition under the federal Free Exercise, Free Speech, and Equal Protection clauses.

Debate asks if school vouchers expand educational opportunities or subsidize private schools

School vouchers, as a school choice option, have raised issues about:

- whether to use public funds for religious schools
- what criteria private schools may apply when selecting students
- the degree to which private schools are publicly accountable for student performance
- the extent of autonomy private schools enjoy in determining curriculum or other pedagogical or financial matters.

Proponents argue that school vouchers give poor families educational opportunities similar to those enjoyed by wealthier families and ensure, through market forces, that parents have sufficient choices to provide their children with an education consistent with their values and beliefs. Opponents argue that school vouchers negatively impact the democratizing function of public schools by exacerbating economic, ideological, and racial segregation across schools.

For more information: Contact legislative analyst Lisa Larson at 651-296-8036. Also see the House Research publication *School Vouchers*, September 2002.

HOUSE RESEARCH | Short Subjects

Lisa Larson

October 2002

Title I of the Federal Elementary and Secondary Education Act and Statewide Testing

Funding and purpose

Title I of the Elementary and Secondary Education Act is the single largest source of federal education funding; Minnesota received about $98 million in fiscal year 2002 and about $113 million in fiscal year 2003 in Title I funding. Title I funding is distributed based upon the number of low-income families residing in a school district. The funding provides additional educational programs and services to help children who are behind in school, including after-school, weekend and summer school programs, teacher training, parent involvement activities, specialists in reading, language arts and math, and tutors and aides.

1994 federal requirements

When Congress reauthorized the Elementary and Secondary Education Act in 1994, it required states to adopt or develop challenging curriculum content and performance standards, align assessments with state content standards, and implement an accountability system to measure school and district progress in improving student achievement. The legislation, among other things, required states to

- develop challenging reading and math standards
- develop three levels of performance standards for all students (partially proficient, proficient, advanced)
- administer reading and math assessments in grade spans 3 through 5, 6 through 9, and 10 through 12
- use criterion-based assessments that judge students' performance against an objective standard, instead of using norm-referenced tests that compare students' performance to that of other students
- use the same performance standards to assess students with disabilities and limited English proficiency, but provide reasonable adaptations and accommodations to ensure accurate and reliable information on what the students know and can do
- report student assessment data by school district, school, gender, major ethnic and racial groups, limited English proficiency status, migrant status, disability, and economic disadvantage
- define adequate yearly progress by using performance standards to establish a benchmark for school improvement
- require schools to show continuous progress toward achieving adequate yearly progress
- establish consequences for schools that fail to meet the standard for adequate yearly progress

In exchange for undertaking the added requirements, Congress gave states greater flexibility in their use of Title I funds.

Compliance waivers

As of March 2002, Minnesota and 34 other states and instrumentalities had not fully complied with 1994 Title I assessment requirements. To avoid jeopardizing Title I funding, the federal education department granted Minnesota a three-year waiver, giving the state until January 1, 2004, to complete assessment requirements. As a condition of receiving the waiver, the Department of Children, Families and Learning submitted to the federal education department a plan and time line for addressing deficiencies in the state's assessment system.

2001 federal requirements

In 2001, Congress passed new legislation to again reauthorize the Elementary and Secondary Education Act. The 2001 legislation augments the 1994 assessment and accountability requirements by requiring states to increase testing requirements that must be implemented through 2008 and establish progressively severe consequences for schools that fail to improve test scores. Under the 2001 legislation, among other things, states must

- develop content standards in science by the 2005-2006 school year that are applicable to all students and align content and performance standards in science and administer the science assessments by the 2007-2008 school year in grade spans 3 through 5, 6 through 9, and 10 through 12
- administer reading and math tests annually to all students in grades 3 through 8, including at least 95 percent of students in specific population subgroups who may meet separate annual performance targets, beginning in the 2005-2006 school year (states need not administer these tests if Congress fails to appropriate specified funding in any one year)
- require some students in grades 4 and 8 to take the National Assessment for Educational Performance (NAEP) at federal expense
- annually assess limited English proficiency students by the 2002-2003 school year and test in English those students who have attended school in the United States for three consecutive years unless an alternative local assessment is more reliable
- make available annual information on student performance and teacher qualifications by the 2002-2003 school year
- show gains in academic achievement for all students and for specific population groups and measure the gains against the state's definition of adequate yearly progress, which must expect all students to perform at a proficient level within 12 years
- define by year the actions a school district must take to improve failing schools, including allowing students to attend other public schools, using Title I funds for supplemental services from public or private providers, undertaking corrective actions such as replacing school staff or implementing a new curriculum, and restructuring the school as a charter school.

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

HOUSE RESEARCH | **Short Subjects**

Kathy Novak

October 2002

Tuition Reciprocity Program

What is post-secondary tuition reciprocity?

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

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

Who is eligible to participate?

Students who live in participating states and enroll in two-year, baccalaureate, graduate, and professional programs in one of the other participating states are eligible for reciprocity. Except for the medicine, veterinary medicine, and dentistry programs under the Minnesota/Wisconsin agreement, all professional programs are included in the program.

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

What tuition rates do students pay?

Undergraduate, graduate, and professional tuition rates are set in the agreements for participating institutions and programs. The agreements must be approved by post-secondary governing boards—in Minnesota, the Minnesota State Colleges and Universities (MnSCU) board of trustees and the University of Minnesota Board of Regents.

The most common tuition rate structures are:

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

Does the reciprocity program cost the state?

The state pays for the reciprocity program in two ways:

- state aid payments to MnSCU and the University of Minnesota include reciprocity students (nonresident, nonreciprocity students are excluded from the aid calculation); and

- general fund appropriations for payments to other states, if required, under the formulas in the agreements.

The state appropriated $9 million for fiscal years 2002-2003 for reciprocity payments to other states. In 2002, HESO estimated the state's obligation was about $3.2 million less that the appropriation. The difference was transferred to the state grant program.

How many students participate in the program?

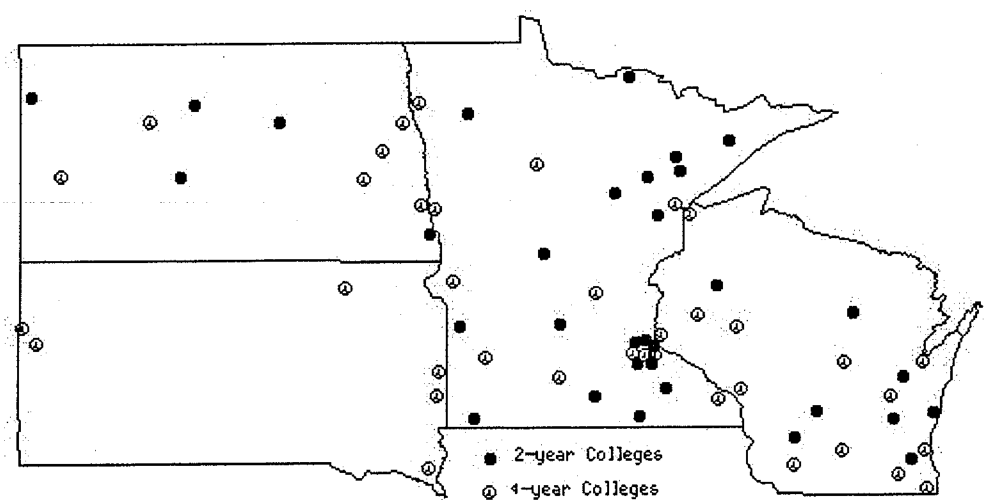
Students from Minnesota, North Dakota, South Dakota and Wisconsin account for most of the participants in the reciprocity program.

Full Year Equivalent Reciprocity Students 2000-2001

	From Minnesota Attending in		*Attending in Minnesota from*	
	Undergraduate	Graduate	Undergraduate	Graduate
North Dakota	5,514	286	4,810	303
South Dakota	1,453	63	1,862	258
Wisconsin	11,658	742	7,821	585
Total	18,625	1,091	14,493	1,146

What schools do reciprocity students attend?

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



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

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Deborah K. McKnight September 2002

University of Minnesota Constitutional Autonomy

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

Definition

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

Statute and Constitution

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

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

Essential Case Law Principles

The Minnesota Supreme Court first decided a case on constitutional autonomy in 1928. A handful of cases decided since then have resulted in the following four rules to use in evaluating legislation that affects the university.

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

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

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

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

- **The university is subject to the state constitution and is not above the legislature's lawmaking power.** As noted above, cases limit the legislative and executive branches' ability to manage internal university affairs and to place conditions on appropriations. Nonetheless, the legislature still has the power to impose on the university various general regulatory requirements that apply to other public agencies. The Minnesota Supreme Court has said that one criterion for evaluating the validity of such requirements is whether the university has accepted being covered by the statute in question. *See University of Minnesota Constitutional Autonomy,* Minnesota House Research Department at 12-14 (2000).

For more information: Contact legislative analyst Deborah K. McKnight 651-296-5056. Also see the House Research Legal Analysis, *University of Minnesota Constitutional Autonomy*, December 2000.

HOUSE RESEARCH | **Short Subjects**

Linda Holmes

November 2002

Minimum Wage

What is the state minimum wage?

According to state law, the state minimum wage is $5.15 per hour for employers who do at least $500,000 of business per year, and $4.90 per hour for employers who do less than $500,000 of business per year. There is an exception for employees under age 20 during their first 90 days of work, who can be paid $4.25 per hour.

What is the federal minimum wage?

The federal minimum wage is $5.15 per hour, with a provision for a "training wage" of $4.25 per hour for employees under age 20 for their first 90 days of work.

Are employees covered by the state law, the federal law, or both?

As a general matter, the federal law covers all employees of establishments that have at least $500,000 in gross receipts per year. Further, any employee of an establishment that does not meet the $500,000 minimum is covered if that employee's individual work involves transactions that in some way touch interstate commerce. The way these provisions are interpreted, most employees are covered by the federal law.

The state law covers the great majority of employees in Minnesota unless they are specifically exempt. Therefore, unless they fit into one of the specific exceptions, most people who work in Minnesota are covered by both the state and federal law.

What are the state and federal exemptions

Many of the specific exemptions from minimum wage requirements are the same in federal and state law. Some exemptions are broad, such as the one that applies to executive, administrative, and professional employees, which appear in both state and federal law, and some are narrow, such as the federal exemption of employees who work at home making evergreen wreaths. There are regulations at the state and federal levels that provide the boundaries of many of these categories.

Some of the important exemptions are for executive, professional, and managerial employees who work on a salary basis, and certain skilled computer workers.

If an employee is covered by both state and federal law, which prevails?

The short answer is that the higher wage prevails. If one law mandates a minimum of $4.90 and one mandates a minimum of $5.15, for instance, the employer can comply with both only by paying more than $5.15. Because the federal minimum wage is currently $5.15 for employers of all sizes, the only employees who would have the current state small-employer minimum wage of $4.90 as their lowest permissible wage are those employees who work for small employers and are covered by state law but not federal law.

What about employees who receive tips?

Minnesota does not allow a "tip credit," so tipped employees in Minnesota who are subject to the state minimum wage provisions must be paid the regular state minimum hourly wage by the employer, regardless of whether or not they also receive tips. Further, the employer may not require employees to share tips with the employer or with other employees, because the tips are the exclusive property of the person who receives them.

This differs from federal law, which allows a partial tip credit as long as the employer can prove that the employee actually receives enough tips to make up the difference between the lower hourly wage the employer pays and the statutory minimum wage. If a Minnesota employee is covered by state law, however, the employer cannot take the tip credit against the state minimum wage. This means that a tipped employee of a covered employer in Minnesota still must be paid a direct wage of either $4.90 or $5.15 per hour (depending on employer size), whether or not the employee also receives tips.

When was the last time the minimum wage was increased?

The most recent increases in the federal and state minimum wages were effective in September of 1997, except that the increase in Minnesota's small employer wage was effective January 1, 1998.

How does the minimum wage in Minnesota compare to the minimum wage in other states?

According to information published by the United States Department of Labor in October 2002, seven states have no minimum wage laws, 11 states and the District of Columbia have minimum wages higher than the federal minimum, 29 states have minimum wages the same as the federal minimum (including Minnesota), and three states have minimum wages lower than the federal minimum.

States have different approaches to setting and applying their minimum wage laws. Some states automatically make certain adjustments to their state rates when the federal rate changes. Many states also exclude from state coverage any employment that is covered by the federal law so that there is no overlap. In Washington and Alaska, the state minimum wage is automatically adjusted for inflation.

Who enforces minimum wage laws?

Minimum wage laws are enforced in Minnesota by the Minnesota Department of Labor and Industry and the United States Department of Labor.

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

HOUSE RESEARCH | **Short Subjects**

Linda Holmes

November 2002

Parenting Leave

What do the state and federal laws do?

Both the Minnesota Parenting Leave Law and the federal Family and Medical Leave Act (FMLA) require certain employers to provide qualifying employees with a minimum amount of job-protected leave when they have a newborn or newly adopted child. The federal FMLA also provides leave in other situations, such as the illness of a family member or the illness of the employee.

These laws do not necessarily provide additional leave to be added to all the leave that the employer voluntarily provides. Instead, they require that a minimum amount of job-protected leave (meaning leave after which an employee has the right to his or her job back) be made available. For instance, if an employer provides 12 weeks of paid parental leave for employees as a part of its normal benefit package, that leave would qualify as the leave required by law, so the employee could not take the 12 paid weeks and then claim another 12 weeks of unpaid but job-protected "FMLA leave." In other words, these laws do not create a grant of a block of special set-aside leave so much as they provide a minimum amount of time an employee may be absent from work after a birth or adoption without endangering the employee's job.

What employees are covered by the state law?

An employee is covered by the state law if: (1) the employee works for an employer that has at least 21 employees at any site (whether or not it is the site where the employee works); and (2) the employee has worked for the employer at least half-time for the 12 consecutive months preceding the request for leave.

What employees are covered by the federal Family and Medical Leave Act?

An employee is covered by FMLA if: (1) the employee works for a public employer, or for a private employer that has at least 50 employees within 75 miles of where the employee works; and (2) the employee has worked for the employer for at least 12 months (not necessarily consecutively); and (3) the employee has worked for the employer for at least 1,250 hours in the 12 consecutive months preceding the request for leave.

What if an employee is covered by both statutes?

If an employee is covered by both statutes, then the employer must comply with both. The effect of this is that the employee receives the benefit guaranteed by the more generous provision of state or federal law.

How much leave can the employee receive?

When an employee either has a newborn biological child or a newly adopted child, federal law provides for a minimum of 12 weeks of leave, and state law provides for a minimum of six weeks of leave.

When does the leave start?

Under state law, the employee can choose to start the leave at any time up to six weeks after the child is adopted or born, except that if a newborn has to spend more time in the hospital than the mother spends, then the leave can begin up to six weeks after the child comes home from the hospital.

Under federal law, the employee can begin the leave up to 12 months after the birth or adoption of the child.

Does the leave have to be paid?

Neither the federal nor the state law requires that the leave be paid. Under state law, the employer can reduce the six weeks of leave by any amount of paid parental or disability leave, but not by sick leave, so that the total leave does not exceed six weeks. Under the FMLA, either the employer or the employee can decide to substitute any paid leave available to the employee for any part of the unpaid leave. Therefore, either the employer or the employee can decide that the employee will exhaust vacation or other paid leave as part of the 12 weeks.

What about the employee's health insurance during the leave?

Both state and federal law require that the employee be permitted to continue existing health insurance through the employer during the leave period. State law allows an employer to require the employee to pay the entire premium during his or her leave, but the FMLA requires that the employer continue to pay whatever portion of the premium it was paying prior to the leave. This difference in provisions is one reason why it may be important to determine whether the employee is covered by the state law, the federal law, or both. The FMLA further provides that if the employee chooses not to return to work after the leave, the employer can require the employee to pay back any insurance premiums the employer paid during the leave.

What happens when the employee returns?

Under both state and federal law, the employee is entitled to be returned to the same position or a comparable position (in hours, duties, and pay) at the end of the leave, unless the employee otherwise would have been laid off during the leave. The FMLA has an exception to reinstatement for an employer's most highly paid employees, if reinstatement would cause "grievous economic injury" to the employer.

Does state or federal law provide parental leave other than when a child is first born or adopted?

Minnesota law provides that an employee is entitled to 16 hours of unpaid leave per year to attend school conferences and activities relating to the employee's child, provided those activities cannot be scheduled outside of work time. This law also covers foster parents.

Minnesota law also allows an employee to use the sick leave granted to him or her by his or her employer to care for an ill child. Both of these are in addition to the six weeks of leave provided for the birth or adoption of a child. Coverage by these laws is the same as for the six-week leave discussed above, except that the school activities leave is available without regard to the number of employees that the employer has.

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

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HOUSE RESEARCH | **Short Subjects**

Linda Holmes **November 2002**

Prevailing Wage

What is prevailing wage?

Prevailing wage is a system under which contractors and subcontractors working on state construction projects are required to pay their employees no less than a particular amount determined by the Department of Labor and Industry to be the "prevailing wage" for that particular employee's job and for the location where the work is being done. The system contains both a minimum hourly wage requirement and requirements for overtime pay after a maximum of eight hours per day or 40 hours a week. This differs from the regular state overtime requirements, which require overtime only after 48 hours in a week and contain no daily overtime provision.

What projects are covered by prevailing wage requirements?

Generally, the prevailing wage requirements apply to state "projects." A project is defined as "erection, construction, remodeling, or repairing of a public building or other public work financed in whole or part by state funds." Prevailing wage provisions do not apply to a contract in which the total cost of the project is expected to be under $2,500 and only one trade or occupation is required to complete the project, or to a contract in which the total cost of the project is expected to be under $25,000 and more than one trade or occupation is required to complete it.

How is the prevailing wage calculated?

The Department of Labor and Industry is responsible for conducting surveys in which it gathers information from contractors, labor organizations, and other interested parties about what wages are being paid to employees who do particular jobs in particular geographical areas. The department has established rules that explain how it conducts the survey. When the information has been collected, the department determines which single wage is being paid to the largest number of employees, and that wage becomes the prevailing wage for that job in that place. This number is *not* an average, but is instead the *mode* of all wages paid in the area, which can be higher or lower than the average.

For example, if the department gathered information listing one employee making $10.25 per hour, two employees making $10.30 per hour, two employees making $10.50 per hour, three employees making $10.60, and four employees making $16.00, the prevailing wage would be $16.00. Similarly, if there were four employees making $10.00, three employees making $15.00, two employees making $16.00, two employees making $16.50, and two employees making $16.75, the prevailing wage would be $10.00.

Who enforces Minnesota's prevailing wage laws?	These laws are enforced by the Department of Labor and Industry, except with respect to highway construction, in which case enforcement is the responsibility of the Department of Transportation.

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

Linda Holmes November 2002

The Dislocated Worker Program

What is the Dislocated Worker Program?

The Dislocated Worker Program provides assistance to some individuals who are displaced from their employment or source of support and require assistance in returning to or entering the workforce.

Who is eligible for assistance?

Several kinds of workers are eligible for assistance under the program. They include those who:

- are terminated from their employment, exhaust their unemployment benefits, and are unlikely to return to their previous industry or occupation;
- are terminated as part of a plant closing or other large layoff;
- have been long-term unemployed and have limited opportunities for similar reemployment in the area where they live;
- have been self-employed (including as farmers or ranchers) and are unemployed (or, for farmers and ranchers, are earning substantially less income) as a result of economic conditions or natural disasters; or
- are displaced homemakers, meaning they have spent a number of years providing homemaking service while dependent on another person, and that person is no longer providing support as a result of the other person's disability or death, or because of a divorce. "Displaced homemaker" can also include a person who previously was supported by public assistance because of the presence of a dependent in the household who is no longer present.

What kind of assistance is available?

The program provides basic employment services such as job counseling, testing, skills assessment, and placement assistance. It provides money for training, including classroom training, on-the-job training, skills training, and basic education. Finally, to a limited degree, it offers support services, including temporary help with expenses such as rent, health insurance, transportation, and similar costs that may need to be covered while a person is in training.

How is the money distributed?	Funds are appropriated to the Job Skills Partnership Board, and are in turn given as grants to workforce service areas (there are 18 such areas in Minnesota, established by federal law) or other eligible organizations, which may include labor organizations, business organizations, state or local government agencies, or nonprofit agencies. These areas and organizations often in turn contract with individual service providers to deliver services to individuals. The Dislocated Worker Program is probably best known for its projects responding to large layoffs, but the board is required to grant between 35 percent and 50 percent of its funds to assist individuals and those affected by smaller layoffs.
Where does the money come from?	Employers pay a special tax along with their unemployment insurance taxes that goes into a separate fund called the Workforce Development Fund. Currently, this tax is 0.07 percent of taxable wages, and the taxable wage base is $21,000, meaning that the maximum any employer pays into the Workforce Development Fund is approximately $15 per employee per year. Not all the money in the Workforce Development Fund goes to fund the Dislocated Worker Program. The legislature appropriates some of the money in the fund to support other employment and training programs. Whatever money remains after these appropriations are made is available for the Dislocated Worker Program. In addition to the state money, there are federal funds appropriated for the federal Dislocated Worker Program, which is similar to the state program.

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

Mike Bull

October 2002

Air Quality Regulation in Minnesota

The federal Clean Air Act

The federal Clean Air Act is the primary regulatory authority used by the Minnesota Pollution Control Agency (MPCA) to protect the state's air quality. In addition to the Clean Air Act, state law grants broad authority to the agency to protect Minnesota's air. However, budgetary and other constraints keep the MPCA from going much beyond its responsibilities under the Clean Air Act.

The State Implementation Plan

The federal Clean Air Act, first enacted in 1970, established a two-tiered regulatory partnership, in which:

- the **federal government**, through the Environmental Protection Agency, (EPA) develops standards for air quality; and
- **each state** plans how achieve those standards.

When the EPA approved Minnesota's State Implementation Plan (SIP), it delegated its regulatory authority to administer the Clean Air Act in Minnesota to the MPCA. Rather than a single plan that is reviewed on a regular basis, the SIP is a constantly evolving collection of plans, targets, standards, permits, and state regulations designed to meet state and federal air quality requirements. Once approved, the SIP takes on the force and effect of federal law, in addition to whatever separate authority it may have under state law.

Federal standards

There are a number of federal standards or programs that state air regulatory programs should incorporate. The most important of these are:

- National Ambient Air Quality Standards
- National Emission Standards for Hazardous Air Pollutants
- New Source Performance Standards and
- New Source Review

Each will be discussed below.

National Ambient Air Quality Standards

The EPA has set standards for concentrations of seven principal pollutants (the "criteria pollutants") in the outside air, called the National Ambient Air Quality Standards (NAAQS).

The seven criteria pollutants are carbon monoxide (CO); lead; sulphur dioxide (SO_x) and nitrogen oxide (NO_x) (often called "socks and knocks"); ozone (O_3); particulate matter with diameters of 10 micrometers or less (PM 10); and particulate matter with diameters of 2.5 micrometers or less (PM 2.5).

Those areas of the country that meet the standards for a given criteria pollutant are said to be "in attainment" for that pollutant. All of Minnesota is currently in attainment for all seven criteria pollutants, although the MPCA is concerned about the growing concentrations of ozone in the metropolitan region. Once an area is determined to be a "nonattainment" area, the regulatory controls of air quality within that area become much more stringent, and the resulting costs of compliance can be extremely expensive.

Standards for control of air toxics

The 1990 amendments to the Clean Air Act listed 189 hazardous air pollutants to be regulated by the EPA. The federal agency may add to this list, but to date it has not done so.

To regulate hazardous air pollutants, EPA identifies categories of sources that release these air toxics (e.g., gasoline service stations, coal-burning power plants, chemical plants, etc.). The EPA then reviews the control technologies available for each category and specifies an emission standard for that category of sources, assuming the maximum reduction of air toxin emissions is consistent with the technology available. (This is often referred to as MACT, for "maximum achievable control technology.") Collectively, these standards are known as the National Emission Standards for Hazardous Air Pollutants or NESHAP.

New Source Performance Standards

The EPA has established standards limiting emissions from new or modified facilities of approximately 70 industrial categories of emission sources. These standards are known as the New Source Performance Standards (NSPS). A new facility subject to these standards must demonstrate that it will comply with the applicable NSPS and obtain a construction permit from the MPCA.

New Source Review

Under the New Source Review program (NSR), a facility must install modern pollution control equipment when it is built (for new sources) or when it makes certain major modifications (for existing sources). Facilities subject to NSR in attainment areas must install "best available control technology" (BACT). Facilities subject to NSR in nonattainment areas are subject to an even more strict standard, and must install "lowest achievable emission rate" technology (LAER).

The new source review requirements apply only to new and significantly modified facilities. Facilities existing as of 1977 that have not made major modifications need only install "reasonably available control technology" (RACT). Some refer to these existing facilities as "grandfathered" facilities. Many coal-fired power plants in existence or planned and under construction in 1977 fall under this category.

Regulation of mobile sources

Only the EPA and California may adopt emissions standards for mobile sources (cars, trucks, buses, etc.). California is authorized under the federal Clean Air Act to adopt stricter standards, and any other state may elect to adopt and enforce California's more stringent emissions standards.

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

HOUSE RESEARCH | Short Subjects

John Helland

September 2002

Drainage Issues

As stated in Minnesota Statutes, section 103A.201, the state's water policy is designed to regulate the conservation and use of water resources in a way that is in the best interest of the people and promotes public health, safety, and welfare. Regulation of water policy involves drainage, which the state has been attempting to manage since the late 19th century.

History of drainage laws

Minnesota's first comprehensive drainage law was passed in 1887. It established a petition process for landowners, monitoring by county commissioners, and a system of viewers to survey, locate, and prepare a report on a proposed drainage ditch. This 115-year-old law established a process that is similar to the approaches still used in state drainage law.

In 1955 the state established the Water Resources Board, which then authorized the creation of geographic watershed districts. (The board later became part of the present Board of Water and Soil Resources.) Watershed districts managed the drainage systems within their boundaries. County boards were required to evaluate the effects on the environment and natural resources when considering a drainage project, and the number of petitioners required to initiate a project was increased. The Commissioner of Natural Resources was required to evaluate environmental and conservation impacts before a drainage project could be established.

Drainage activity peaked in the 1950s. In the 1960s, public policy had shifted toward wetland conservation, and people began to question whether drainage was always in the public interest. Federal and state law evolved toward the acquisition and protection of wetlands. Changes in state law increased the consideration of environmental measures before a drainage proceeding commenced and imposed stricter protection of wetlands. These changes were manifested in the Wetland Conservation Act of 1991, which established a "no-net-loss" policy for the state's remaining wetlands.

Activity and authority

Up until the mid-1980s, Minnesota had about five million acres of drained land. About 20 percent of the land was drained by tile pipes conveying excess water from farm fields to collection ditches. The remaining 80 percent was drained by 27,000 miles of constructed drainage ditches.

In the last two decades, drainage activity has tapered off. There are fewer individual farmers and, subsequently, less interest in opening up new land to drain. The growing realization of public benefits of wetland protection and accompanying laws has slowed wetland drainage. Recent drainage activity has occurred in the state's growing urbanization areas, including preparing for streets, roads, airports, and residential and industrial development.

Counties have general authority for public drainage, although some drainage systems are under the supervision of a watershed district. Counties and watershed districts are more or less on their own in interpreting the drainage law, and generally do so on a case-by-case basis. This has caused a growing lack of uniformity and standardization of drainage procedures among counties and watershed districts.

Issues in public drainage

Issues and concerns about public drainage have emerged among various interest groups during the last decade. Some groups are interested in specific changes to the drainage laws; others want a wholesale change to "modernize" it. The state Board of Water and Soil Resources sponsored a public drainage forum to identify and discuss the issues. The major concerns that arose from that forum are as follows.

- There is a need for more education on the very process-oriented drainage law for all interested parties, but especially for public officials who are able to change the law
- The buffer strips required to be placed along new drainage systems to prevent erosion need to be maintained and inspected
- The abandonment of a public drainage is very hard to accomplish
- Repair of an existing drainage ditch sometimes is thought of as an improvement
- Some drain tile systems are overwhelming the capacity of existing ditch systems to handle the water flow
- The viewers' report in a drainage proceeding may be the single most important document in the process; it lists viewers' facts and findings

Several ideas for improving the drainage system came out of the forum.

- Implement a cost/benefit analysis of drainage on a countywide basis
- Use best management practices on ditch systems
- Use new technology in drain tile systems
- Give incentives to landowners to abandon ditch systems that no longer provide a public benefit
- Have engineers review the environmental criteria to assess the impact of a drainage project that's initiated by a petition

For more information: Contact legislative analyst John Helland at 651-296-5039. Also see the House Research publication *The Drainage Issue*, January 1999.

HOUSE RESEARCH | **Short Subjects**

John Helland **October 2002**

Nuclear Waste Transportation

Federal repository

After more than 20 years and $4 billion spent on scientific study, the United States Congress in July approved the Yucca Mountain, Nevada, site as the federal repository for nuclear waste. President Bush had forwarded an approved United States Department of Energy (DOE) environmental impact statement (EIS) on the site to Congress, but the state of Nevada had objected, requiring congressional approval.

The Yucca Mountain site

Yucca Mountain is a remote Nevada location 100 miles from a large population center, Las Vegas. It was picked because of this and also because of:

- its very dry climate (less than six inches of rain annually) and
- its extremely deep water table (close to 1,000 feet below the repository site).

Nevada objections

Nevada had earlier filed suit against the DOE claiming that the Yucca Mountain EIS was inadequate and in violation of the National Environmental Policy Act and the Nuclear Waste Policy Act. The state claimed that the EIS transportation analysis of spent nuclear fuel and high-level radioactive waste was totally inadequate. Nevada wants DOE to develop a draft national transportation plan for waste shipment, with alternatives, and then a consistent state plan identifying preferred shipping routes. Nevada also wants at least a six-month comment period, with public hearings in all states and major cities along proposed shipping routes. The suit failed in United States district court, but is now before the United States Court of Appeals.

Timetable

The DOE is in the process of submitting the Yucca Mountain license application to the Nuclear Regulatory Commission (NRC). Based on federal law, NRC then conducts scientific review and public hearings before any construction may be able to commence in 2005. The facility for underground storage will take three years to fully construct. The DOE then requests NRC authorization to operate, which takes at least another two years. At the earliest, Yucca Mountain may be able to accept nuclear waste shipments by 2010.

Waste transport

If or when the nuclear waste repository at Yucca Mountain becomes operational, a combination of transportation modes by train and truck will be used to move radioactive materials from 77 sites located in 35 states (including waste from both commercial and government facilities). The federal government prefers using rail to ship waste 95 percent of the time. All spent nuclear fuel and high-level radioactive waste shipped will be in solid form for transportation and disposal. The waste materials will be transported to a repository in large certified container casks: rail casks may weigh as much as 150 tons; truck casks can weigh 26 tons.

Routing	The estimated number of annual shipments is 175. United States Department of Transportation (DOT) and NRC rules track the shipments by 24-hour satellite; along with armed escorts; and there must be advance route approval and notification to the states. Each state governor can provide preferred routes to the DOT, and emergency response teams already have been trained in the states where shipment will occur. The federal government says that in more than 30 years, there has been no harmful release of radiation in more than 2,700 shipments of nuclear waste. In Europe, particularly France and Britain, nuclear waste has been shipped for more than 25 years through heavily populated areas without serious incidents.
Alternative private site	In addition to waiting for the Yucca Mountain site to open, Xcel Energy in Minnesota has helped form a consortium of eight nuclear utilities to find and fund a private nuclear waste storage site. The site is proposed on the Utah reservation of the Skull Valley Band of Goshute Indians. An EIS was issued by the NRC, and the Atomic Safety and Licensing Board is holding hearings on the site's license application. If approved, nuclear waste shipments could begin from various locations, including Minnesota, to Utah sometime in 2005. Utah is objecting to the licensing process. Preliminary plans to ship nuclear waste through Minnesota, to either Nevada or Utah disposal sites, includes only waste from Xcel's Monticello and Prairie Island facilities and a decommissioned nuclear facility in LaCrosse, Wisconsin (see, www.state.nv.us/nucwaste) See also federal web sites for the NRC (www.nrc.gov) and DOE Yucca Mountain Project (www.ymp.gov).

For more information: Contact legislative analyst John Helland at 651-296-5039. Also see the House Research publication *Nuclear Waste Dry Cask Storage*, December 2001.

Mike Bull

October 2002

Solid Waste Management in Minnesota

State agencies

There are two state agencies that have significant responsibilities for managing solid waste in Minnesota. The Minnesota Pollution Control Agency (MPCA) is the state's equivalent of the federal Environmental Protection Agency; it develops and enforces the state's waste management regulations. In addition, the MPCA issues permits for solid waste management to waste haulers and solid waste facility owners.

In contrast, the Minnesota Office of Environmental Assistance (OEA) is not a regulator. Instead, the OEA provides technical and financial assistance and environmental education to businesses, local governments, schools, community groups, and individual citizens, with a specific focus on waste reduction and recycling. The OEA is also responsible for approving county solid waste plans.

State solid waste management policy

The state's solid waste management policy is specified in Minnesota Statutes, section 115B.02, which says that the goal of solid waste management in the state is to "protect the state's land, air, water, and other natural resources and the public health by:"

- reducing the amount and toxicity of waste generated;
- recovering usable materials and energy from waste;
- reducing dependence on land disposal of waste;
- coordinating waste management among political subdivisions; and
- ensuring the orderly and deliberate development of waste management facilities.

Solid waste consists of mixed municipal solid waste (what we commonly refer to as "garbage"), construction debris, and other nonhazardous waste. Solid waste is managed separately from hazardous waste.

The waste management hierarchy

Minnesota law describes a hierarchy for various solid waste management practices. To the extent practicable, solid waste is to be managed as high on the hierarchy as possible. The waste management practices listed in the statute, in order of preference, are:

- waste reduction and reuse
- waste recycling
- composting of yard waste and food waste
- resource recovery through composting or incineration and
- land disposal

When this hierarchy was first enacted, policymakers believed that government had the authority to direct waste to be managed in specific ways, and even at specific facilities, to ensure that waste was managed at the appropriate level of the hierarchy. However, judicial decisions in recent years have constrained governments' ability to do so. Policymakers have responded by implementing tools other than their regulatory "flow control" authority, such as contracts with haulers and other financial incentives, to guide waste to be managed in accordance with state policy. Many policymakers remain frustrated at the increasing amount of waste that is managed low on the hierarchy (land disposal, primarily) and by the difficulty in financing new waste-processing facilities.

Planning

Planning for the management of solid waste is primarily a county responsibility, but the planning requirements vary according to whether the county is a metropolitan county or a county in greater Minnesota. Regardless of where the county is located, the county's proposed plan must be approved by the OEA; it must include waste reduction and recycling provisions, as well as provisions to minimize the amount of waste that is disposed of in landfills. Metropolitan counties must develop county plans that are in accordance with the most recent "metropolitan long-range policy plan" adopted by the Metropolitan Council, and revised by the OEA.

Collection

Providing for the collection of solid waste is primarily a municipal responsibility. Municipal governments have three main options with regard to collection:

1. **Municipal:** the city collects garbage with city trucks and workers;
2. **Organized:** the city contracts with one or more waste haulers to collect waste within the city; and
3. **Open:** the city allows licensed haulers to collect waste within the city.

The OEA estimates that approximately 80 percent of the cities within the metropolitan area are "open" whereas cities in greater Minnesota are fairly evenly split between municipal/organized collection and open collection.

Where does the waste go?

The OEA estimates that the amount of solid waste generated in Minnesota has increased 37 percent since 1992, notwithstanding a statutory goal to reduce the amount of waste generated by 10 percent in that period. Of the approximately 5.6 million tons generated:

- approximately 47 percent is recycled;
- less than half a percent is composted;
- roughly 20 percent is incinerated in waste-to-energy facilities; and
- about 33 percent is disposed of in landfills. Of the amount landfilled, 658,000 tons went to landfills outside the state.

For more information: Contact legislative analyst Mike Bull at 651-296-8961. Also see the House Research publication *Minnesota Solid Waste History*, January 2002 .

John Helland

October 2002

State-Owned Land in Minnesota

How much land does the government own?

There are about 51.2 million acres of land and 2.6 million acres of water within Minnesota. About 25 percent of the land is owned by governmental units. The federal government owns about 7 percent of the land area, or 3.4 million acres, while the state government owns about 17 percent of the land area, or 8.4 million acres. Over 95 percent of the state-owned land was given to the state by the federal government.

Almost all federal land in Minnesota is natural resource land, primarily forest acreage in Chippewa and Superior national forests. Other federal lands are mainly in national wildlife management areas, national parklands, and Indian reservation lands.

Who manages the land?

The state Department of Natural Resources (DNR) is responsible for the management of over 90 percent of all state-owned land. At least 80 percent of DNR land is forested lands, primarily in state forest units, with other land in wildlife management areas, state parks, scientific and natural areas, fisheries management areas, water access sites, and state trials and recreation areas.

Other state agencies that own and manage land are the Department of Transportation, Military Affairs, Administration, Human Services, and the University of Minnesota and Minnesota State Colleges and Universities systems.

Easement acquisition trend

A recent trend for natural resource land protection has been to acquire protection through conservation easements, rather than only the purchase of direct fee title. Conservation easements protect quality land for a certain period of time by payments to landowners based upon a percentage of the assessed value of their land. Both the Board of Water and Soil Resources (BOWSR) and the DNR have utilized easements recently; BOWSR having over 195,000 acres under easement through the RIM and CREP programs; and DNR having about 20,000 acres under easement for various purposes.

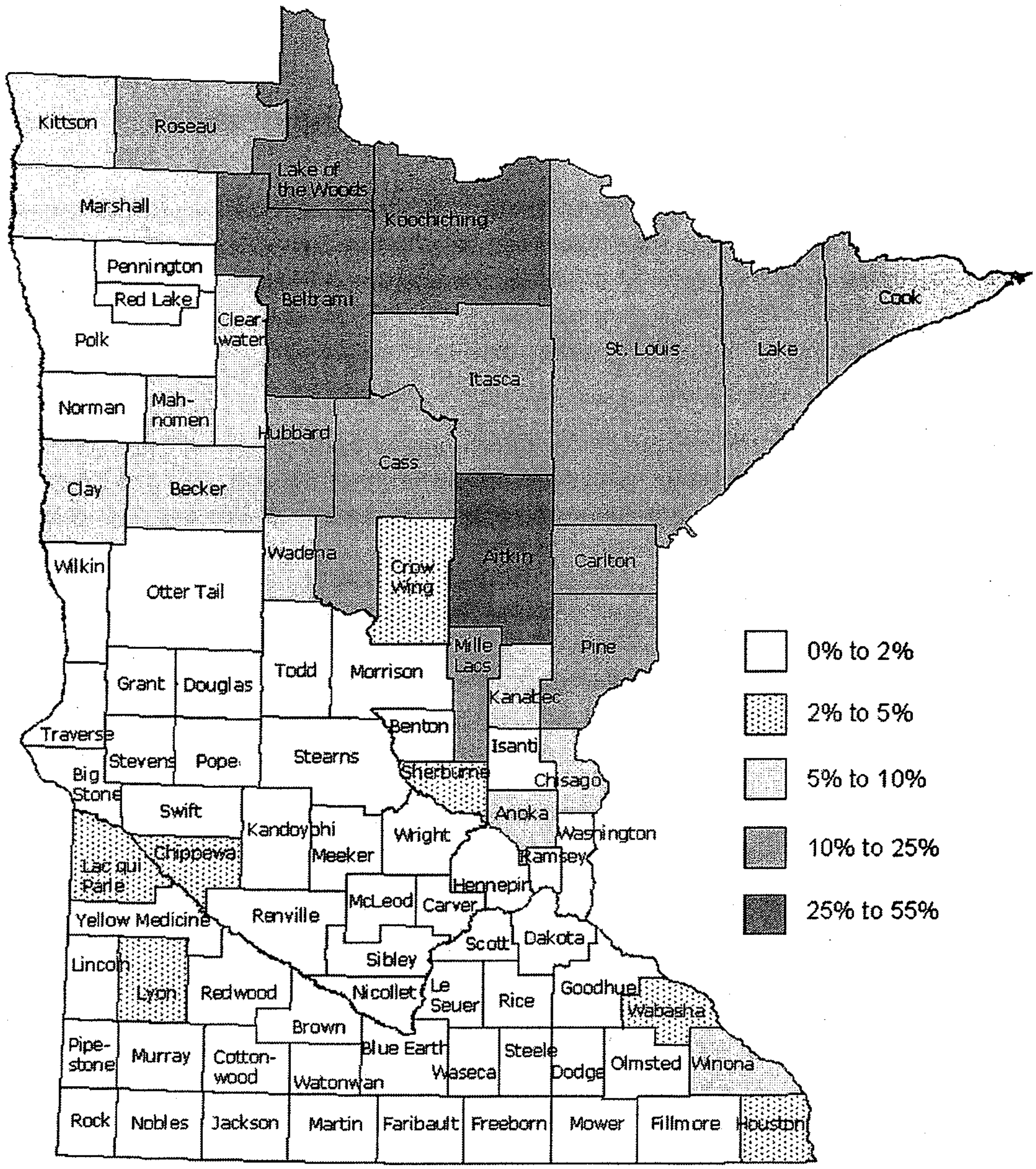
Information about the Reinvest in Minnesota (RIM) program and Conservation Reserve Enhancement Program (CREP) can be found on the BOWSR web site at www.bwsr.state.mn.us/easements/index.html.

A 2002 law, chapter 393, section 36, was enacted requiring the Commissioner of Administration to inventory most state-owned land and report to the 2003 Legislature on whether the land is:

1) Being used for a public purpose;
2) Expected to be used for a future public purpose; and
3) Not now or expected to be used for a public purpose.

State Land Ownership

Approximate percentage of state-owned land within each county



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

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

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John Helland October 2002

The 3/16 Bill

History

In the 2001 session, bills were introduced (H.F. 1671/S.F. 1589) that proposed to amend the Minnesota Constitution and dedicate 3/16 of 1 percent of taxable sales revenue for natural resources purposes. They became known as "the 3/16 bills." Both bills started receiving serious consideration late in the 2002 session when gubernatorial candidates at the time expressed support for the concept, but neither became law.

Amount and dollar division

If the 3/16 dedication was approved by the voters, it would amount to about $129 million in fiscal year 2006 (the dedication would have to be approved by voters because it would amend the state constitution). It would last until 2026 and, as it ended up last session, 51 percent of the money would go to a conservation heritage enhancement fund, funding fish and wildlife habitat projects; 20 percent for state parks and trails; 20 percent for metropolitan parks and trails; 7 percent for local and regional park and trail grants and grant-in-aid trails; and 2 percent for the state, Como, and Duluth zoos. Additionally, an amendment was added asking the voters to approve a 3/16 dedication for public education.

Council

The 51 percent expenditure slated for the conservation heritage enhancement fund originally was to be decided by a new heritage enhancement council, made up of four nonvoting legislators and 11 citizens representing hunting and fishing interests. The Department of Natural Resources (DNR) objected to this feature, along with some other groups, and it was removed late in the 2002 session.

Need

Most wildlife and sportsmen groups in the state felt current state funding, primarily through the Game and Fish Fund (license revenues), was not keeping up with identified habitat needs. They claim that hunting, fishing, and wildlife activities in Minnesota generate substantially more revenue for the state than the state invests in wildlife programs. There is an estimated $3 billion annually spent in the state on hunting, fishing, camping, and wildlife-watching activities.

2002 funding

Additionally, the current budget deficit resulted in the DNR's general fund budget being cut by almost $13 million in fiscal years 2002-2003, and $28.6 million in fiscal years 2004-2005. In addition, almost $50 million in natural resources projects for the DNR in the 2002 bonding law (Chapter 373) were vetoed by the governor.

Other states

The proponents of the 3/16 bills modeled the legislation to some degree on laws existing in Missouri and Arkansas. A 26-year-old permanent law exists in Missouri that dedicates 1/8 of 1 percent of taxable sales revenue for natural resources activities. This amounted to $88 million in funds last year. Additionally, a separate 1/10 of 1 percent sales tax dedication—which must be renewed by a statewide public vote every six years—was enacted in 1984 to fund state park and soil conservation needs. Because of these laws, Missouri is now only behind California and Florida—much larger states in population and overall state budgets—in total expenditures for conservation purposes.

Missouri has a four-person conservation commission to decide on the sales tax dedication spending. The Missouri Legislature has little control over the dedication budget. Arkansas also dedicates 1/8 of 1 percent of taxable sales revenue to natural resources purposes, but with smaller population and less revenue than Missouri, it amounts to about $17 million annually.

Next session

In Minnesota for 2003, the conservation groups supporting the 3/16 bills—primarily members of the Minnesota Outdoor Heritage Alliance—are seriously looking at a one-half of 1 percent sales tax dedication. This would raise $350 million annually for all natural resources purposes, or almost $175 million more a year than comes from the general fund now. The groups, if successful in getting legislation passed and approval by the voters, would support discontinuing any dollars coming from the general fund for natural resources.

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

Mike Bull and Karen Baker October 2002

Statutory Solid Waste Taxes and Fees

Solid Waste Management Tax

Minnesota Statutes, chapter 297H: State law **imposes** a sales tax on the solid waste management services provided by a waste hauler to a customer. Solid waste management services are defined as collection, transportation, processing, and disposal services. Enacted in 1997 as a revenue-neutral replacement of two other solid waste fees, the tax rates for the solid waste management tax are 9.75 percent on solid waste services to residential customers, and 17 percent on services to commercial and industrial customers. In addition, the state imposes a volume-based fee of 60 cents per loose cubic yard on the management of construction and demolition debris. Each hauler remits the amounts collected to the state. The revenue from the sales tax and the fee on debris is apportioned by law as follows:

- 50 percent (or a minimum of $22 million) to the Solid Waste Fund for landfill clean-up and Minnesota Pollution Control Agency (MPCA) groundwater and solid waste activities; and
- 50 percent to the general fund. The legislature then appropriates some portion of this amount to the Office of Environmental Assistance (OEA) for solid waste activities and provides revenue for block grants to counties for recycling programs.

Metropolitan Solid Waste Landfill Fee

Minnesota Statutes, section 473.843: State law **imposes** a fee on operators of certain landfills in the metropolitan area (i.e., Burnsville and Pinebend). The amount of the fee depends on whether the facility weighs the solid waste before disposing of the waste. Facilities that weigh the waste pay a fee of $6.66 per ton. Facilities that do not weigh the waste pay a fee of $2 per cubic yard. As enacted in 1984, all facilities were charged a fee of 50 cents per cubic yard on solid waste disposal. The revenue is apportioned by law as follows:

- 25 percent to the Metropolitan Landfill Contingency Action Trust Fund for closure, post-closure care, and response actions at solid waste facilities in the metropolitan area.
- 75 percent to the Metropolitan Landfill Abatement Fund to reduce "to the greatest extent feasible and prudent the need for and practice of land disposal" (landfill abatement) in metropolitan area.

Greater Minnesota Landfill Clean-up Fee

Minnesota Statutes, section 115A.923: Enacted in 1989, this state law **imposes** a fee of $2 per cubic yard on operators of certain landfills outside of the metropolitan area. Revenues collected must be paid to the county, joint powers board, sanitary district, or city in which the facility is located and used only for:

- programs to reduce reliance on landfills
- costs associated with landfill closure, post-closure, and clean-up or
- "purposes of mitigating and compensating for the local risks, costs and other adverse effects" of having the landfill located in the jurisdiction.

County Solid Waste Fee Authority

Minnesota Statutes, section 115A.919: State law **authorizes** counties in which a landfill is located to impose a volume-based fee on landfill operators. The revenue is required to be credited to the county's general fund and used only for:

- programs to reduce reliance on landfills
- costs associated with landfill closure, post-closure, and clean-up or
- "purposes of mitigating and compensating for the local risks, costs and other adverse effects" of having the landfill located in the county.

As enacted in 1984, the fee was initially capped at 25 cents per cubic yard, but the cap for most landfills was removed in 1988. The fee on landfills for construction debris is capped at 50 cents per cubic yard. The statute was also amended in 1991 to allow a county to assess an additional fee per cubic yard on waste generated in another county (not to exceed $7.50 per cubic yard).

City or Town Solid Waste Fee Authority

Minnesota Statutes, section 115A.921: State law **authorizes** certain cities and towns to impose a fee on landfills within the city or town. Initially the fee was capped at 15 cents per cubic yard, increased to 35 cents in 1988, and to $1.00 in 1989. Twenty-five percent of the revenues must be used for landfill abatement or "for mitigating and compensating for the local risks, costs and other adverse effects" of having the landfill located in the city or town. The balance may be used for any general fund purpose.

County Service Charges

Minnesota Statutes, sections 400.08 and 473.811: State law **authorizes** counties to impose by ordinance reasonable rates and charges for solid waste management services provided by the county or under contract with the county. These changes are imposed as a separate line item on property tax or other government billing statements. As enacted in 1971, the authority was limited only to counties outside the metropolitan area; it was expanded to metro counties in 1986.

What are annual estimated revenues of these taxes ad fees?

Tax/Fee	Estimated Calendar Year 2001 Revenue (millions)
Solid Waste Management Tax	$54.8
Metro Solid Waste Landfill Fee	3.7
Greater Minnesota Landfill Clean-up Fee	6.4
County Solid Waste Fee Authority	3.5
City/Town Solid Waste Fee Authority	3.5
County Service Charges	63.0

Note: Except for the state solid waste management tax, all of the fees and charges are imposed at the local level. Although the total amount of fees and charges collected is to be reported annually to the state auditor, many forms are not submitted and none are audited. Therefore, amounts should only be considered estimates and used cautiously.

For more information: Contact legislative analyst Mike Bull at 651-296-8961 and Karen Baker at 651-296-8959. Also see the House Research publication *Minnesota Solid Waste History*, January 2002.

HOUSE RESEARCH | Short Subjects

Deborah A. Dyson

November 2002

"60-Day Rule" Time Deadline for Agency Action

What is the "60-day rule"?

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

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

Who does it apply to?

The law applies to:

- a department, agency, board, commission, or other group in the executive branch of state government;
- a statutory or home rule charter city, county, town, or school district;
- any metropolitan agency or regional entity; and
- any other political subdivision of the state. Minn. Stat. § 15.99, subd. 1.

What requests does it apply to?

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

It is not entirely clear what "relating to zoning" etc., means and what is included in "other governmental action." However, only one case discusses "other governmental action," and the decision in that matter is unpublished and not precedential. The request was for approval of a septic system as a standard under state agency rules. When the state agency denied the request, the company sued, asserting that the 60-day rule applied and that because the agency had missed the deadline, it was approved. In an unpublished opinion, the state court of appeals determined that "other governmental action" did not apply to actions with a statewide effect, and therefore the 60-day rule did not apply to the company's application. *In the matter of System Designation of Multi-Flo Wisconsin Aerobic Treatment Units*, CO-01-823, 2001 WL 1665410, 2001 Lexis 1425 (Minn. App., Dec. 21, 2001).

In another case in district court, the question is whether a building permit application is subject to section 15.99.

When does the time begin to run?

The 60 days begins to run when the agency receives a complete application. The agency must notify an applicant within ten days of receiving any part of an application if there is anything missing. Minn. Stat. § 15.99, subd. 3 (a). If more than one state agency in the executive branch must approve or deny the application, the 60 days runs beginning when the first one receives the complete application and it is up to that agency to make sure all other agencies get copies of the application. Minn. Stat. § 15.99, subd. 3 (b).

Are extensions allowed?

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

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

What constitutes approval or denial of a request?

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

To deny a request, an agency must affirmatively deny it and provide written reasons for denial at the time of denial. For a local government with a governing body that votes on such matters, failure of a motion to grant a request does not constitute denial, as it would in other matters. *Demolition Landfill, Inc. v. City of Duluth*, 609 N.W.2d 278, 281-82 (Minn. App. 2000). This also means that a tie vote on a motion to grant a request, which in other instances means the motion fails, will mean a request is granted unless a vote to deny it can pass before the deadline and written reasons for denial be provided at that time.

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

Deborah K. McKnight October 2002

Legislators and Dual Offices

Why can't legislators hold two offices?

The Minnesota Constitution prohibits legislators from holding any other state or federal office except postmaster or notary public.

Legislators are barred from holding another office so that they will not be able to benefit personally from their elected position. Because of the constitutional restriction, a legislator cannot use official influence to be appointed or elected to another position; nor is he or she subject to being influenced in voting by the hope of creating a new position which the legislator would then try to obtain.

What is an office?

"Office," by case law, includes all elected offices and those appointed positions that have independent authority under law to determine public policy or to make a final decision not subject to a supervisor's approval. Cases also indicate a conflict may exist between two offices if:

- one office hires, supervises, evaluates, or sets the salary for the other; or
- occupying the two offices is likely to result in occasions where the individual must harm or neglect one position in order to perform duties that are part of the other position.

Could a person serve without pay?

Serving in either position without pay does not eliminate the problem because there is continuing potential for conflict between the duties of the two offices, according to a ruling by the attorney general on the similar issue of compatibility of offices. This reasoning might apply to cases involving legislators and a second office.

Must a legislator resign before seeking another office?

An attorney general's opinion states that an individual may apply for a job or run for an office that is incompatible with a current position without resigning from the current position. However, upon accepting a position or receiving a certificate of election to an office considered incompatible with the first job or office, an individual is deemed to have resigned from the first position. This reasoning might apply to cases involving legislators and a second office.

For more information: Contact legislative analyst Deborah McKnight at 651-296-5056. Also see the House Research publication *Compatibility of Offices*, November 2001.

HOUSE RESEARCH | Short Subjects

Deborah K. McKnight **October 2002**

Gift Ban Law and Rules for House Members

What does the gift law prohibit?

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

Who are lobbyists and principals?

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

What is the penalty for a violation?

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

What is a gift?

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

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

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

- campaign contributions

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

What House rules apply to gifts?

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

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

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

Deborah A. Dyson

October 2002

Special Legislation and Local Approval

The Minnesota Constitution prohibits "special legislation" with the exception of certain special legislation relating to local governments.

Special legislation

Special legislation is legislation that applies to part of a class—a particular person, thing, or locale within a given class—and, in general, is prohibited under the state constitution. If a general law can be enacted, the legislature may not enact a special law, except a local law.

Whether a law is "special" is determined by the court on a case-by-case basis, applying general principles. In distinguishing permissible general legislation and unconstitutional special legislation, courts have said:

- A law is general when it is uniform in its operation even though it divides the subjects of its operation into classes and applies different rules to different classes;
- A law is special if it applies to particular members of a class.

In order to determine if a classification is justified and constitutional, courts have applied a three-part rational-basis test. A classification is proper if:

- the classification applies to and embraces all who are similarly situated;
- the distinctions are not manifestly arbitrary or fanciful but are genuine and substantial so as to provide a natural and reasonable basis justifying the distinction; and
- there is an evident connection between the distinctive needs peculiar to the class and the remedy or regulations in the law.

Prohibited special legislation

The Minnesota Constitution lists certain subjects that cannot be the subject of special legislation, whether they are local law or not:

- authorizing the laying out, opening, altering, vacating, or maintaining of roads, highways, streets, or alleys;
- remitting fines, penalties, or forfeitures;
- changing the names of persons, places, lakes, or rivers;
- authorizing the adoption or legitimation of children;
- changing the law of descent or succession;
- conferring rights on minors;
- declaring any named person of age;
- giving effect to informal or invalid wills or deeds, or affecting the estates of minors or persons under disability;
- granting divorces;
- exempting property from taxation or regulating the rate of interest on money;
- creating private corporations, or amending, renewing, or extending the charters thereof; granting to any private corporation, association, or individual any special or exclusive privilege, immunity, or franchise whatever or authorizing public taxation for a private purpose.

The constitution also prohibits special laws in the form of bills of attainder. A bill of attainder is special legislation that inflicts punishment or a penalty upon an individual.

Finally, the constitution requires taxes to be uniform on the same class of objects.

Legislative appropriations are not special legislation.

Local approval

As an exception to the prohibition on special legislation, the state constitution permits the legislature to enact special laws relating to local government units. A local law is effective only after approval by the affected local government unit, unless the general state law provides otherwise.

State statute requires approval by resolution adopted by a majority vote of all members of the governing body of the unit unless the particular special law specifies another method of approval. The chief clerical officer of a local government unit then files a certificate of local approval with the Secretary of State, including a copy of the resolution of approval or, if submitted to the voters, the number of votes cast for and against approval at the election. Generally, the law is effective after the local government files the required certificate with the Secretary of State.

If a local government unit fails to file a certificate of approval before the first day of the next regular session of the legislature, i.e., before the first Tuesday after the first Monday in January of odd-numbered years, the law is deemed to be disapproved by the local government unless otherwise provided in the special law. This has caught a few local governments that have then had to return to the legislature for enactment of the same special legislation.

Exceptions

The constitution permits the legislature to provide by general law exception to the local approval requirement. Currently, state statute provides three instances in which local approval is not required:

(1) The law enables one or more local government units to exercise authority not granted by general law. That is, the law is permissive, not mandatory.

(2) The law brings a local government unit within the general law by repealing a special law, by removing an exception to the applicability of a general statutory provision, by extending the applicability of a general statutory provision, or by reclassifying local government units.

(3) The law applies to a single unit or a group of units with a population of more than one million people.

Under all other circumstances, local approval is required. This includes legislation for a local government that is coded in Minnesota Statutes. Even if a law does not require local approval because it fits one of the exceptions above, if the specific legislation requires it, it is not effective until approved. Finally, whether or not the legislation expressly requires local approval, if the legislation is local law and none of the general law exceptions apply, the constitution requires local approval before the law is effective.

"Application clause"

The constitution also requires that special legislation for a local government name the local government unit or the counties, if more than one unit, are affected, whether or not local approval is required.

Usually the affected unit of government is named as a substantive part of the law and the application is apparent. With regard to the Metropolitan Council and the metropolitan agencies, although the unit of government is named in the substantive part of the law, it has become standard practice to add an "application clause," listing the counties included in the jurisdiction of the agency, to bills relating to metropolitan government.

For more information: Contact legislative analyst Deborah Dyson at 651-296-8291. Also see the House Research publication *Special Legislation*, November 2000.

Deborah A. Dyson October 2002

State Bonding

One of the ways the state pays for projects is to borrow money by issuing bonds—which are promises to repay the money borrowed at a specified time and interest rate. There are two main types of bonds: general obligation (G.O.), backed by the full faith, credit, and taxing powers of the state, and revenue bonds, backed by revenues other than a tax of statewide application. The state constitution limits the purposes for which G.O. bonds may be issued and requires certain procedures.

All State G.O. Bonds

All state G.O. bonds have certain common requirements. They must be for a public purpose, specified in law, and mature in not more than 20 years.

Public purpose. Under the state constitution, all expenditures of state funds, including bond proceeds, must be for a public purpose. There is a public purpose if the expenditure can reasonably be expected to achieve a legitimate public goal or benefit, even if some benefit may result for nonpublic interests. In determining whether the purpose is "public," one must look at both historical and contemporary standards. The legislature is given great deference in determining a purpose to be "public." *Visina v. Freeman*, 252 Minn. 177, 184, 89 N.W.2d 635, 643 (1958).

Specified in law. "Each law authorizing the issuance of bonds shall distinctly specify the purposes thereof and the maximum amount of the proceeds authorized to be expended for each purpose." Minn. Const. art. XI, § 7. This may be done by describing the project in some detail or by reference to a governmental program established in statute.

Mature in no more than 20 years. Minn. Const. art. XI, § 7.

Bonds To Acquire and Better Public Land and Buildings

The principal purpose for which state G.O. bonds are issued is to acquire and to better public land and buildings and to make other public capital improvements. Minn. Const. art. XI, § 5, para. (a).

Capital project. A capital project, in general, is for the acquisition or improvement of fixed assets, such as land or buildings. The fixed asset must be long-lived; bond counsel has suggested that the useful life be at least ten years. The improvements must be substantial, extend the useful life or substantially increase the value of the fixed asset and not be predictable or recurring (as repairs would be). By way of example, a study or planning are not capital in nature, but design work for a capital project is. An option to buy real property is an intangible asset and not eligible for bonding. Reimbursement for capital expenditures already made is not a capital project, but payment of principal on the debt is.

Publicly owned. Bonds issued under the capital improvements provision may only be for publicly owned projects, whether state or local. "Publicly owned" has been determined to include projects of the Minnesota Historical Society, but not public radio, TV, or Indian tribe projects, or private sewage systems even if they will serve the public.

Three-fifths vote. A law to authorize the issuance of state G.O. bonds for capital improvements must be enacted with at least a three-fifths vote of the House and the Senate. Minn. Const. art. XI, § 5, para. (a). A law to repeal an authorization requires only a simple majority vote.

Other Constitutionally Authorized Uses of G.O. Bonds

Under other provisions of the state constitution, state G.O. bond proceeds may also be used:

- to repel invasion or suppress insurrection;
- to borrow temporarily through certificates of indebtedness;
- to refund outstanding bonds of the state or its agencies;
- to establish and maintain highways subject to constitutional limitations on highway bonds;
- to promote forestation and prevent and abate forest fires;
- to construct, improve, and operate airports and other air navigation facilities;
- to develop the state's agricultural resources by extending credit on real estate;
- to improve and rehabilitate public or private railroad rights-of-way and other rail facilities up to $200 million par value; and
- as otherwise authorized in this constitution.

Minn. Const. art. XI, § 5, paras. (b) to (j). Not all of these purposes are capital in nature, and the constitution does not require a three-fifths vote to authorize issuance of bonds for these purposes.

Trunk highway bonds. Bonds issued for trunk highways are G.O. bonds, but payable from the trunk highway fund (with a statewide property tax as backup). Trunk highway projects may not be paid for with G.O. bonds that are payable in the first instance from the general fund. Minn. Const. art. XIV, § 11; art. XI, § 5, para. (e).

Revenue Bonds

The constitution neither specifically authorizes nor prohibits issuance of revenue bonds. As with any expenditure of public funds, revenue bond proceeds must be used for a public purpose. A significant limitation on the issuance of revenue bonds is whether the revenue to repay the bonds is sufficient to make the bonds marketable. Various state agencies have authority to issue revenue bonds. For example, the Minnesota Housing Finance Agency, may issue mortgage revenue bonds, and the Minnesota Public Facilities Authority may issue revenue bonds to finance municipal wastewater treatment and other public infrastructure projects.

Debt Management Guidelines

There is no constitutional or statutory limitation on how much debt the state may incur (with the exception of debt for railroads), but the Department of Finance has guidelines intended to maintain the state's good credit rating.

- The general fund appropriation for debt service should not exceed 3 percent of general fund revenues.
- G.O. debt of the state should not exceed 2.5 percent of total personal income.
- Total amount of all G.O. debt, moral obligation debt, state bond guarantees, equipment capital leases, and real estate leases should not exceed 5 percent of total personal income.
- Total revenue and G.O. debt of state agencies, public corporations, and the University of Minnesota should not exceed 3.5 percent of total personal income.

Role of Bond Counsel

While there is some guidance from the courts on the constitutional requirements for and limitations on state bonding, bond questions rarely reach the courts. In order for bonds to be sold, attorneys for the state—bond counsel—are asked to render an unqualified legal opinion approving the issuance of the bonds. Without a good opinion, no one will buy the bonds. Thus, the primary guidance the legislature has on what is "bondable" and how the law must be written comes from bond counsel.

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

HOUSE RESEARCH | Short Subjects

Deborah A. Dyson

October 2002

State Preemption of Local Law

State law governs what a local government may regulate. Local government only has authority granted to it by state law. This grant of authority is either express or necessarily implied from another grant of power. In some instances, state law expressly authorizes or even directs local regulation. In some instances, state law expressly forbids local regulation. In many instances, local governments rely on authority implied from a grant of power. For example, local governments adopt many ordinances under their authority to protect the health, safety, and welfare of their citizens. When state law is silent on how it relates to local regulation, local governments must determine if local regulation that is otherwise within their scope of authority may conflict with or be preempted by state law. "Conflict" and "preemption" are separate legal concepts and are looked at on a case-by-case basis.

Conflict

A local ordinance conflicts with state law, and therefore is invalid, if:

- the ordinance and the statute contain express or implied terms that are irreconcilable;
- the ordinance permits what the statute forbids; or
- the ordinance forbids what the statute expressly permits.

Courts have held that there is no conflict where the ordinance, though different, is merely additional and complementary to or in aid and furtherance of the statute. *Hannan v. City of Minneapolis*, 623 N.W.2d 281, 284 (Minn. App. 2001) (citing *Mangold Midwest Co. v. Village of Richfield*, 274 Minn. 347, 352, 143 N.W.2d 813, 816-17 (1966)).

Preemption

Some statutes expressly preempt local regulation. For example, Minnesota Statutes, section 471.633, states that it preempts local regulation of firearms, except regulations relating to the discharge of a firearm. Another section expressly allows local zoning of firearms shops.

If the state law is silent on preemption, then the question is whether the state law preempts local regulation by "occupying the field." Local regulation will be preempted when:

- the legislature has fully and completely covered the subject matter,
- the legislature has clearly indicated that the subject matter is solely of state concern, or
- the subject matter itself is of such a nature that local regulation would have unreasonably adverse effects on the general populace.

Hannan v. City of Minneapolis, 623 N.W.2d 281, 285 (Minn. App. 2001) (citing *Mangold Midwest Co. v. Village of Richfield*, 274 Minn. 347, 357-360, 143 N.W.2d 813, 820-821 (1966)).

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

Deborah A. Dyson

October 2002

State-Local Relations

All local governmental units are creatures of the state and subject to the will of the state legislature, within any constitutional restrictions.

"Local Government"

"Local government" is a general term for those governmental entities or political subdivisions of the state that provide functions and services at the local level. In Minnesota, the term usually refers to counties, towns (townships), and cities. Single- or multi-purpose (special) districts are frequently included in the term "political subdivision" but are less often defined as local governments.

Creatures of the state

The Constitution of the United States is silent on local government. Control of local government is not one of the enumerated federal powers of the Constitution, nor is it expressly prohibited to the states. It is, therefore, a residual power left to the states and people by the Tenth Amendment. Furthermore, local units of government do not have recourse to any provision of the federal constitution in order to resist state legislative interference or control. *Williams v. Mayor and City Council of Baltimore*, 289 U.S. 36, 40, 53 S.Ct. 431, 432 (1933).

Under the Minnesota Constitution, "The legislature may provide by law for the creation, organization, administration, consolidation, division and dissolution of local government units and their functions, for the change of boundaries thereof, for their elective and appointive officers including qualifications for office and for the transfer of county seats. A county boundary may not be changed or county seat transferred until approved in each county affected by a majority of the voters voting on the question." Minn. Const. art. XII, § 3. Several chapters of Minnesota Statutes are devoted to just these purposes.

Powers of a municipal corporation: Dillon's Rule

Local governments have no inherent powers but have only such powers as are expressly conferred by statute or are implied as necessary in aid of those powers which are expressly conferred. *Village of Brooklyn Center v. Rippen*, 255 Minn. 334, 335-36, 96 N.W.2d 585, 587 (1959). This basic principle of what powers a local government has follows the principle first stated in 1872 in a treatise on municipal corporations, written by Iowa Supreme Court Judge John F. Dillon; it is known as Dillon's Rule. The two major modifications the legislature has made to the rule are the authority for cities to adopt home rule charters and the broad grant of authority to legislate for the general welfare.

Modification of Dillon's Rule: home rule charters

The legislature has granted cities the authority to adopt home rule charters; this action is the first significant mechanism in diminishing the practical effect of Dillon's Rule. A home rule charter, a local constitution, not only provides for the particular governmental organization of a municipality but also provides for substantive authority to be exercised by the governing body for the community. A charter must be consistent with the state constitution, and state law can overrule a charter provision.

The Minnesota Constitution authorizes any local government unit when authorized by law to adopt a home rule charter for its government. Minn. Const. art. XII, § 4. A charter must be approved by the voters of the local government unit as prescribed by general law.

A city may adopt a home rule charter following the procedures in Minnesota Statutes, chapter 410. Of the 854 cities in the state, 107 are home rule charter cities and the others are known as statutory cities. There is no general law enabling other local units of government to adopt home rule charters. A 1987 special law allowed Ramsey County to establish a commission to study the need or desirability of a home rule charter for the county, and if necessary to prepare and present a charter to the voters of the county. The voters approved a charter in 1990.

Modification of Dillon's Rule: general welfare

The statutory authority to legislate for the general welfare also mitigates the severity of Dillon's Rule. It is a broad grant of authority for a local government to exercise any power not enumerated specifically that contributes to the protection of the health, morals, peace, and good order of the community, promotes its welfare in trade, commerce, and manufacture, or aids in carrying out all appropriate objects contemplated in the creation of a city.

All statutory cities in Minnesota have authority to legislate for the general welfare. Minn. Stat. § 412.221, subd. 32. Home rule charter cities simply include a general welfare clause or "all powers clause" within the provisions of their charters. Towns have the same authority in statute. Minn. Stat. §§ 365.10, subd. 17, 368.01, subd. 19.

Counties do not have "general welfare" authority, although Minnesota Statutes, section 145A.05 is sometimes viewed as providing a relatively broad grant of authority by authorizing ordinances protecting the public health.

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

Deborah A. Dyson November 2002

Terms Used In Local Government Legislation

Minnesota statutes and laws use a number of terms to refer to local governmental units and from one law to another they may not mean the same thing. This is a summary of commonly used terms and cautions regarding their definitions.

Local government

"Local government" usually refers to counties, towns, and cities. Single- or multi-purpose (special) districts are frequently included in the term "political subdivision" but are less often defined as local governments. Sometimes, absent a definition, only the context of the law will indicate what entities are meant to be included.

Political subdivision

"Political subdivision" is probably the broadest term used to describe any public body that is not state or federal government. However, a statute may define the term to mean specific entities.

Public corporation

"Public corporation" is used in two broad senses. In the context of local government, it means an entity created for the administration of public affairs, an instrumentality of the state, including counties, cities, towns, and special purpose entities. It also applies to quasi-governmental entities, created in law and often exempt from some laws that apply to state agencies. See, e.g., Minnesota Technology, Inc. Minn. Stat. § 116O.03, subd. 1.

Municipal corporation

In the narrowest sense, a municipal corporation is a city. However, the term can be defined for the purposes of a law to include other governmental units.

City: statutory or home rule charter; classification

There are two types of cities in Minnesota: statutory and home rule charter. A statutory city is governed by statute and any special laws enacted for that city; a home rule charter city is governed by its charter, any special laws enacted for that city. If the home rule charter is silent on a matter that is addressed for statutory cities by general law, and general law does not prohibit a city charter from addressing the matter or expressly provide that a city charter prevails over general law, then the city may apply the general law on the matter. Minn. Stat. § 410.33.

"In any law adopted after July 1, 1976, the word 'city' when used without further description extending the application of the term to home rule charter cities means statutory cities only." Minn. Stat. § 410.015.

Classification: Cities are divided, for legislative purposes, into classes as follows:

- First class: over 100,000 inhabitants; once a city is defined to be of the first class, it is not reclassified unless its population decreases by 25 percent from the census figures which last qualified the city for inclusion in the class;
- Second class: 20,001 to 100,000 inhabitants;

- Third class: 10,001 to 20,000 inhabitants, and
- Fourth class: not more than 10,000 inhabitants.

Changes in classification take effect after the federal decennial census. Minn. Stat. § 410.01.

"Village" and "borough" are obsolete terms. All villages and boroughs in the state became statutory cities in the early 1970s.

Municipality This term generally means a city but many statutes define it to include other entities. For example, the uniform municipal contracting law defines "municipality" to mean "a county, town, city, school district or other municipal corporation or political subdivision of the state authorized by law to enter into contracts." Minn. Stat. § 471.345, subd.1.

County "County" rarely needs additional definition except to limit its application or to define it as a shorthand reference to the county board or some other entity covered by the law.

Town, township, urban town "Town" and "township" are used interchangeably in Minnesota law. As in other states, Minnesota towns are based on the congressional township—generally 36 square miles. Organized towns are the primary local government unit for unincorporated areas. Urban towns are those towns that have been granted some of the same powers as statutory cities.

Incorporated, unincorporated In the context of governmental units, "incorporated" means a city and "unincorporated" means a town. *See* Minnesota Statutes, chapter 414, governing municipal incorporations and boundary adjustments.

Interpretation of statutes, definitions "When a county, town or city is mentioned, without any particular description, it imports the particular county, town or city appropriate to the matter." Minn. Stat. § 645.44, subd. 3.

Metropolitan area There are at least two definitions of "metropolitan area" used in state law. One means the seven-county area of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington counties that is within the jurisdiction of the Metropolitan Council. Minn. Stat. § 473.121, subd. 2.

The federal Office of Management and Budget (OMB) defines metropolitan areas (MAs), including metropolitan statistical areas (MSAs), consolidated metropolitan statistical areas (CMSAs), and primary metropolitan statistical areas (PMSAs). The OMB defines the Minneapolis-St. Paul MSA to include 11 Minnesota counties (the seven named above and Chisago, Isanti, Sherburne, and Wright), and the Wisconsin counties of Pierce and St. Croix. "Central cities" means Minneapolis and St. Paul. OMB Bulletin No. 99-04.

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

HOUSE RESEARCH | Short Subjects

Don Hirasuna

October 2002

Are Former Welfare Recipients Filing State Income Tax Returns
A Look One Year After Leaving Welfare

This short subject lists the characteristics of former Aid to Families with Dependent Children and Minnesota Family Investment Program parents who did not file Minnesota income tax returns. Included is information on the characteristics of nonfilers and the characteristics of those who might be eligible for the working family credit, but did not apply.

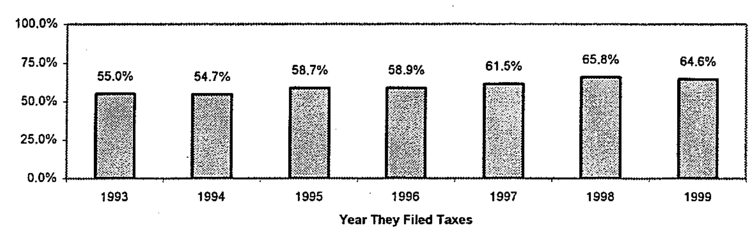
Families that file Minnesota income taxes

One year after leaving AFDC or MFIP:

- In 1997, 18,498 families left welfare, and one year later, 12,172 filed state income tax returns
- The percentage of families filing increased to 65.8 percent in 1998 from 55.0 percent in 1993.

The data includes family heads and spouses, regardless of whether the spouse ever received AFDC or MFIP.

Percent of Parents That Filed State Income Taxes One Year After Leaving AFDC or MFIP



The chart takes all parents that leave welfare and do not return by September 2001. The percentage of filers are those that file an M-1 income tax form one year after leaving welfare.

Who is less likely to file Minnesota income taxes?

Of parents who left welfare in 1997, the lowest filing rate in 1998 included:

- 37.4 percent of those parents living in Hennepin and Ramsey County (780 parents); 59.8 percent of those parents in Moorhead and East Grand Forks (79 parents); and 35.5 percent of those parents in the northwest nonmetropolitan area (258 parents).
- 51.6 percent of African Americans, 59.7 percent of Hispanics, and 58.6 percent of Native Americans;
- 48.6 percent of those parents who did not graduate high school.

A few examples for not filing for taxes

Some reasons why parents may not file tax returns include:

- they moved away from Minnesota
- they had no taxable income (e.g., all of income was from child support, income from a live-in partner, or income from other government programs)
- they had too little income to be required to file tax returns

Of those that worked in Minnesota how many did not file state income taxes?

The following lists the characteristics of parents who left welfare and earned wages in Minnesota the following year, but did not file income tax returns. It includes information on only those parents formerly on AFDC or MFIP (not including wage information for spousal parents or step-parents who never received AFDC or MFIP). This section might be of interest to policymakers concerned about whether former welfare recipients are filing for state tax benefits like the working family credit.

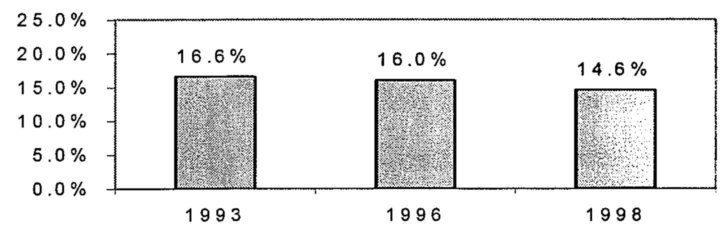
The number of parents with wage income.

- At least 12,583 or 68.0 percent of all families leaving welfare in 1997 had wage income in 1998.
- The percentage increased from 56.4 percent in 1993.

The number that filed. Of those 12,583 families with wage income in 1998:

- 14.6 percent (1,836 families) did not file Minnesota income tax returns.
- That percentage decreased from 16.6 percent (1,534 families) in 1993.

Percent of Parents with Wage Income One Year after Leaving AFDC or MFIP that Did Not File Minnesota Income Tax Returns



Who is less likely to file even though they have wage income?

Of those parents who left welfare in 1997, the simple percentages of families with wage income that did not file tax returns include:

- 16.9 percent of families that lived in Hennepin and Ramsey County, 26.9 percent of families that lived in Moorhead and East Grand Forks, and 19.5 percent of families that lived in the northwest nonmetropolitan region
- 22.7 percent of African American family heads (409), 22.6 percent of Hispanics (162), and 40.7 percent of Native Americans (237)
- 21.7 percent of family heads (633) who did not graduate high school
- 22.5 percent of family heads (657) with three or more children
- 18.5 percent of family heads (1,015) that were 35 or older

For more information: Contact legislative analyst Don Hirasuna at 651-296-8038.

Amy Petschauer

August 2002

Basics of EGA and EA

Emergency General Assistance (EGA) and Emergency Assistance (EA) are programs that provide income assistance in emergency situations.

Emergency General Assistance

Who is eligible?

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

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

Persons or families in need who are not state residents may also receive assistance to meet emergency needs. In the case of nonresidents, state law provides that the 30-day residency requirement is not waived when a person applies for EGA.

There is no limit on how many times an individual or family may receive EGA.

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 of which the loss or lack of poses a direct, immediate threat to the physical health or safety of the applicant.

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

How is EGA funded and how are benefits paid?

EGA is funded with state general fund dollars.

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

Emergency Assistance

Who is eligible for EA?

A family without resources immediately available to meet emergency needs is eligible for EA if:

- A family member has resided in the state for at least 30 days;
- The family is without resources immediately available to resolve the emergency;
- Assistance is necessary to avoid destitution or to provide emergency shelter arrangements;
- The family's emergency situation did not arise because the family is under sanction, a caregiver is disqualified, or the caregiver refused without good cause to accept employment or training; and
- At least one child or pregnant woman meets the MFIP citizenship requirements.

EA is available for one 30-day period in a consecutive 12-month period.

What are "emergency needs?"

Under EA, emergency needs are limited to: rent, mortgage or contract for deed arrearages, damage or utility deposits, certain moving expenses and home repairs, utility costs, and special diets.

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 of eligibility. When emergency needs continue, assistance may be issued for up to 30 days beyond the initial 30-day period of eligibility, but only when assistance is authorized during the initial period.

EA is also available to reimburse MFIP families each month for the costs of "special diets." (The need for a special diet, such as a pregnancy and lactation diet or low cholesterol diet, must be prescribed by a licensed physician.) There is no limit on the number of times a family may receive payments for special diets.

How is EA funded and how are benefits paid??

EA is funded with state general fund dollars and federal TANF funds.

Except for payments for special diets, most EA payments are issued through vendor payments to effectively resolve the emergency.

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

HOUSE RESEARCH | **Short Subjects**

Peg Hicks

September 2002

Child Care Licensing

To protect the health, safety, and welfare of children in child care settings, state law specifies certain requirements for the licensing of child care programs. Licensure of child care programs is governed by Minnesota Statutes, chapter 245A, and related rules.

Who must be licensed?

State law prohibits an individual, corporation, or other organization from providing child care services without a state license. Operating a child care program without a license is a misdemeanor. In general, both child care centers and family child care homes must be licensed, and specific licensing requirements apply to each type of program.

State law also specifies certain exceptions to the general requirement that child care providers must be licensed. Under these exceptions, the following types of child care are considered to be legal nonlicensed child care, for which a provider does not need a license:

- services provided to children who are related to the child care provider;
- services provided to children from a single related family who are not related to the child care provider;
- programs for children enrolled in kindergarten to the 12th grade and prekindergarten special education in a school, or programs serving children in combined special education and regular prekindergarten programs operated or assisted by the Commissioner of Children, Families and Learning;
- services provided for children without charge for ten or fewer days a year, or for periods of less than three hours a day while the child's parent is in the same building as the child;
- recreation programs for children that operate fewer than 40 days in a year;
- child care programs operated by a school that provide child care to school-age children, provided the program is approved by the district's school board;
- Head Start nonresidential programs which operate for less than 31 days in a year;
- services provided to children for a cumulative total of less than 30 days in any 12-month period; and
- the religious instruction of school-age children, Sabbath or Sunday schools, or congregate care of children by a church, congregation, or religious society during the period the church, congregation, or religious society uses for its regular worship.

What is the purpose of licensing?

The state's licensing process is designed to ensure that licensed child care programs meet certain health, safety, and supervision standards, child-to-staff ratios, and other requirements.

The licensing process also includes a requirement that child care providers pass a background study. If a background study reveals that an individual has committed certain crimes, maltreated a child or vulnerable adult, or engaged in certain conduct, the Commissioner of Human Services may disqualify the individual from direct contact with children served in the licensed child care program.

In addition, all licensed child care providers are mandated reporters under the state's Maltreatment of Minors Act. This means that a child care worker who knows or has reason to believe that a child is being neglected or abused must report the abuse or neglect to the local law enforcement, social services agency, or licensing agency. For additional information about child abuse reporting requirements, see *Overview of the Maltreatment of Minors Act*, House Research Department, December 2001.

What are the roles of state and local governments in the licensing process?

Both state and local government have a role in child care program licensing. The Minnesota Department of Human Services (DHS):

- issues licenses to all child care programs;
- conducts licensing inspections and investigates complaints and allegations of licensing violations or child maltreatment in child care centers; and
- conducts background studies of individuals who have direct contact with children served by licensed child care centers.

The local county social services or human services agency:

- performs specified licensing functions for family and group family child care homes under authority delegated to the county by the Commissioner of Human Services;
- conducts licensing inspections and investigates complaints and allegations of licensing violations or child maltreatment in family and group family child care homes; and
- conducts background studies of individuals who have direct contact with children served by licensed family and group family child care homes.

Who should individuals call if they have questions?

Individuals who have questions about child care licensing should call the Licensing Division at DHS at 651-296-3971, or their local county agency.

For more information: Contact legislative analyst Peg Hicks at 651-296-8079.

HOUSE RESEARCH | Short Subjects

Peg Hicks

September 2002

Child Support

When is child support ordered?

If a married couple with minor children are divorced or obtain a legal separation, a court must order one or both parents to pay child support.

If a child's parents are not married, generally paternity must be established before a court will order child support. Paternity can be established by court order or by the parents voluntarily executing a document called the Recognition of Parentage.

What does child support include?

Child support includes, at a minimum, an amount intended to feed, clothe, and shelter the child, medical support, and work- or education-related child care costs. Child support also may include support arrears or reimbursement of public assistance payments made on behalf of the child.

Who pays child support, and who receives it?

"Obligor" is the legal term for the parent who pays money to the other parent or anyone else for the child's support. "Obligee" is the parent or other individual or entity who receives money on behalf of a child. Usually the obligee is the parent with whom the child lives, and the obligor is the other parent. But sometimes parents have joint custody, each parent has custody of one or more of the couple's children, or the child is not in either parent's custody.

How is the child support amount calculated?

Child support is calculated by determining an obligor's monthly net income. Monthly net income is calculated by deducting the following from monthly gross income: state and federal income taxes, Social Security, reasonable pension contributions, union dues, dependent health insurance coverage or actual medical expenses, and any child support or maintenance payments currently being paid.

After the obligor's monthly net income is determined, the court must compare it to the child support guidelines in statute. The guidelines indicate what percentage of monthly net income the obligor should pay as support, given the number of children involved. After determining the support amount under the statutory guidelines, the court must consider several statutory criteria that allow the court to depart from the guidelines amount. These criteria include the parents' earnings, income, resources, and debts, the child's needs, the child's living standard before the dissolution, which parent receives the dependent income tax exemption, and whether the obligor receives public assistance.

What are the roles of federal, state, and local governments and the judiciary in setting child support?

Federal Government. Minnesota Statutes have long provided for child support in cases where parents divorce or have never married. In 1975 the federal government also became involved in this issue. Congress enacted laws aimed at establishing uniformity across states and setting minimum standards in state child support enforcement systems. The goal was to reduce the demand for public assistance by more effectively enforcing child support orders. The federal government provides funding to states with child support systems that meet certain federal requirements.

State Government. The legislature sets child support policy in Minnesota. State policy is greatly influenced by the federal requirements that are prerequisites to receiving federal welfare and child support funds. However, the federal requirements are often general in nature, leaving the details up to the legislature.

The Department of Human Services (DHS) is the primary executive branch agency responsible for overseeing Minnesota's child support system. The agency:

- provides training and assistance to the counties;
- operates Minnesota's centralized child support payment center;
- runs the statewide computer systems and maintains statewide data on child support;
- manages and disburses federal and state child support funding; and
- provides overall guidance for Minnesota's child support system.

Counties. Counties do a lot of the hands-on work in Minnesota's child support system. Counties deal directly with the families involved. Child support services are typically located within the county human services or social services department. The caseworkers that work on child support cases are called child support officers (CSOs). They work closely with the county attorney, who provides legal advice and represents the county (not the child or parents) in child support actions.

Judicial Branch. The judicial branch interprets and applies the child support laws in individual cases.

How is support enforced if payments are not made?

The state has several mechanisms in place to enforce child support, including: parent locator services; the work reporting system; income withholding; occupational license sanction; driver's license suspension and motor vehicle title liens; recreational license suspension; civil judgments, real property liens, and liens against financial accounts; creditor's remedies; contempt of court; reports to credit agencies; intercepting tax refunds; denying passports; seek employment orders; and criminal charges.

Where can you get more information about child support?

For more detailed introductory information and answers to common questions about Minnesota's laws on setting, modifying, paying, enforcing, and terminating child support, see House Research Department publication *Minnesota's Child Support Laws: An Overview*, July 2002. This publication includes references to the applicable provisions in Minnesota Statutes, chapter 518, governing child support.

Anyone affected by a child support order can call his or her county child support office or the automated DHS Child Support Help Line at 651-296-2542, or 1-800-657-3954. In addition, the DHS child support enforcement website includes various information about child support. *See* http://www.dhs.state.mn.us/ECS/ChildSupport/Default.htm.

For more information: Contact legislative analyst Peg Hicks at 651-296-8079.

HOUSE RESEARCH | **Short Subjects**

Amy Petschauer

September 2002

General Assistance

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

Eligibility

An applicant qualifies for GA if he or she meets the eligibility requirements and has income and assets below the limits established by the state legislature and the Department of Human Services (DHS).

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

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

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

13. Is over age 18 and whose primary language is not English and is attending high school at least part time
14. Is learning disabled

GA is not provided to:

- Fugitive felons and parole and probation violators; or
- Persons who have fraudulently misrepresented residency to obtain assistance in two or more states (GA is not provided for ten years).

Benefits

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

Monthly GA Standards for Single Persons and Childless Couples

Eligible Units	Monthly Standard
One adult	$203
Emancipated minor	203
One adult, living with parent(s) who have no minor children	203
Minor not living with parent, stepparent, or legal custodian (with social services plan approved)	250
Married couple with no children	260
One adult, living in a medical facility or in group residential housing	71

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

Funding and Expenditures

The state pays for the costs of GA benefits. In state fiscal year 2001 the state paid out $15, 896,937 in benefits to GA recipients.

Recipient Profile

Most GA recipients are single persons. Childless couples may also be eligible for GA. In state fiscal year 2001 the average monthly number of GA cases was 8,516. (Most GA cases consist of one person. However, GA data is available from DHS by cases only, not by the number of individual GA recipients.)

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

HOUSE RESEARCH | Short Subjects

Randall Chun

October 2002

General Assistance Medical Care

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

Eligibility

To be eligible for GAMC, an individual must:

- Receive General Assistance or meet the GAMC income and asset limits. The GAMC net income limit, after excluding certain types of income, is 75 percent of the federal poverty guidelines. The GAMC asset limit is $1,000 per household, after excluding the homestead, household goods, a vehicle, and other assets excluded by the Medical Assistance (MA) program.

- Not be eligible for MA.

- Be a Minnesota resident. GAMC has a 30-day durational residency requirement.

- Meet other program eligibility requirements.

Individuals with incomes above the GAMC income limit can qualify for the program through a spend-down. Under a spend-down, 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 GAMC income limit.

Covered services

The GAMC program provides coverage for a range of medical services, including but not limited to: physician, hospital, rehabilitative, dental, medical equipment and supplies, mental health, prescription drugs, and medical transportation.

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

Provider reimbursement	The GAMC program reimburses providers under both a fee-for-service system and a managed care system (referred to as prepaid GAMC). Under the fee-for-service system, health care providers bill DHS and are reimbursed at rates specified by state law. Under prepaid GAMC, prepaid health plans receive a monthly capitation payment for each enrollee. The state does not set provider reimbursement rates; these rates are instead the result of negotiation between the health care providers and the prepaid health plan.
Funding and expenditures	GAMC is completely state funded; there is no federal funding. During fiscal year 2002, the state spent $178.6 million in payments to medical providers for GAMC services.
Recipients	During fiscal year 2002, an average of 30,139 persons were eligible for GAMC services each month. As of September 1, 2002, 20,472 GAMC recipients in 69 counties were enrolled in prepaid GAMC.
Application procedure	Individuals interested in applying for GAMC should contact their county human services agency.

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

HOUSE RESEARCH | Short Subjects

Don Hirasuna

September 2002

General Characteristics of the Welfare Population

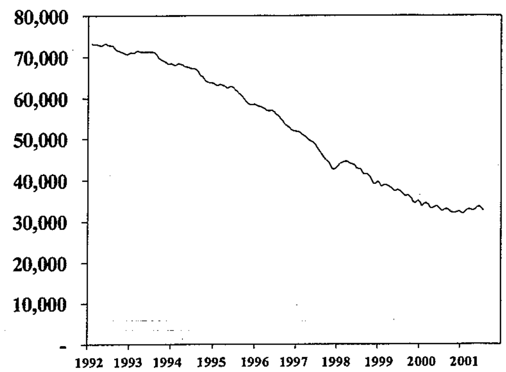
This short subject lists selected characteristics of families on welfare (Aid to Families with Dependent Children and Minnesota Family Investment Program). "Families" used here are households where both the parents and the children are eligible for welfare.

Number of families on welfare decreased

From January 1992 to July 2001:

- The number of families with eligible parents and children decreased by 55 percent, from 72,218 to 33,652
- The Minnesota Department of Human Services reports that the average monthly number of child-only cases in fiscal year 2001 was 8,200

The Number of Families on AFDC and MFIP from January 1992 through July 2002

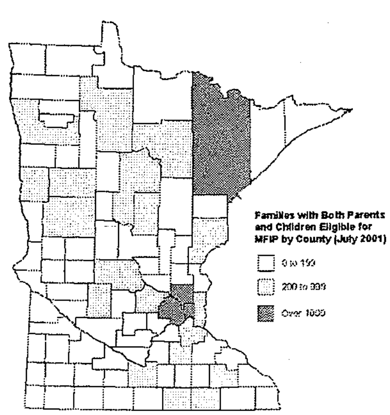


Where they lived

As of July 2001:

- 52 percent of the families lived in Hennepin or Ramsey County
- 66 percent lived in the seven-county Twin Cities metropolitan area or other standard Metropolitan Statistical Areas

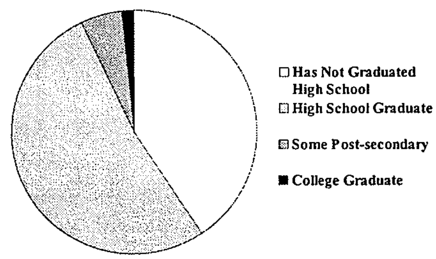
Families with Both Parents and Children Eligible for MFIP by County (July 2001)



Their educational attainment

- As of July 2001, 40 percent of caretakers had not finished high school.

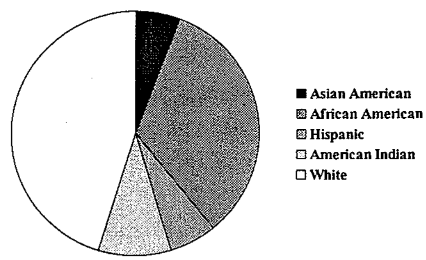
Educational Attainment of Caretaker (July 2001)



Their racial background

- As of July 2001, 45 percent of caretakers were white.

Race of Caretaker (July 2001)



Their family size

As of July 2001:

- 28 percent of families were or were eligible as a two-parent family
- 49 percent of the families had three or more children on AFDC or MFIP

How long do families stay on welfare?

First-Time Entrants to Welfare. For families entering after July 1997, which was the earliest year parents could enter MFIP:

- 50 percent of caretakers stay for eight or more months
- 25 percent of caretakers return within 12 months after their first time on welfare

(Family characteristics may vary over time.)

Total Time on Welfare. For families entering between July 1997 and December 1997, and includes all families regardless of whether they are subject to the 60-month time limit:

- 6.8 percent of caretakers have been on welfare for more than three years by July 2001

For more information: Contact legislative analyst Don Hirasuna at 651-296-8038. Also see the House Research publication *Characteristics of AFDC/MFIP Recipients*, March 2000, for more information.

HOUSE RESEARCH | Short Subjects

Peg Hicks October 2002

Human Services Programs: Relationship Between Federal, State, and Local Governments

Minnesota has a system of human services programs that provides health care, economic assistance, and social services to eligible families. In general, the state's human services programs are state-administered and county-run. This means that county human services agencies process applications, determine the eligibility of applicants, and perform other administrative duties, under the supervision of the Minnesota Department of Human Services (DHS). DHS also is responsible for sending out cash assistance payments to program enrollees, and for reimbursing health care providers and managed care plans for services provided to program enrollees. In the case of programs established in federal law, DHS is also responsible for overall state compliance with applicable federal requirements.

This publication provides a brief discussion of the role of federal, state, and local governments in the administration of the state's human services programs.

What is the federal government's role in the state's human services programs?

Congress enacts laws that set broad standards and requirements for certain human services programs. For example, federal law requires the Medical Assistance (MA) program (Minnesota's version of the federal-state Medicaid program) to cover certain population groups and certain health care services.

The federal government also appropriates money to the state for the administration of certain human services programs. In order to qualify for federal funding, Congress often requires the state to enact various kinds of legislation. For example, the federal government contributes approximately 74 percent of the state's total child support enforcement funding. To qualify for this federal funding, the legislature has enacted certain requirements relating to child support enforcement. Typically, these federal requirements are quite general in nature, leaving the details up to the legislature.

What is state government's role in administering human services programs?

The state legislature sets human services policy in Minnesota. In many cases, state policy is greatly influenced by the federal law requirements that are prerequisites to receiving federal funding. Although state law must include certain federal requirements, the state legislature may enact provisions that go beyond the minimum federal requirements. For example, the MA program covers population groups and health care services that federal Medicaid law designates as optional for states, rather than required.

DHS is the primary executive branch agency responsible for overseeing the state's human services programs. DHS supervises human services program administration, promulgates rules, and develops program manuals and bulletins governing the administration of the programs. DHS also provides training and technical support to counties and maintains centralized computer systems relating to the programs.

What is the local government's role in administering human services programs?

Counties do much of the hands-on work in administering the state's human services programs. For example, county staff accept applications and determine eligibility for a wide range of income assistance and health care programs. County staff also negotiate payment rates for certain residential facilities and health care providers, subject to state maximums. County staff also work with parents to help establish and enforce child support obligations.

For certain human services programs, counties also contribute to programs' funding through local property tax revenue. For example, counties provide approximately 13 percent of the state's total child support enforcement funding.

For more information: Contact legislative analysts Randall Chun at 651-296-8639 or Peg Hicks at 651-296-8079.

Randall Chun October 2002

Medical Assistance

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

Eligibility

To be eligible for MA, an individual must:

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

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

Eligibility group	Net income limit, as % of federal poverty guidelines (FPG)	Asset limit*
Children < age 2	280	None
Children 2 through 18	170	None
Children 19 through 20	100	None
Pregnant women	275	None
Parents	100	$15,000 for one/$30,000 for two or more persons
Aged, blind, or disabled	100	$3,000 for one/$6,000 for two/$200 each additional

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

Individuals with incomes over these limits can also qualify for MA through a spend-down. Under a spend-down, 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 spend-down limit of 100 percent of FPG for families and children and 75 percent of FPG for individuals who are aged, blind, or disabled.

Eligibility (cont.)

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

Covered services

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

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

Provider reimbursement

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

Funding and expenditures

The federal share of MA costs is determined by a formula that is based on state per capita income. In fiscal year 2002, the federal government paid 50 percent of the cost of MA services, and the state was responsible for the remaining 50 percent. In fiscal year 2002, total state and federal MA expenditures for services were $4.114 billion.

Recipients

During fiscal year 2002, an average of 395,976 individuals were eligible for MA services each month. As of September 1, 2002, 241,253 MA recipients in 69 counties received services under PMAP.

Application procedure

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

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

HOUSE RESEARCH | Short Subjects

Don Hirasuna September 2002

MFIP Cases Reaching the 60-Month Time Limit

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

The first to reach the 60-month time limit

In Minnesota, 1,554 cases reached the 60-month limit in August 2002.

- 558 were subsequently closed and ineligible for Minnesota Family Investment Program (MFIP) in July 2002
- 907 were granted an extension
- 89 were suspended cases, child-only cases, or cases receiving only the food portion of MFIP

Who they are

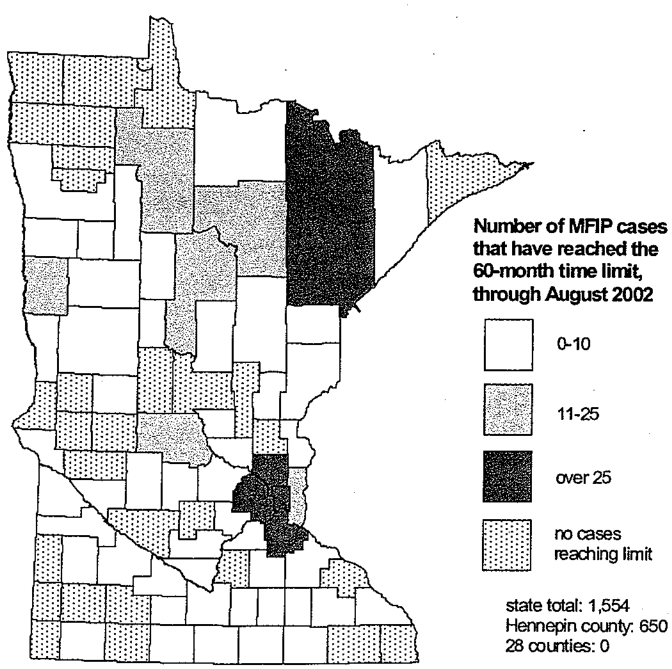
Families reaching the 60-month time limit are more likely to be:

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

Where they live

Most, 72.7 percent, of all closed cases through August 2002 lived in Hennepin or Ramsey County.

MFIP Cases That Have Reached the 60-Month Time Limit Through August 2002

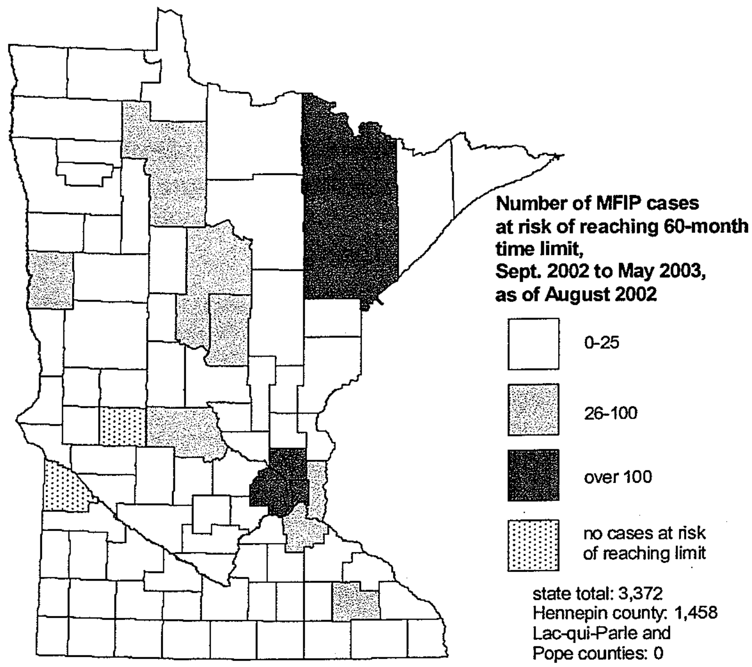


Cases at risk of reaching the 60-month time limit by May 2003

There are 3,372 cases at risk of reaching the 60-month time limit by May 2003 (data as of August 2002).

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

Additional MFIP Cases at Risk of Reaching the 60-month time limit by May 2003



The data is from the Minnesota Department of Human Services (DHS). Parents at risk of reaching the 60-month time limit include all cases eligible since August 1997. These are the number of cases that have used 51 or more months of their 60-month limit as of June 2002. This does not include any families that migrate into the state in future months with prior Temporary Assistance to Needy Families (TANF) months that will be counted toward the 60-month limit. The cases at risk of reaching the 60-month time limit are likely greater than the number of families that will reach the limit. Some of these families will leave welfare without using up all of their eligibility. Some parents may receive extensions. Still other parents will move into or leave the state. Parents entering the state may reach their welfare 60-month limit before March 2003. The numbers for August 2002 are estimates.

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

Amy Petschauer
September 2002

Minnesota Family Investment Program Time Limit Exemptions and Extensions

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

MFIP time limit exemptions

People in the following categories do not have months of assistance received count toward the 60-month time limit:

- victims of domestic violence;
- caregivers who are 60 years or older;
- 18- and 19-year-olds who are engaged in education activities; and
- minor caregivers who are complying with living arrangement and education plan requirements for minor caregivers. Minn. Stat. § 256J.42.

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

- months when a family receives assistance while living in Indian country (as defined by federal law 18 U.S.C. § 1151) where at least 50 percent of the adults are not employed;
- months when a pregnant minor or minor parent receives assistance when he or she is *not* the head of household or married to the head of household; and
- months when the only assistance received is noncash assistance under the Welfare-to-Work program. 45 C.F.R. § 264.1.

MFIP hardship extension categories

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

Ill or incapacitated. This category includes participants who:

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

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

- are diagnosed as having mental retardation or mental illness, and that condition prevents the person from obtaining or retaining unsubsidized employment;

- are considered unemployable or are employable, but employability is limited due to a low IQ;
- have a learning disability; or
- are victims of family violence and are participating in an alternative employment plan.

Employed participants. This category includes:

(1) a one-parent family, if the parent is participating in work activities for at least 30 hours per week, of which an average of at least 25 hours per week are spent in employment;

(2) a two-parent family if the parents are participating in work activities for at least 55 hours per week, of which an average of at least 45 hours per week are spent in employment; or

(3) a family in which a participant is working fewer than the number of hours required under (1) and (2) if the participant verifies that the number of hours that the participant may work is limited due to an illness or disability.

To qualify for this extension, the parent in a one-parent family or both parents in a two-parent family must have not been sanctioned for at least 10 out of the 12 months before reaching the 60-month time limit, including the 60th month. This extension expires on June 30, 2004.

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

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

Services for families who reach the time limit

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

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

HOUSE RESEARCH | Short Subjects

Randall Chun

October 2002

MinnesotaCare

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

Eligibility

To be eligible for MinnesotaCare, an individual must:

- Have gross income that does not exceed 275 percent of the federal poverty guidelines (FPG) for families and children ($49,776 for a household of four), and 175 percent of FPG for single adults and households without children ($15,516 for a household of one and $20,904 for a household of two).
- Have assets that do not exceed $15,000 for a household of one and $30,000 for a household of two or more, after certain exclusions. This asset standard does not apply to pregnant women and children.
- Not have access to employer-subsidized health care coverage, and not have had access to this coverage through the current employer for 18 months prior to application or renewal. This requirement does not apply to children with incomes that do not exceed 150 percent of FPG and certain other children.
- Have no health care coverage at the time of application, and for four months prior to application or renewal. Children with incomes that do not exceed 150 percent of FPG and certain other children considered to be "underinsured" are exempt from this requirement.
- Be a resident of Minnesota. Pregnant women, families, and children must meet the residency requirements of the Medical Assistance (MA) program; adults without children must satisfy a 180-day residency requirement.

Covered services

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

Adults who are not pregnant are covered for most, but not all MA services. Services not covered include personal care attendant, private duty nursing,

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

Premiums and cost-sharing

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

Provider reimbursement

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

Funding and expenditures

In fiscal year 2002, the state paid $351 million for medical services provided to MinnesotaCare enrollees. Fifty-five percent of this cost was paid for by the state, 34 percent by the federal government, and 11 percent by enrollees through premium payments.

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

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

Recipients

As of September 2, 2002, 154,157 individuals were enrolled in the MinnesotaCare program. Just under one-half of these enrollees were children.

Application procedure

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

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

HOUSE RESEARCH | Short Subjects

Elisabeth Loehrke

October 2002

Minnesota's Tobacco Settlement

What is Minnesota's tobacco settlement?

In 1998 the state of Minnesota and Blue Cross and Blue Shield of Minnesota settled their lawsuit against several tobacco companies and related organizations. According to the settlement, the state receives payments from tobacco companies that began in 1998 and will continue into perpetuity. Blue Cross and Blue Shield of Minnesota has a separate settlement agreement. The settlement establishes three types of settlement payments.

- **Annual payments** are deposited in the state's general fund and are used for the general operation of state government.
- **One-time payments** are deposited in endowments and are used for tobacco use prevention, other public health, and medical education activities, and for cash flow.
- **Court-administered payments** are used to fund the activities of the Minnesota Partnership for Action Against Tobacco (MPAAT).

The annual and one-time payments receive annual inflation adjustments and volume adjustments (based on changes in the volume of tobacco products sold in the United States, and changes in tobacco company profitability). The court-administered payments do not receive inflation or volume adjustments. The settlement also restricts tobacco companies and related organizations from engaging in certain marketing and advertising activities, requires dissolution of the Council for Tobacco Research, ensures public access to court documents and files, and requires disclosure of certain payments to lobbyists.

How much are the annual payments, and how are they used?

On December 31, 1999, and each year thereafter into perpetuity, the tobacco companies must make annual payments to the state. These annual payments are deposited in the state's general fund and are used for the general operation of state government. There are no restrictions on how these payments may be used. The following table specifies the payment amounts received to date and projected payment amounts for future fiscal years.

Fiscal Year	2000	2001	2002	2003 (proj)	2004 (proj)	2005 (proj)
Payment Amount	$110.7 million	$124.4 million	$155.9 million	$151.5 million	$188.7 million	$190.8 million

Source: Minnesota Department of Finance

How much are the one-time payments, and how are they used?

Minnesota is scheduled to receive six one-time payments between September 1998 and January 2003. These one-time payments are distributed to two endowment funds and one account created by the legislature: the Tobacco Use Prevention and Local Public Health Endowment, the Medical Education Endowment, and an Academic Health Center Account within the Medical Education Endowment. Up to 5 percent of the fair market value of each fund or account is appropriated in statute each year for specific purposes. The following table provides additional information on the endowments and account.

	Tobacco Use Prevention and Local Public Health Endowment	Medical Education Endowment	Academic Health Center Account
Year Created	1999	1999	2001
How Funded	61 percent of 1998, 1999, 2000, and 2001 one-time payments	39 percent of 1998, 1999, 2000, and 2001 one-time payments	100 percent of 2002 and 2003 one-time payments
Fair Market Value of Fund as of 8/31/02	$451 million	$289 million	$203 million
How Money Used	• Statewide youth tobacco prevention grants • Local youth tobacco prevention grants • Local public health promotion and protection activities • Minnesota Department of Health administrative expenses • Other MDH tobacco prevention and control activities • Tobacco-use monitoring systems • Biennial evaluations of endowment-funded projects	• Instructional costs of health professional programs at publicly funded academic health centers and affiliated institutions • Clinical training of health professionals at various medical facilities • MDH administrative expenses	• Instructional costs of health professional programs at the Academic Health Center (AHC) • Interdisciplinary academic initiatives at the AHC • Leveraging federal funds for medical education activities

Source of fair market value data: Minnesota Department of Finance

In addition to the above uses, beginning July 1, 2003, the principal amounts in both endowment funds may be used for cash flow purposes. The legislature authorized this use in 2002.

How much are the court-administered payments, and how are they used?

In addition to funds paid directly to the state, some tobacco settlement funds are deposited in one of two accounts—a cessation account or a national research account—administered as ordered by the Ramsey County District Court. Between 1998 and 2007, $202 million will be deposited into these accounts. These accounts are administered by a private, nonprofit organization created by the court called the Minnesota Partnership for Action Against Tobacco (MPAAT).

- **Cessation account.** $102 million due in December 1998 was deposited in a cessation account, to be used to offer smoking cessation opportunities to Minnesota smokers.
- **National research account.** $100 million—$10 million a year for ten years, from June 1998 to June 2007—is to be deposited into a national research account, to be used for research to eliminate tobacco use by children and for program implementation, evaluation, and other tobacco control purposes.

The legislature and the executive branch do not have any direct control over MPAAT's funding or expenditures. The Ramsey County District Court oversees its activities.

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

HOUSE RESEARCH | Short Subjects

Randall Chun October 2002

Prescription Drug Program

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

Eligibility

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

- Be a Medicare enrollee who is either age 65 or over, or under age 65 with a disability.
- Not have prescription drug coverage through a private sector health insurance plan or through a Medicare supplement plan, and not have had this coverage in the four months prior to application;
- Be ineligible for Medical Assistance (MA) or General Assistance Medical Care (GAMC) without a spenddown, and not be enrolled in MinnesotaCare;
- Have an income that does not exceed 120 percent of the federal poverty guidelines, after the income exclusions of the MA program and a $20 disregard per individual or couple are applied. Beginning July 1, 2003, the program income limit for persons age 65 and over will increase to 135 percent of the federal poverty guidelines;
- Have assets whose value does not exceed $10,000 for one individual and $18,000 for a household of two or more, after the homestead, household goods, a vehicle, and other specified assets are excluded;
- Have lived in Minnesota for at least 180 days.

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

Covered services

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

Pharmacy reimbursement	Pharmacies are reimbursed for prescription drugs provided to program enrollees at the MA reimbursement level, minus any deductible paid by an enrollee.
Funding and expenditures	Enrollees must satisfy a $35 monthly deductible. The prescription drug program is funded by the state. In fiscal year 2002, after accounting for prescription drug rebates, the state paid $5.1 million for prescription drugs provided to program enrollees.
Recipients	In fiscal year 2002, average monthly enrollment in the program was 4,780. As of June 1, 2002, enrollment in the program was 4,636.
Application procedure	Individuals interested in applying for the Prescription Drug Program should contact their county human services agency. More information about the program can be obtained from the Senior LinkAge Line (1-800-333-2433).

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

HOUSE RESEARCH | Short Subjects

Elisabeth Loehrke September 2002

State Regulation of Health-Related Occupations

Who regulates health-related occupations in Minnesota?

At least 47 health-related occupations are regulated by the state. Health-related occupations regulated by the state are overseen by either the Minnesota Department of Health (MDH) or by a health-related licensing board. As of August 2002, there were 16 health-related licensing boards and two divisions in MDH that oversee health-related occupations. Some licensing boards regulate a single occupation, while others regulate a range of related occupations. For example, the Minnesota Board of Optometry only regulates optometrists, while the Minnesota Board of Medical Practice regulates acupuncturists, athletic trainers, osteopaths, physician assistants, physicians, respiratory care practitioners, and traditional midwives. MDH regulates various allied health professionals, such as alcohol and drug counselors and audiologists; various environmental health professionals, such as plumbers and lead workers; unlicensed mental health practitioners; and unlicensed complementary and alternative health care providers.

How are health-related occupations regulated?

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

- *Licensure* is the most stringent form of regulation. Under licensure, a person cannot practice in an occupation unless the person has satisfied predetermined qualifications for practicing and has been recognized by the state has having met those qualifications. Minn. Stat. § 214.001, subd. 3, para. (d). This is also known as "scope of practice protection." A person may demonstrate that the required qualifications have been met by passing a licensing examination, graduating from an accredited educational institution with a relevant degree, or working in the field while under supervision. Example: dentists.
- With *registration*, only registered persons who have met predetermined qualifications for practicing are allowed to use a designated title ("title protection") and are listed on an official roster. Minn. Stat. § 214. 001, subd. 3, para. (c). Under a registration system, it is possible for a person to practice in an occupation without being registered, as long as the person does not use any protected titles. Occupations that are licensed generally also prohibit nonlicensed persons from using protected titles. Example: audiologists.
- To obtain *certification*, a person must satisfy the qualification requirements specified in statute or rule. It may be possible for a person to practice in an occupation without being certified, but other laws may

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

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

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

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

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

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

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

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

HOUSE RESEARCH | **Short Subjects**

Peg Hicks

September 2002

State-Operated Services

What are State-Operated Services (SOS)?

State-Operated Services (SOS) are a continuum of health care services administered by the Department of Human Services (DHS) serving: people with mental illness, developmental disabilities, chemical dependency, and traumatic brain injury; psychopathic personalities; sexual psychopaths; sexually dangerous persons; and elderly with severe behavioral problems. SOS provides services for clients at a variety of campus-based and community-based sites. There are two types of services provided by SOS: "appropriated services" and "enterprise services."

What are SOS appropriated services?

SOS appropriated services provide specialized treatment and related supports for persons with disabilities who cannot otherwise access needed health care services in community settings. These services are provided in campus-based programs, community facilities, and group homes, and through direct outreach services to individuals.

SOS appropriated services provide:

- **Adult Mental Health Services.** SOS provides inpatient psychiatric services to persons with mental illness at the state's regional treatment centers (RTCs) in Anoka, Brainerd, Fergus Falls, St. Peter, and Willmar. In addition, the state has developed an array of community-based services delivered in partnership with counties and community service providers.

- **Nursing Facility Services.** SOS operates the Ah-Gwah-Ching Center in Walker and the Woodhaven Senior Community Center on the Brainerd RTC campus as nursing homes for elderly clients referred from other parts of SOS. These facilities also accept referrals from community nursing homes for clients who have severe and challenging behavior problems.

- **Forensic Services.** SOS operates statewide forensic services in three major program areas:

  The *Minnesota Extended Treatment Options (METO)*, located in Cambridge, is a 48-bed specialized service for individuals with developmental disabilities whose behaviors present a public safety risk.

  The *Minnesota Security Hospital (MSH)*, located on the St. Peter RTC campus, is a 194-bed facility that provides multi-disciplinary forensic treatment services for individuals who are under civil commitment as mentally ill and dangerous. MSH also provides comprehensive court-ordered forensic evaluations and operates a 50-bed forensic transition program that provides a supervised residential setting and treatment to permit an individual's safe return to the community.

  The *Minnesota Sex Offender Program (MSOP)* includes the 150-bed Minnesota Psychopathic Personality Treatment Center in Moose Lake; two evaluation and transition units of 25 beds each located on the St. Peter RTC campus; and 18 special needs beds located on the St. Peter RTC campus for individuals with limited intellectual functioning who require specialized support and treatment approaches.

- **Community Support Services.** SOS provides community support services for individuals with developmental disabilities through 15 six-bed group homes located in community settings; two community health clinics that provide psychiatric and dental services to individuals who are unable to obtain these services in the community; and various other support services.

How are SOS appropriated services funded?

To assure the availability of services for clients in need, SOS appropriated services are funded prospectively through a general fund appropriation. DHS also seeks reimbursement for these services from Medicare, Medical Assistance, private insurance, clients' personal funds, and other revenue sources as available.

What are SOS enterprise services?

SOS enterprise services provide services to people with disabilities while operating in the marketplace with other providers. These services are funded solely through revenues collected from a variety of third-party payment sources.

Enterprise services provide:

- **Chemical dependency (CD) treatment.** SOS CD programs provide inpatient and outpatient treatment to persons with chemical dependency and substance abuse problems. SOS operates these programs on the Anoka, Brainerd, Fergus Falls, St. Peter, and Willmar RTC campuses and in Carlton.
- **Residential services for individuals with developmental disabilities or traumatic brain injuries (TBI).** Residential services for individuals with developmental disabilities or TBI typically are provided in licensed foster care settings or in the person's own home.
- **Day training and habilitation (DT&H) services for individuals with developmental disabilities or TBI.** DT&H programs provide vocational support services to persons through a licensed work site or supported work sites with job coaches.
- **Rehabilitation services for individuals with TBI.** The Minnesota Neurorehabilitation Hospital (MNH), located on the Brainerd RTC campus, provides intensive hospital-level rehabilitative services to individuals with acquired brain injuries who have challenging behaviors.
- **Child and Adolescent Behavioral Health Services (CABHS).** CABHS provides an array of services ranging from in-home crisis intervention to hospital-level care on the Willmar and Brainerd RTC campuses.

How are SOS enterprise services funded?

SOS enterprise activities are funded solely through revenues collected from a variety of third-party payment sources, including private health insurance, Medical Assistance, counties, and other revenue sources available to clients.

For more information: Contact legislative analyst Peg Hicks at 651-296-8079.

HOUSE RESEARCH | **Short Subjects**

Joel Michael

October 2002

Alcoholic Beverage Taxes

Two special state taxes apply to alcoholic beverages: excise taxes and a higher retail sales tax

Minnesota imposes two types of special taxes on alcoholic beverages:

- **Special excise taxes** are imposed on manufacturers or wholesalers of these products. These taxes are a fixed dollar amount per unit (per barrel or liter). The tax rates vary by beverage type. See the table below for tax rates.

- A **special higher sales tax rate** of 9 percent (2.5 percentage points higher than the regular rate) applies to their retail sales—whether made on-sale (to be consumed in bars or restaurants) or off-sale (in liquor stores or by other sellers). The tax is a percentage of the retail price.

Excise tax rates are set as a dollar amount per volume of the beverage

Manufacturers of beer and wholesalers of distilled spirits and wines pay the special excise taxes. (If the beer manufacturer doesn't pay, the wholesaler or importer is liable for the tax.) The table shows the rates for the most common beverage categories. Higher rate categories apply to wines with alcoholic contents that exceed 21 percent and 24 percent, but little or no products of these types are sold. In addition, a special "bottle tax" of 1 cent per bottle applies to each wine and liquor bottle that is 200 milliliters or larger.

Beverage Type	Excise Tax per	
	gallon	liter
Beer < 3.2% alcohol	.08	NA
Beer > 3.2% alcohol	.15	NA
Cider < 7% alcohol	.15	NA
Wine < 14% alcohol	.30	.08
Wine > 14% alcohol	.95	.25
Sparkling wine	1.82	.48
Distilled spirits	5.03	1.33

Because the excise taxes are fixed dollar amounts, they don't vary with the price of the product. Higher priced products pay the same tax as lower price products. Moreover, revenues grow only as more gallons of the taxed products are sold; they don't increase with inflation (price increases). For revenues to keep pace with inflation, the legislature must adjust the tax rates periodically. It has done this only sporadically (most recently in 1987).

Few exemptions apply

The law exempts the following from the excise tax:

- Sacramental wine
- Product sold to food processors and pharmaceutical companies
- The first 25,000 barrels of beer produced by a brewery with annual production of less than 100,000 barrels (A barrel is 31 gallons.)

Revenues go to the general fund

Revenues from both the excise taxes and the additional 2.5 percentage point sales tax go to the general fund. Fiscal year 2002 revenues from the excise taxes were about $62 million and $48 million for the special sales tax. Thus, the special sales tax rate raised over 40 percent of alcohol tax revenues. The table to the right shows the collections by beverage type for the excise tax and for the additional sales tax on all alcoholic beverages. The excise tax revenue from liquor reflects the higher rates imposed on these products, rather than their share of the market (measured by dollars spent). It is safe to conclude that the sales tax imposes a much higher tax burden on wine and beer than the excise tax does.

Beverage Type	**FY2002 Revenues (000)**	**% of Total**
Beer < 3.2%	$493	0.4%
Beer > 3.2%	15,481	14.1%
Cider	30	0.0%
Wine < 14%	2,325	2.1%
Wine > 14%	273	0.2%
Sparkling Wine	718	0.7%
Distilled Spirits	42,914	39.0%
Excise tax total	62,234	56.6%
2.5% sales tax	47,705	43.4%
Total	$109,940	
Source: MN Department of Revenue		

Minnesota tax compared with other states

Minnesota's wine and beer excise taxes are average or below average compared with most other states. Minnesota's tax on distilled spirits (liquor) is among the higher taxes for states with excise taxes. A number of states (including Iowa) have liquor monopolies and a portion of the price markup is a *de facto* tax; it is difficult to compare the tax burden with these states. The table compares Minnesota's tax rates with its bordering states. However, only North Dakota imposes an additional sales tax (an additional 2 percentage points). Thus, the total Minnesota alcohol tax burden is higher than suggested by simply comparing excise tax burdens.

Excise Tax Rates (per gallon) Bordering States			
	Strong Beer	Table Wine	Liquor
IA	$.19	$1.75	N.A.
MN	**.15**	**.30**	**$5.03**
ND	.16	.50	2.50
SD	.27	.93	3.93
WI	.06	.25	3.25
Source: Federation of Tax Administrators			

Tax relative to alcohol content varies

The excise taxes are imposed on the volume of the beverage, not its alcoholic content. (The federal tax on distilled spirits, by contrast, is imposed explicitly on alcoholic content.) Since alcoholic content varies significantly within beverage type, it is difficult to generalize about the tax on alcohol content. But using averages for beverage types, it is apparent that alcohol in beer and wine is lightly taxed compared with liquor. The excise tax per an ounce of alcohol in liquor is about 9 cents, while it is between 2 and 3 cents for wine and beer.

Tax is regressive

The alcohol taxes are regressive; they constitute a higher share of income for lower income families and individuals, on average. The Department of Revenue's Tax Incidence Study indicates they are less regressive than the tobacco taxes, but are nevertheless more regressive than the general sales tax.

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

HOUSE RESEARCH | Short Subjects

Joel Michael

October 2002

Apportionment of Corporate Franchise Tax

Apportionment is constitutionally required

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

All states use formula apportionment

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

Minnesota uses a weighted three-factor formula

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

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

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

Special formulas apply to some industries

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

No throwback rule applies

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

Minnesota's apportionment formula does not affect the tax owed to another state, in any case.

Formula apportionment has important economic effects

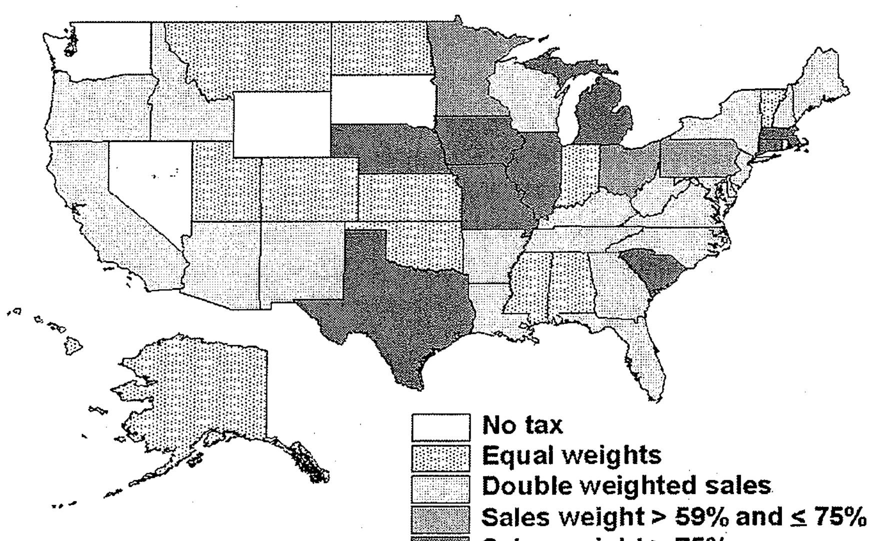
Public finance economists generally agree that apportionment formulas are a very important feature of state corporate income (franchise) taxes. They essentially make the tax the same as a tax directly on the factors: e.g., the tax on the portion of income assigned using the sales factor is the same, in economic effect, as a sales tax. Weighing sales more heavily, thus, shifts the tax toward being a tax on sales. Since sales are assigned to the buyer's location, and there is no throw-back rule, export or non-Minnesota sales are exempt. Thus, increasing the weight for sales creates an incentive for companies to invest in Minnesota property or to hire more employees (or reduces the tax's disincentive to do so) to sell products outside of Minnesota. The property and payroll factors, by contrast, would assign more income to Minnesota, increasing the tax, because the investment increases Minnesota property and payroll.

States have been moving to sales apportionment

After the U.S. Supreme Court ruled sales-only apportionment was valid, many states have increased their reliance on the sales factor because of these incentive effects. Eight states now rely exclusively on sales to apportion income for manufacturing businesses. Most states weight sales more heavily. The map below shows formulas used by other states. Minnesota business organizations have been urging the legislature to adopt sales-only apportionment. Doing so would reduce taxes on businesses whose Minnesota sales factor is lower than the average of their property and payroll factors. Conversely, tax would increase for multistate businesses whose Minnesota sales factor is higher. State revenues overall would drop, if no other changes were made in the tax.

Apportionment of Corporate Income

Applicable to Manufacturers



Source: Federation of Tax Administrators

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

HOUSE RESEARCH | Short Subjects

Joel Michael

October 2002

Cigarette and Tobacco Excise Taxes

Minnesota's cigarette tax is 48 cents per pack

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

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

The legislature has increased the cigarette tax five times since 1971

Over the last 30 years, the legislature has periodically increased the rates of both the cigarette excise and tobacco products taxes. The cigarette tax has been increased five times since 1971 and the tobacco products tax twice. The years in which the rates were increased and the rates are shown in the table to the right.

Years of Tax Rate Increases

	Cigarette	**Tobacco Products**
1971	$0.18	20%
1985	0.23	25%
1987	0.38	35%
1991	0.43	35%
1992	0.48	35%

Tax revenues are about $182 million per year

For fiscal years 2003-2005, the Finance Department estimates collections from the two taxes will equal about $182 million per year. Revenues have fallen slightly as smoking has declined. For example, about $189 million was collected from the two taxes in fiscal year 2000. Revenues from the tobacco products tax are deposited in the general fund. Revenues from 2 cents per pack of the cigarette tax go to the Minnesota future resources fund, and the rest are deposited in the state general fund.

The tax is regressive

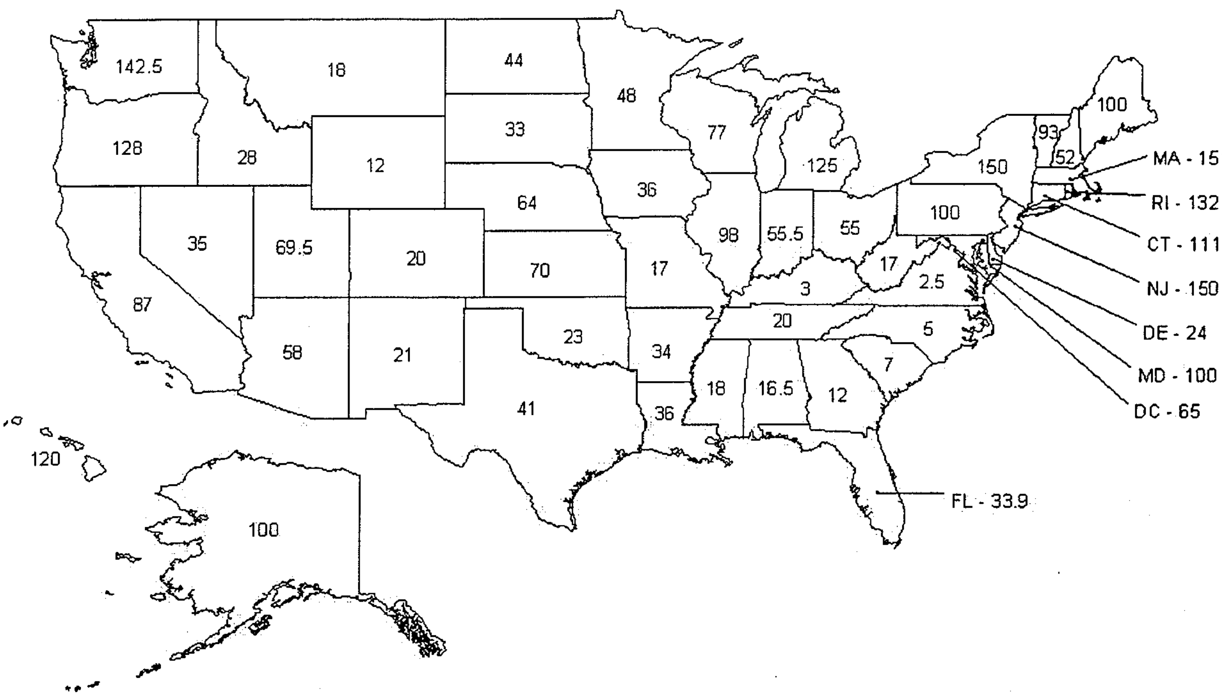
According to the Department of Revenue's *2001 Tax Incidence Study*, the cigarette and tobacco taxes are the most regressive of Minnesota's state and local taxes. The burden of these taxes falls much more heavily on lower income households (as a share of income) than any of the other categories of taxes analyzed in the study.

Neighboring states have comparable tax rates

Because cigarettes can easily be transported from one state to another, particularly by individuals who live near state borders, the tax rates in bordering states are important to tax policy. States bordering Minnesota have roughly comparable cigarette excise tax rates. Wisconsin has a higher rate (77 cents), while the other states all have somewhat lower rates: North Dakota at 44 cents; Iowa at 36 cents; and South Dakota at 33 cents. The rates for all states are shown on the map below. Minnesota's tax rate of 48 cents is the median; one-half of the states have higher rates and one-half lower.

State Cigarette Tax Rates*

as of November 1, 2002
cents per pack



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

Numerous states have recently increased their cigarette tax rates to balance their budgets or to fund program initiatives. Voters have approved some of these increases; Missouri and Arizona both have ballot questions in the November 2002 election authorizing tax increases. The table to the right shows the tax increases that have taken effect during calendar year 2002, regardless of when they were enacted.

Settlements of the states' lawsuits against the tobacco companies have also had the same economic effect as an increase in the cigarette tax, since these settlement payments are passed along to consumers (nationally) through higher cigarette prices.

States Cigarette Tax Rate Increases taking effect between 1/2002 and 11/2002
cents per pack

Massachusetts	75	New York	39
New Jersey	70	Maryland	34
Pennsylvania	69	Rhode Island	32
Connecticut	61	Ohio	31
Oregon	60	Nebraska	30
Michigan	50	Hawaii	20
Vermont	49	Utah	18
Kansas	46	Louisiana	12
Illinois	40	Tennessee	7
Indiana	40		

Source: FTA, NCSL, and *State Tax Notes*, complied by House Fiscal Analysis Department

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

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

Pat Dalton

October 2002

City Local Government Aid Program (LGA)

LGA provides general purpose aid to cities

LGA has two purposes—to provide property tax relief and to ensure that cities can raise sufficient revenues to meet their needs (excluding schools). LGA is the state's largest program of general-purpose aids to local governments. It was created in 1971 as part of a major reform of the state/local finance system. It replaced a variety of categorical aids and "shared tax" programs. Although the original program made payments to all nonschool local governments, it is now paid only to cities.

At $586.8 million in 2003, city LGA is the largest noncategorical state aid program

Distribution of LGA 1975-2003				
	LGA Payments (in millions)			
Calendar Year	**Counties**	**Cities**	**Towns**	**Special Districts**
1975	$31.3	$93.0	$13.9	$0.6
1980	22.0	208.3	15.4	0
1985	14.5	264.9	9.4	0
1990	7.5	337.2	2.2	0
1995	0	336.1	3.2	0
2000	0	394.4	3.6	0
2001	0	411.0	3.8	0
2002	0	565.0	0	0
2003 (certified)	0	586.8	0	0

The city LGA appropriation increased substantially between 2001 and 2002 to partially offset the loss of city homestead and agricultural credit aid (HACA) payments that were eliminated as part of a property tax reform.

The LGA appropriation increases annually for inflation

Unlike many state aid programs, the city LGA appropriation automatically increases every year for inflation, measured by the implicit price deflator (IPD) for state and local government purchases. The annual increase cannot be less than 2.5 percent or greater than 5.0 percent, regardless of the actual change in the IPD. For aids payable in 2003, for example, the IPD was only 0.67 percent but the LGA appropriation increased by 2.5 percent.

The current LGA formula has been in place for eight years

The current method for distributing city LGA was adopted in 1993. The factors and coefficients used in the formula were based on an analysis by the League of Minnesota Cities to identify appropriate measures of city "need."

Earlier formulas had used property tax levies as a proxy for "need." Those formulas also contained a "rolling grandfather" provision. This meant that cities were guaranteed to receive at least as much aid in the current year as they had received in the previous year. This "rolling grandfather" led to some major inequities in payments between cities over time.

LGA consists of two parts—base aid and formula aid

The amount of aid a city receives in any year under the current program consists of two parts: an amount determined by the formula and a "base" amount (also known as "grandfathered" aid). Any increases in the LGA appropriation are usually distributed via the formula; the base aid generally does not increase.

Base aid usually does not grow and is equal to a city's aid in 1993

The base aid is equal to the amount of aid each city received in 1993 in LGA and a couple of other aid programs. Unlike the "rolling grandfather" in previous formulas, the base amount does not increase for any city unless specifically provided for in legislation. Over the years, adjustments have been made to base amounts paid to individual cities to deal with special needs and circumstances that are not accounted for in the formula. Examples include unusually high sewer conversion costs, sudden and dramatic tax base loss, and overburdens in large regional centers that provide services to the surrounding rural population.

When the current LGA formula was first enacted, base aid made up $320 million of the $330 million total LGA appropriation. In 2003, base aid accounts for $360.4 million of the $586.8 million LGA appropriation.

Formula aid is based on city "need" minus "ability to pay"

Each city's formula aid is equal to a percentage of the difference between its "need" and its "ability to pay." This difference is often referred to as "unmet need." A city's "need" is based on four factors:

- population
- population decrease
- percent of its housing built before 1940, and
- percent of its tax base that is classified as commercial or industrial

A city's "ability to pay" is equal to the city's tax capacity multiplied by the average city tax rate.

A city's LGA amount can increase and decrease over time

The amount of aid a city receives under the formula can vary over time depending on changes in its need factors and its tax capacity. Because the appropriation is capped at a specific amount each year, the amount of formula aid a city gets is also dependent on its "unmet need" relative to the "unmet need" in other cities.

A city's LGA payment may not be less than its base aid amount. There are also limits on aid increases in any year. The percent increase in LGA payments to the cities of Minneapolis, St. Paul, and Duluth, may not exceed the percent increase in the total LGA appropriation for that year. The LGA increase for any other city may not exceed 10 percent of the city's property tax levy in the previous year.

For more information: Contact legislative analyst Pat Dalton at 651-296-7434. Also see the House Research publication, *Restructuring of State Aid to Minnesota Cities*, October 1993 with December 1994 addendum.

Joel Michael

September 2002

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. Many of these proposals 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. However, the United States Supreme Court has long held that a negative 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 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);
- Providing reduced tax rate for in-state transactions, *Boston Stock Exchange v. State Tax Commission,* 429 U.S. 318 (1977).
- Limiting charitable contribution deductions to in-state charities. *Chapman v. Commissioner of Revenue*, -- N.W.2d -- (Minn. 2002).

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

- **The tax will be invalidated, even if discrimination is minor or seemingly inconsequential.** The Court has rejected arguments that the effect of the discrimination is so minor or *de minimus* that it is not of constitutional stature.

- **Incentives to encourage local investment or activity may be invalid.** Tax incentives for in-state activity (e.g., investment or exporting) may be invalid, if the net effect is to raise the underlying 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); *Zenith/Kremer Waste System, Inc. v. Western Lake Superior Sanitary District,* 472 N.W. 2d 300 (1997), *cert. denied* 523 U.S. 1145 (1998).

Discriminatory Taxes May Be Valid as Complementary Taxes. 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.

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

HOUSE RESEARCH | Short Subjects
The Constitution and the Legislature

Joel Michael

September 2002

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 for raising revenues or for curtailing the cost of tax benefits. Legislators often wish to impose higher taxes on nonresidents or to deny them special benefits granted to residents, such as credits or deductions. Tax issues relative to nonresidents often arise in the following contexts:

- Individual income tax on income derived from real property 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 essentially on the same basis 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.

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 exemptions and deductions under the individual income tax. *Travis v. Yale & Towne Mfg. Co.,* 252 U.S. 60 (1920). However, these deductions generally may be limited or prorated to be proportionate to the amount of in-state income.
- 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 religion) 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. This means that the differential treatment of nonresidents must be rationally related to the state's objective. In general, this gives the legislature considerable flexibility. However, a careful 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 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 how many years they had 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 it is a grant of power to Congress, the Supreme Court has held that the Commerce Clause also prohibits states from imposing undue burdens on or interfering with interstate commerce. Provisions that impose higher taxes on nonresidents who conduct business in the state 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 or purchases, 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 "drummers" or solicitors than on residents.

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: Contact legislative analyst Joel Michael at 651-296-5057. Also see the House Research Short Subjects publications on the Commerce Clause and equal protection, September 2002.

Joel Michael October 2002

Corporate Franchise Tax

Corporate franchise tax applies to "C" corporations

The corporate franchise tax, also frequently referred to as the corporate income tax, applies to "C" corporations (i.e., corporations and some partnerships) that are taxable under subchapter "C" of the Internal Revenue Code. Entities exempt from the tax include:

- "Pass-through entities" (e.g., partnerships, "S" corporations, and other entities that do not pay entity level taxes); the owners of these entities (shareholders or partners) only pay tax on their respective shares of the business entity's income. These entities are subject to the minimum fee (see below).
- Insurance companies (Insurers pay a premium tax instead)
- Credit unions
- Charitable organizations and other entities exempt from the federal income tax

Tax base is profits

The tax base is essentially the profits of C corporations. State law defines the tax base by reference to the definition of taxable income under the federal corporate income tax. For example, federal depreciation rules are followed. Minnesota deviates from the federal rules in some important ways. In particular, it provides an exemption for some types of foreign source income and for payments from foreign operating corporations. The Minnesota tax also taxes some income exempt under federal law.

Tax rate is 9.8 percent

A flat tax rate of 9.8 percent applies to Minnesota taxable income.

Income is apportioned to Minnesota using a weighted three-factor formula of property, payroll, and sales

Many corporations operate in more than one state. Under the United States Constitution, a state can legally tax only the income of a business that is "fairly apportioned" to the activity in the state. All states do this using formula apportionment (i.e., based on the in-state percentage of one or more factors). Minnesota apportions a multi-state corporation's income using a weighted three-factor formula of sales (75 percent weight), property (12.5 percent), and payroll (12.5 percent). The Minnesota percentage for each factor is multiplied by the weight and the three factors added to determine the Minnesota percentage of the corporation's total income. For unitary businesses operating through several corporations (e.g., parent-subsidiary), all of their income is combined. This is referred to as the "combined reporting" method of apportionment. For more information on apportionment, see the separate Short Subject, "Apportionment of Corporate Franchise Tax."

Various tax credits apply

The corporate franchise tax is reduced by various tax credits. These include credits for:

- Research and development
- Tax paid to another state
- Enterprise zone activity

Revenues go to the general fund

Revenues from the corporate franchise tax are deposited in the general fund. The Department of Finance estimated (in February 2002) that corporate franchise tax collections will be $625 million in fiscal year 2003, $690 million in fiscal year 2004, and $704 million in fiscal year 2005. In fiscal year 2002, the franchise tax provided a little less than 5 percent of state general fund revenues.

Revenues are elastic but very volatile

Revenues under the tax are elastic; they grow as the size of the economy grows. But they are also are the most volatile of the major taxes imposed by the state. When the economy slows down or goes into recession, corporate profits and the franchise tax tend to drop quite precipitously. For example, in fiscal year 2001 (an expansion year) the state collected $729 million in corporate franchise tax. In fiscal year 2002 (a year in which a mild recession occurred), corporate franchise tax revenues dropped to $533 million or 26.9 percent. Revenues from the tax dropped even more during the deeper recessions of the early 1980s.

A minimum tax applies

An alternative minimum tax or AMT applies under the franchise tax. This tax closely follows the similar federal AMT. A corporation must compute its tax under the AMT, using a broader tax base (e.g., less generous depreciation rules) and lower tax rate (5.8 percent). If the AMT results in a higher tax, the corporation must pay this amount.

A minimum fee applies to most entities

All corporations (both S and C corporations) and partnerships must pay a minimum fee based on the sum of their Minnesota property, payroll, and sales. This fee is an "add-on" fee that must be paid in addition to the tax computed under the regular tax or AMT. The schedule for the fee is shown to the right.

Fee Schedule

Minnesota Property, Payroll, and Sales	Fee
Less than $500,000	0
$500,000 - $999,999	$100
$1,000,000 - $4,999,999	$300
$5,000,000 - $9,999,999	$1,000
$10,000,000 - $19,999,999	$2,000
$20,000,000 or more	$5,000

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

HOUSE RESEARCH | Short Subjects

Pat Dalton and Steve Hinze October 2002

County Property Tax Relief Aids

The Department of Revenue administers three county aid programs

In addition to a number of categorical aids, counties receive aid under three property tax relief programs, administered by the Department of Revenue. Homestead and agricultural credit aid (HACA) is a general-purpose aid that may fund spending for any purpose. Criminal justice aid (CCJA) and family preservation aid (FPA), must be used specifically for the broadly defined purposes of criminal justice and family preservation. (See the table on the back for a county breakdown of each type of aid received in 2002.)

HACA is the largest of the three property tax relief programs

Counties are due to receive $204.8 million in HACA payments in 2002. HACA amounts are not formula-driven per se; instead, each county's base HACA amount was determined to compensate for state-mandated adjustments to the county's tax base between 1990 and 2002. Each year, each county gets the same amount it received in the previous year, plus a percentage increase based on the rate of inflation and on the annual growth in the number of households. In some years, a county's HACA payment is permanently reduced in conjunction with the state takeover of a service that had been provided by the county. For 2003 to 2005, some counties are undergoing HACA reductions as the state takes over the financing of certain court-related costs. For 2004, all counties will receive a HACA reduction as the state takes over a portion of out-of-home placement costs.

CCJA is distributed based on population and crime rates

Counties are due to receive $31.5 million in CCJA payments in 2002. One-half of the appropriation is distributed based on each county's population. The other one-half is distributed based on each county's proportion of the statewide total of "part I crimes" committed in the previous year. "Part I crimes" include murder and non-negligent manslaughter, robbery, aggravated assault, arson, forcible rape, burglary, larceny-theft, and motor vehicle theft. The appropriation for this program increases each year between 2.5 percent and 5.0 percent, depending on the rate of inflation.

FPA is distributed based on the change in the share of income maintenance caseloads

Counties are due to receive $23.4 million in FPA payments in 2002. The initial allocation of FPA in 1995 among counties was based on two factors—each county's share of total children in out-of-home placement in the state in 1991 and 1992, and each county's share of income maintenance cases in the state in 1993. Since 1995 each county's aid increases or decreases based on the change in its relative share of income maintenance caseloads in the state. Like the CCJA program, the appropriation for FPA increases each year between 2.5 percent and 5.0 percent, depending on the rate of inflation.

For more information: Contact legislative analyst Pat Dalton at 651-296-7434 or Steve Hinze at 651-296-8956.

2002 County Property Tax Relief Aids

COUNTY	HACA	CCJA	FPA	COUNTY	HACA	CCJA	FPA
Aitkin	1,651,143	93,442	66,959	Marshall	664,534	49,337	21,882
Anoka	13,395,872	1,959,376	1,051,208	Martin	690,167	112,268	73,474
Becker	1,034,647	144,160	193,943	Meeker	1,239,195	133,319	66,384
Beltrami	0	273,656	551,303	Mille Lacs	1,152,258	146,487	121,990
Benton	837,125	163,149	100,159	Morrison	1,700,737	171,451	80,860
Big Stone	760,342	27,728	22,708	Mower	1,745,046	249,495	134,298
Blue Earth	1,784,558	375,630	203,594	Murray	794,407	38,898	15,937
Brown	1,133,236	127,451	64,049	Nicollet	1,136,164	164,961	149,546
Carlton	1,570,825	152,602	155,827	Nobles	929,811	103,618	103,603
Carver	4,524,510	347,995	91,231	Norman	592,006	31,289	26,797
Cass	1,318,992	220,441	273,623	Olmsted	5,999,277	677,568	415,674
Chippewa	1,072,585	55,916	25,643	Otter Tail	2,799,216	289,943	225,662
Chisago	2,647,744	231,874	147,180	Pennington	577,868	78,766	36,032
Clay	1,282,418	273,310	271,033	Pine	1,275,371	167,845	143,986
Clearwater	205,111	43,335	62,650	Pipestone	710,011	50,322	35,683
Cook	1,040,472	31,183	10,531	Polk	1,495,069	176,622	180,443
Cottonwood	866,872	62,506	40,312	Pope	841,940	52,437	16,742
Crow Wing	2,108,165	390,106	219,974	Ramsey	13,629,527	4,082,377	3,490,793
Dakota	12,635,124	2,139,131	810,910	Red Lake	334,554	20,403	7,112
Dodge	1,229,127	73,695	33,248	Redwood	1,007,840	80,938	72,886
Douglas	1,971,149	194,992	73,427	Renville	964,147	87,566	58,124
Faribault	765,633	74,000	52,534	Rice	1,555,949	360,504	147,778
Fillmore	1,070,379	83,104	32,822	Rock	590,429	38,498	21,884
Freeborn	1,649,090	172,245	145,095	Roseau	584,600	82,863	27,797
Goodhue	1,042,561	271,096	132,796	St. Louis	10,436,044	1,248,733	1627,966
Grant	648,759	35,228	13,886	Scott	5,449,814	524,551	148,837
Hennepin	37,777,119	8,597,200	7,819,259	Sherburne	1,520,266	301,742	110,703
Houston	1,198,204	84,967	36,690	Sibley	1,052,202	53,913	37,366
Hubbard	886,792	127,462	118,279	Stearns	4,545,685	865,504	380,006
Isanti	2,217,683	162,003	125,068	Steele	1,209,683	199,289	159,785
Itasca	1,975,326	190,705	202,370	Stevens	1,033,806	47,738	11,997
Jackson	828,159	51,630	20,176	Swift	945,710	51,472	26,028
Kanabec	1,255,025	85,833	52,254	Todd	1,612,083	128,305	81,437
Kandiyohi	2,492,915	242,194	222,155	Traverse	578,533	18,421	14,680
Kittson	382,464	21,926	12,922	Wabasha	1,019,601	106,564	50,788
Koochiching	26,501	86,960	80,487	Wadena	361,116	76,817	90,625
Lac Qui Parle	681,260	34,381	20,932	Waseca	1,334,146	93,347	90,106
Lake	1,180,635	51,684	28,054	Washington	8,545,815	1,164,524	469,380
Lake of the Woods	347,282	21,391	15,939	Watonwan	804,026	59,484	54,202
Le Sueur	1,800,107	102,250	62,825	Wilkin	935,141	37,856	31,048
Lincoln	653,383	21,320	12,508	Winona	1,791,130	284,953	100,069
Lyon	976,438	106,790	105,853	Wright	2,467,200	505,943	236,980
Mcleod	1,791,631	212,185	95,604	Yellow Medicine	1,076,156	45,395	22,720
Mahnomen	328,195	35,069	107,539				
				Total	**204,773,838**	**31,515,627**	**23,405,649**

Nina Manzi October 2002

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

What is federal taxable income (FTI)?

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

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

What kinds of income are included in FTI?

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

What kinds of income are excluded from FTI?

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

What deductions are allowed from FTI?

Taxpayers may claim either the standard deduction or itemized deductions. In tax year 2000, the most recent year for which data is available, 59 percent of Minnesotans claimed the standard deduction and 41 percent itemized.

How much is the standard deduction?

In tax year 2003, the standard deduction equals

- $7,950 for married couples filing joint returns
- $3,975 for married couples filing separate returns
- $7,000 for head of household filers
- $4,750 for single filers

What itemized deductions are allowed?

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

What personal and dependent exemptions are allowed?

Taxpayers may claim one personal exemption each, and one dependent exemption for each dependent claimed. For tax year 2003, the personal and dependent exemptions are $3,050 each. A family of four qualifies for four exemptions, totaling $12,200.

Are there limits on deductions and exemptions?

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

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

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

Tax year 2003	**Itemized deduction limit begins at**	**Exemption phase-out begins at**
Married joint filers	$139,200	$208,800
Married separate filers	$69,600	$104,400
Single filers	$139,200	$139,200
Head of household filers	$139,200	$174,000

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

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

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

Karen Baker and Nina Manzi October 2002

Homeowner's Property Tax Refund Program

What is the property tax refund program?

The homeowner property tax refund program (sometimes called the "circuit breaker" or the PTR) is a state-paid refund that provides tax relief to homeowners whose property taxes are high relative to their incomes. If property tax exceeds a threshold percentage of income, the refund equals a percentage of the tax over the threshold, up to a maximum amount. As income increases, the:

- threshold percentage increases;
- portion of tax over the threshold that the taxpayer must pay increases; and
- maximum refund decreases.

The program uses household income, a broad measure that includes most types of income. Deductions are allowed for dependents and for claimants who are over age 65 or disabled.

Has the program changed?

The 2001 tax law expanded the homeowner's property tax refund program, effective for refunds based on property taxes payable in 2002. The changes lowered the threshold for determining eligibility and increased the maximum refund allowed. The tax law also limited the amount of tax qualifying for the refund for farmers to the tax attributable to the house, garage, and first acre of property. (Previously the tax amount for farmers also included the tax on the first $600,000 of land and farm buildings.)

What are the maximums?

For refund claims filed in 2003, based on payable 2003 taxes and 2002 household income, the maximum refund is $1,530. Homeowners whose income exceeds $81,000 are not eligible for a refund.

What is the average refund and total amount paid?

2001 Statewide Homeowner Property Tax Refunds
Filed in 2001 (based on 2000 incomes and payable 2001 taxes)

	Number of returns	Total refund amount	Average per return
Under 65 years old	125,144	$42.8 million	$342
Senior/disabled	93,620	$32.0 million	$342
Total: all homeowners	218,764	$74.8 million	$342

How are claims filed?

Refund claims are filed using the Minnesota Department of Revenue Schedule M-1PR. Claims filed before August 15, 2003, will be paid beginning in late September 2003. The deadline for filing claims based on taxes payable in 2003 is August 15, 2004; taxpayers filing claims after that date will not receive a refund. Forms are available on-line at www.state.mn.us/ebranch/mdor/01forms.html.

How do refunds vary depending upon the filer's income and property tax?

The following table shows the refund amount for two example families with different incomes—one family in the metro area and one in greater Minnesota. Although the property tax refund threshold, copayment rates, and maximum refund amounts are the same statewide, the average residential homestead property tax in the metro area is higher than in greater Minnesota. The metro area family has payable 2003 property taxes of $2,032, the estimated average for the metro. The greater Minnesota family has payable 2003 property taxes of $987, the estimated average for greater Minnesota. Taxpayers who are over age 65, disabled, or have dependents are allowed a subtraction from income in determining the refund.

Married couple both under age 65, two dependents

		Metro area		**Greater Minnesota**	
		Taxpayer #1	**Taxpayer #2**	**Taxpayer #3**	**Taxpayer #4**
1	Market Value of Home	$173,000	$173,000	$100,000	$100,000
2	Gross Income	20,000	40,000	20,000	40,000
3	Deduction for dependents	8,100	8,100	8,100	8,100
4	Household income (2 – 3 = 4)	11,900	31,900	11,900	31,900
5	Property tax	2,032	2,032	987	987
6	Statutory threshold percentage	1.8%	2.7%	1.8%	2.7%
7	Threshold % x income (4 x 6 = 7)	214	861	214	861
8	Property tax over threshold (5 – 7 = 8)	1,818	1,171	773	126
9	Statutory copay percentage	25%	40%	25%	40%
10	Taxpayer copay amount (8 x 9 = 10)	454	468	193	50
11	Remaining tax over threshold (8 – 10 = 11)	1,363	702	580	75
12	Maximum refund allowed	1,330	1,130	1,330	1,130
13	Net property tax refund	$1,330	$ 702	$ 580	$ 75

For more information: Contact legislative analyst Karen Baker at 651-296-8959 or Nina Manzi at 651-296-5204.

Pat Dalton

October 2002

Levy Limits

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

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

Levy limits are intended to ensure state aid reduce property taxes

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

Levy limits expire after 2003

Levy limits will expire after property taxes payable in 2003, unless the legislature extends them. The legislature has generally imposed levy limits as part of property tax reforms, but also has repealed or allowed them to expire. The table shows the years limits were imposed. Levy limits initially applied to all cities and towns. The legislature later exempted towns and cities with populations under 2,500.

Chronology of Levy Limits		
Taxes payable years	**Limits Apply?**	**Instigating Event**
1972-1993	Yes	Enactment of 1971 property tax reform
1994-1997	No	Enactment of Truth-in-Taxation notices
1997-1998	Yes	"Compression" of class rates
2000	No	Allowed to expire
2001-02	Yes	2001 property tax reform

State aids used to calculate limits

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

County aids	City aids
Homestead and agricultural credit aid (HACA)	Local government aid (LGA)
Taconite aid	Taconite aid
County criminal justice aid (CCJA)	
Family preservation aid (FPA)	

Annual increases for inflation and local growth

Each year, a local government's levy limit base (levy plus aids) increases based on the following three factors:

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

Because of the low IPD for taxes payable in 2003 (.067 percent), the allowed growth rate for most cities and counties for these taxes is between 1 and 3 percent.

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

The levy limits do not apply to "special levies." Special levies can be imposed for whatever amount the city or county needs outside of levy limits for the following purposes:

- long-term debt;
- state and federal required matching grants;
- preparation for and recovery from natural disasters;
- certain abatements;
- increases in public employee retirement association (PERA) rates after June 30, 2001;
- required jail operation costs (this requires an adjustment to the limit base the first year this special levy is used);
- operation of lake improvement districts (this requires an adjustment to the limit base the first year this special levy is used);
- repayment of a state or federal loan related to highway or capital projects;
- redistricting costs incurred in 2002; and
- transition costs during the year the state assumes court administration costs in that county.

Local governments may go to voters for authority to exceed limits

A local government may not certify a levy higher than its total levy limit plus authorized special levies unless the voters approve at a referendum. A vote to exceed the limit may be for any amount and, if authorized, the tax is spread on tax capacity. Unless approved by a referendum, the levy must be reduced to the limited amount before property tax statements are mailed to taxpayers.

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

HOUSE RESEARCH | Short Subjects

Karen Baker and Steve Hinze

October 2002

Limited Market Value

What is limited market value?

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

What property does LMV apply to?

The following classes of property qualify for LMV:

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

Is it permanent?

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

Does the assessor continue valuing the property?

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

How does it work?

For qualifying property in assessment year 2002 (taxes payable in 2003); the increase in market value shall not exceed the **greater** of:

- 10 percent of the LMV in the preceding assessment year; or
- 15 percent of the difference between the current year's EMV and the previous year's LMV.

How does the phase-out work?

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

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

Example calculations

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

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

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

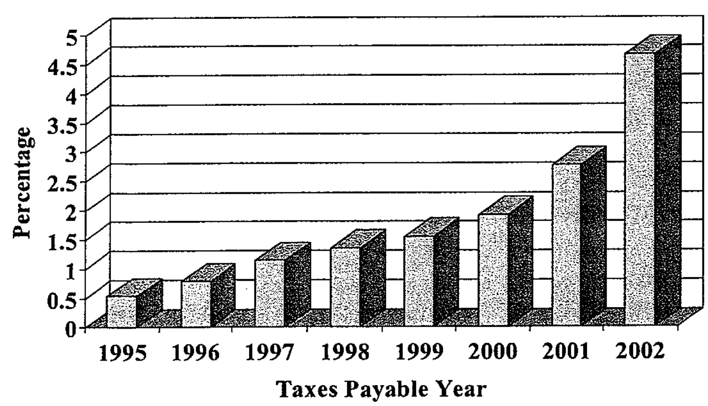
How much has limited market value grown?

For assessment year 2001, over $10 billion of market value was excluded from the tax rolls due to LMV. The table shows the amounts for 1994-2001.

Assessment Year	EMV* (1)	LMV* (2)	Excluded Value* (1) – (2) = (3)
1994	$ 124.1	$ 123.5	$ 0.7
1995	132.0	131.0	1.0
1996	142.1	140.4	1.6
1997	152.1	150.0	2.0
1998	163.6	161.1	2.5
1999	176.6	173.3	3.4
2000	202.6	197.0	5.6
2001	226.4	215.8	10.6

* All values in billions.

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



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

HOUSE RESEARCH | **Short Subjects**

Pat Dalton

Updated: December 2002

Local Sales Taxes in Minnesota

What sales taxes can local governments impose?

All cities are allowed under statute to impose a local lodging tax of up to 3 percent to fund tourism promotion in the community.

Local governments must get special legislation authorizing any other local sales tax. In the past special legislation has allowed certain cities to impose a general sales tax of up to 1 percent, to impose a food and beverage tax, and to impose additional lodging taxes to fund programs other than tourism promotion.

Who currently has a general local sales tax?

Eleven cities and one county now impose a general sales tax. With the exception of Minneapolis and St. Paul, all the local governments imposing a general local sales tax are located in Greater Minnesota.

The cities of Hermantown, Mankato, Minneapolis, New Ulm, Proctor, Rochester, St. Paul, Two Harbors, and Winona impose a 0.5 percent general sales tax.

The city of Duluth and Cook County impose a 1 percent general sales tax.

In 2002, special legislation authorized a 0.5 percent tax in the cities of Sartell, St. Cloud, St. Augusta, Sauk Rapids, St. Joseph, and Waite Park beginning January 1, 2003, upon voter approval. It was approved in the first four cities listed.

What can the revenue be used for?

The special legislation authorizing the local sales tax usually states what may be funded from the sales tax revenues. For most cities, the money must be used to fund a specific capital project or list of projects. The city of Duluth is the only local government that may use its general sales tax revenue for general operating purposes.

What steps are required to impose a local sales tax?

As stated earlier, special legislation authorizing a local sales tax is required prior to imposition. For a general sales tax, a local government is required by law to first pass a resolution explaining what the revenues will be used for and how long the tax will be imposed before seeking special legislation. The law also requires that a general tax be approved at a local referendum prior to imposition.

For more information: Contact legislative analyst Pat Dalton at 651-296-7434. Also see the House Research publication *Local Sales Taxes in Minnesota*, December 2000. Statutes pertaining to this area are Minnesota Statutes, section 469.190 (lodging tax), and Minnesota Statutes, section 297A.99 (general sales tax).

HOUSE RESEARCH | Short Subjects

Pat Dalton October 2002

Minnesota Sales Tax Rate

The general sales tax rate is 6.5 percent

Minnesota first imposed a state sales tax August 1, 1967. At that time the rate was 3 percent. The state last increased the rate in 1991. Below is a table showing how the rate has changed over time.

Period	Rate
August 1, 1967 – October 31, 1971	3.0%
November 1, 1971 – June 30, 1981	4.0%
July 1, 1981 – December 31, 1982	5.0%
January 1, 1983 – June 30, 1991	6.0%
July 1, 1991 – present	6.5%

The 1991 change was unique because the law authorized an "optional" county sales tax rate of ½ percent on top of the 6 percent state rate. However, if a county chose to not impose the local tax, all local governments in the county lost their state property tax aids. All counties imposed the tax. In 1994, this "optional" tax was officially rolled into the state tax rate.

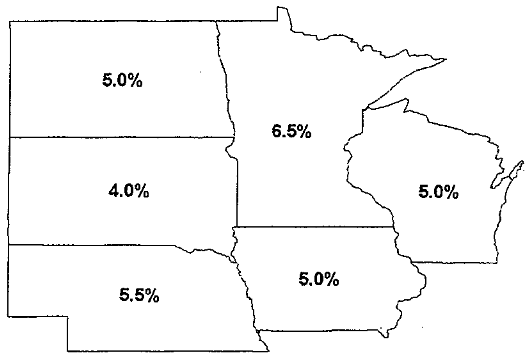
Minnesota has one of the highest sales tax rates in the country

Of the 45 states and the District of Columbia that impose a sales tax, only four other states have a tax rate as high or higher than Minnesota. The four states are:

- Nevada 6.5%
- Washington 6.5%
- Mississippi 7.0%
- Rhode Island 7.0%

Minnesota's tax rate, as indicated on the map, is the highest in the region. Although Minnesota has one of the highest tax rates, it also has one of the narrower tax bases because it does not tax clothing or food for home consumption. All the other states in the region impose sales taxes on clothing. South Dakota also taxes food for home consumption.

Sales Tax Rates



Minnesota taxes alcoholic beverages and car rentals at a higher rate

The general rate of 6.5 percent applies to most items subject to the sales tax under the general sales tax and to motor vehicles under the motor vehicle sales tax. However, Minnesota imposes a sales tax rate of 9.0 percent on the sale of liquor and malt beverages. It also imposes two additional taxes on short-term motor vehicle rentals. The combined sales tax rate on short-term motor vehicles is 16.2 percent but the rental companies retain the revenue from 3 percent to offset their payments of motor vehicle registration taxes.

The special tax rates on alcoholic beverages and car rentals are repealed December 31, 2005

In 2001, the legislature adopted a repeal of the special sales tax rates on alcoholic beverages and short-term motor vehicle rentals. The repeal is effective for sales made after December 31, 2005. At that time, these items will only be subject to the general sales tax rate of 6.5 percent.

This change was enacted to bring the state in compliance with requirements of the national streamlined sales tax requirements. The Streamlined Sales Tax Project (SSTP) is a voluntary attempt on the part of the states to simplify and standardize sales tax systems between states. Under the project requirements, each state is limited to one sales tax rate and must get to one rate by December 31, 2005.

The Department of Revenue is required to study and report to the legislature at the start of the 2003 session on alternatives for raising the revenues lost by the repeal of these higher tax rates.

For more information: Contact legislative analyst Pat Dalton at 651-296-7434. For information on the Streamlined Sales Tax Project and its tax rate requirements see the House Research Short Subject *The Streamlined Sales Tax Project (SSTP)*, October 2002.

HOUSE RESEARCH | Short Subjects

Nina Manzi

October 2002

Minnesota Taxable Income

What is Minnesota taxable income (MTI)?

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

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

What are Minnesota additions to taxable income?

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

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

What subtractions does Minnesota allow from taxable income?

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

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

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

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

HOUSE RESEARCH | Short Subjects

Nina Manzi

October 2002

Minnesota's Individual Income Tax

How much are income tax revenues?

Minnesota's income tax revenues are projected to equal $5.8 billion in fiscal year 2002, approximately 44 percent of state tax collections and 29 percent of all state revenues.

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

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

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

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

Minnesota taxpayers are allowed several subtractions from federal taxable income:

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

What are the income tax rates and brackets?

Minnesota income tax is a graduated tax, with three rates: 5.35 percent, 7.05 percent, and 7.85 percent. The rates are applied to income brackets that vary by filing status. Married couples filing joint returns are allowed the most generous (widest) brackets, followed by head of household filers (single parents), and then by unmarried single filers. The table shows the income tax brackets in effect for each rate in tax year 2003 (brackets for married separate taxpayers are half the width of the married joint brackets):

	Married joint	**Single**	**Head of Household**
5.35%	First $27,720	First $18,970	First $23,350
7.05%	$27,721 to $110,150	$18,971 to $62,300	$23,351 to $93,820
7.85%	All over $110,150	All over $62,300	All over $93,820

A married couple filing a joint return owes income tax equal to 5.35 percent of their first $27,720 of taxable income, 7.05 percent of income between $27,721 and $110,150, and 7.85 percent of taxable income over $110,150. The income tax brackets are adjusted each year for inflation.

What income tax credits does Minnesota allow?

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

- Marriage credit ($60.5 million in fiscal year 2003)
- Long-term care insurance credit ($4.9 million in fiscal year 2003)
- Credit for taxes paid to other states ($87.9 million in fiscal year 2003)

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

- Dependent care credit ($12.6 million in fiscal year 2003)
- Working family (earned income) credit ($107.8 million in fiscal year 2003)
- K-12 education credit ($17.4 million in fiscal year 2003)

Credit amounts are from the Minnesota Department of Revenue's *Tax Expenditure Budget, Fiscal Years 2002-2005.*

For more information: Contact legislative analyst Nina Manzi at 651-296-5204 or Joel Michael at 651-296-5057. Also see the House Research publications *The Minnesota Income Tax Marriage Credit*, September 2002; *The Minnesota and Federal Dependent Care Tax Credits*, December 2001; *The Federal Earned Income Credit and the Minnesota Working Family Credit,* January 2000; *Income Tax Deductions and Credits for Public and Nonpublic Education in Minnesota*, November 2001; *Income Tax Terms: Deductions and Credits*, October 2002.

Karen Baker

November 2002

Mortgage and Deed Taxes

What is the mortgage registry and deed tax?

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

What are the rates?

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

How does it work?

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

Mortgage Registry Tax

John and Mary Anderson secure a loan on a home with a purchase price of $120,000. The Andersons make a $20,000 down payment on the home. The principal debt on the home is $100,000. How much mortgage registry tax do the Andersons owe?

Principal debt x 0.23% = MRT liability

$100,000 x 0.23% = $230

The Andersons owe $230 in MRT.

Deed Tax

John and Mary Anderson record the deed for their new home. The deed is valued at $120,000. How much deed tax do the Andersons owe?

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

$120,000 x 0.33% = $396

The Andersons owe $396 in deed tax.

Who is responsible for paying the tax?

In the case of the MRT, the mortgagor (borrower) is liable. In the case of the deed tax, the buyer is liable. The lender collects the taxes and is responsible for remitting them to the county treasurer.

Who collects the money?

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

How much is collected?

In fiscal year 2001, the MRT and deed tax generated $159.2 million in state revenue. As shown in the table below, collections have increased substantially in recent years. The total amounts reflect only the state's 97 percent share.

Fiscal Year	Total (in millions)	Change: Amount (in millions)	Change: Percent
1996	$88.0	--	--
1997	94.8	$6.8	7.2%
1998	120.2	25.4	21.1
1999	152.7	35.5	23.3
2000	142.2	10.5	7.3
2001	159.2	17.0	10.6

Where is it collected?

About two-thirds of the statewide collections for MRT and deed tax come from the seven-county metro area; the remaining one-third comes from the 80 nonmetro counties. The 2000 statewide average MRT and deed tax per capita was $29, with a metro county average per capita of $36, and a nonmetro county average per capita of $21.

Are there exemptions from the taxes?

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

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

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

HOUSE RESEARCH | Short Subjects

John Williams **December 2002**

The Motor Vehicle Sales Tax Transfer

After a ten-year hiatus, the legislature in 2001 again began dedicating revenues from the motor vehicle sales tax (MVST) to transportation-related purposes. This time, however, the purposes were tax relief rather than new transportation spending.

The MVST is the state sales tax on motor vehicles

The MVST is the 6.5 percent sales tax applied to the sale of new and used motor vehicles. It is generally considered a separate tax from the general 6.5 percent sales tax because of two distinct features:

- When a vehicle is sold in a private (nondealer) transaction, the tax is collected not at the time of sale but at the time the vehicle is re-registered in the new owner's name
- Where a sale is made by a dealer who accepts a trade-in, the tax is applied not to the full selling price but the price less the trade-in

How MVST revenues are now dedicated

Most of MVST revenues are now dedicated to tax relief—replacing revenue from auto license taxes and property taxes. The revenues are distributed as follows:

- 32 percent to the highway user tax distribution fund (HUTDF), the fund dedicated exclusively to state and local highways, to replace revenue lost to that fund when auto license taxes were capped beginning in 2001.
- 20.5 percent to the Metropolitan Council to replace revenue lost when the council's property tax levy for transit operations was abolished by the legislature.
- 1.25 percent to the Department of Transportation for greater Minnesota transit assistance to replace revenue lost when the legislature prohibited using property taxes to subsidize greater Minnesota transit operating costs.
- Beginning in fiscal year 2004, 2 percent additional to be appropriated by law for transit in the metropolitan area.
- The remainder—46.25 percent in fiscal year 2003, and 44.25 percent thereafter—to the state general fund.

MVST Revenues
2002-2005 and Beyond

	2002	2003	2004	2005
HUTDF	30.86%	32%	32%	32%
Metropolitan Transit Property Tax Replacement	0%	20.5%	20.5%	20.5%
Greater MN Property Tax Replacement	0%	1.25%	1.25%	1.25%
Metropolitan Transit Appropriation Account	0%	0%	2%	2%
General Fund	69.14%	46.25%	44.25%	44.25%

How MVST revenues were formerly dedicated

From 1981 through 1991, the legislature attempted to dedicate MVST revenues to highways and transit, with the goal of supplementing rather than replacing existing transportation revenues. In 1981, legislation was enacted to phase in this dedication at the rate of 25 percent per biennium, beginning with 25 percent in 1984-85 and culminating in 100 percent in 1990-91 and beyond. The money was to be allocated 75 percent to state and local highways and 25 percent to transit assistance.

State budget problems throughout the 1980s prevented this schedule from ever being fully implemented. The transfer was cancelled for fiscal year 1984, made at the 25 percent rate in fiscal year 1985, and cancelled again for the 1986-87 biennium. It was revived again in fiscal year 1988 and eventually reached 35 percent.

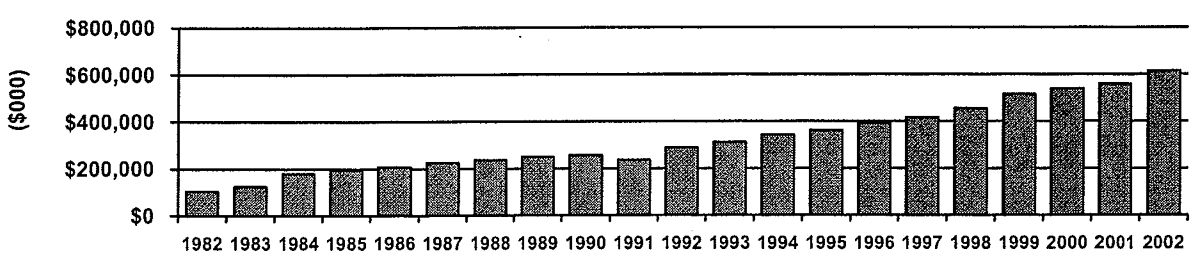
A major budget crisis in the 1991 legislative session ended the transfer. The legislature returned to the general fund $54 million in MVST receipts for fiscal 1991 that had already been transferred to the transportation funds and suspended the transfer for the 1992-93 biennium while restoring it for fiscal 1994 and beyond at the rate of 10.66 percent. Even this reduced transfer was unacceptable to Gov. Arne Carlson, who vetoed it. All MVST revenues went to the general fund for another decade.

MVST Revenue Allocation
1985-1991

	1985	1986	1987	1988	1989	1990	1991
HUTDF	18.75%	18.75%*	0%	3.75%	22.5%	22.5%	18.75 **
Trunk Highway Fund In addition to THF share of HUTDF	0%	0%	0%	0%	0%	3.75%	3.75%**
Transit Assistance Fund	6.25%	6.25%*	0%	1.25%	7.5%	8.75%	7.5%**
General Fund	75%	75%	100%	95%	70%	65%	70%

* Reduced to zero during 1986 legislative session, with money already transferred returned to general fund
** Reduced to zero during 1991 legislative session, with money already transferred returned to general fund

Total Motor Vehicle Sales Tax Revenues



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

Joel Michael October 2002

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 constitutional validity 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, upholding acts that raise some government revenues but that originated as bills in the Senate. In fact, no act of Congress has been invalidated for a violation of the Origination Clause. (The Supreme Court 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).) The remainder of this Short Subject describes rules under the Origination Clause derived from federal cases and some limited 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 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. 1986 (1897)

- **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. It seems likely that Minnesota courts would follow this rule. However, the legislative tradition in Minnesota is to originate state bonding bills in the House. The state's bond counsel likely will insist on it as a condition for issuing a "clean" bond opinion until there is clear Minnesota judicial authority that it is not necessary.

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 to the acts.

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

Steve Hinze and Karen Baker **October 2002**

Property Tax 101: Basic Terms and Concepts

Estimated market value	The assessor determines each property's **estimated market value** based on sales of comparable properties, cost of construction minus depreciation, income generated by the property (if applicable), and other relevant available information.
Taxable and limited market value	**Estimated market value** and **taxable market value** are the same for most types of property. However, for residential homestead and nonhomestead property, agricultural property, and seasonal recreational property, the property's **taxable market value** may be restricted to its **limited market value**, which is a statutory limitation on the amount that the property's value can increase over the previous year's value.
Net tax capacity, class rate	A property's **net tax capacity** is determined by multiplying the property's taxable market value by the relevant **class rate** or rates. Class rates are set by statute, vary by property type, and are uniform statewide.
Levy, levy limit	Each local taxing jurisdiction certifies a **levy** equal to the amount of revenue it desires to raise through the property tax in the upcoming year. For many local taxing jurisdictions, the levy may be constrained by state-imposed **levy limits.**
Local tax rate	The **local tax rate** of a taxing jurisdiction is determined by dividing the jurisdiction's **levy** by the total **net tax capacity** of all properties within the jurisdiction.
Total local tax rate	The **total local tax rate** for an individual property is the sum of the local tax rates of all taxing jurisdictions allowed to levy taxes upon the property.
Market value-based levy and tax rate	Certain voter-approved levies must be levied against market value rather than net tax capacity. The **market value-based tax rate** is determined by dividing the jurisdiction's **market value-based levy** by the total **taxable market value** of all properties within the jurisdiction (excluding the value of property classified as agricultural or seasonal-recreational, since those property types are exempt from market value-based taxes).
Gross tax, property tax credits, net tax	**Property tax credits** reduce the **gross tax** that would otherwise be due upon a property. The remaining amount after subtraction of property tax credits is the **net tax**. The **homestead credit** and the **agricultural credit** are the two most common property tax credits and are based on formulas related to the market value of the property. Other property tax credits include the taconite homestead credit, the disparity reduction credit, and the power line credit.
Property tax computation	On the back is an example illustrating how the property tax is computed for a hypothetical residential homestead.

Computation of Property Tax for a Hypothetical Property

1. Determine the property's ***taxable market value***	$120,000
2. Determine the ***class rate*** based on property type	Residential homestead: 1.0%
3. Multiply taxable market value by class rate to obtain the ***net tax capacity***	$120,000 X 1.0% = $1,200
4. Determine the ***total local tax rate*** by summing the tax rates of all jurisdictions authorized to levy property taxes upon the property (i.e., jurisdictions whose boundaries include the property)	County 50% City/town 35 School district 25 Special districts 5 Total 115%
5. Multiply net tax capacity by total tax rate to determine the net tax capacity-based portion of the ***gross tax***	$1,200 X 115% = $1,380
6. Determine the total ***market value tax rate*** by summing the market value tax rate for all taxing jurisdictions authorized to levy property taxes upon the property	County 0.0% City/town 0.0 School district 0.1 Special districts 0.0 Total 0.1%
7. Multiply taxable market value by total market value tax rate to determine the market value-based portion of the ***gross tax***	$120,000 X 0.1% = $120
8. Add the net tax capacity-based gross tax to market value-based gross tax to obtain the total ***gross tax***	$1,380 + $120 = $1,500
9. Determine the ***homestead credit*** amount for home of this value	$264
10. Subtract the homestead credit from the gross tax to obtain the ***net tax***	$1,500 - $264 = $1,236

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

HOUSE RESEARCH | Short Subjects

Karen Baker and Steve Hinze

October 2002

Property Tax 101 – Property Tax Administration

Who does what?

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

Assessor
- values property;
- determines proper classification; and
- sends valuation notices to taxpayers.

Auditor
- determines each taxing jurisdiction's total tax capacity (i.e., its tax base);
- calculates proposed and final tax rates; and
- prepares Truth in Taxation notices (based on proposed levies).

Treasurer
- prepares and mails out property tax statements;
- collects property tax payments; and
- distributes property tax receipts to each taxing jurisdiction.

Property tax timeline

The process of calculating, imposing, and collecting Minnesota property taxes for a year actually spans two full calendar years. As shown on the reverse side, the two-year cycle begins with the January 2 statutory assessment date and extends all the way through the next calendar year until the property taxes have been paid. For example, for taxes payable in 2002, the cycle begins on January 2, 2001, and doesn't end until the final payment is made in October/November 2002.

Appeal process

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

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

Property Tax System Timeline			
		Assessment Year 2001 **Taxes Payable 2002**	**Assessment Year 2002** **Taxes Payable 2003**
2001	January	Assessment date (2nd)	
	March	Valuation notices mailed	
	April	Local boards of review	
	June	County board of equalization	
	July	Certification of state aid amounts	
	September	Truth-in-taxation levy certifications (15th, 30th)	
	November	Truth-in-taxation notices mailed	
	December	Truth-in-taxation hearings; final levy certifications (27th)	
2002	January	County auditors compute tax rates	Assessment date (2nd)
	March	Tax statements mailed	Valuation notices mailed
	April		Local boards of review
	May	1st half tax payments due (15th)	
	June		County board of equalization
	July	1st half state aid payments made (20th)	Certification of state aid amounts
	September		Truth-in-taxation levy certifications (15th, 30th)
	October	2nd half tax payments due – except agricultural (15th)	
	November	2nd half tax payments due – agricultural (15th)	Truth-in-taxation notices mailed
	December	2nd half state aid payments made (26th)	Truth-in-taxation hearings; final levy certifications (27th)
2003	January		County auditors compute tax rates
	March		Tax statements mailed
	May		1st half tax payments due (15th)
	July		1st half state aid payments made (20th)
	October		2nd half tax payments due – except agricultural (15th)
	November		2nd half tax payments due – agricultural (15th)
	December		2nd half state aid payments made (26th)

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

HOUSE RESEARCH | Short Subjects

Steve Hinze and Karen Baker

October 2002

Property Tax 101: Property Tax Variation by Property Type

What causes property taxes to vary by type of property?

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

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

Class Rate Schedule for taxes payable in 2003

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

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

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

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

What is effective tax rate?

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

Comparison of Property Taxes on Various Types of Property, within the same taxing jurisdiction, each with a market value of $120,000 (Property taxes payable in 2003)

Property Type	Class Rate(s)	Net Tax Capacity	Property Tax**		Effective Tax Rate
			Gross	Net	
Agricultural homestead*	0.55/1.0%	$795	$984	$594	0.50%
Agricultural nonhomestead	1.0	1,200	1,440	1,440	1.20
Residential homestead	1.0	1,200	1,560	1,296	1.08
Seasonal recreational residential (i.e., cabin)	1.0	1,200	1,842	1,842	1.54
Residential nonhomestead (1 unit)	1.0	1,200	1,560	1,560	1.30
Residential nonhomestead (2-3 units)	1.25	1,500	1,920	1,920	1.60
Apartment	1.5	1,800	2,280	2,280	1.90
Commercial/Industrial	1.5	1,800	3,252	3,252	2.71
Commercial/Industrial @ $1,200,000***	1.5/2.0	23,250	41,655	41,655	3.47

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

** These examples assume a total local net tax capacity tax rate of 120 percent, a state tax rate of 54 percent, and a total market value tax rate of 0.1 percent.

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

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

HOUSE RESEARCH | Short Subjects

Steve Hinze and Karen Baker

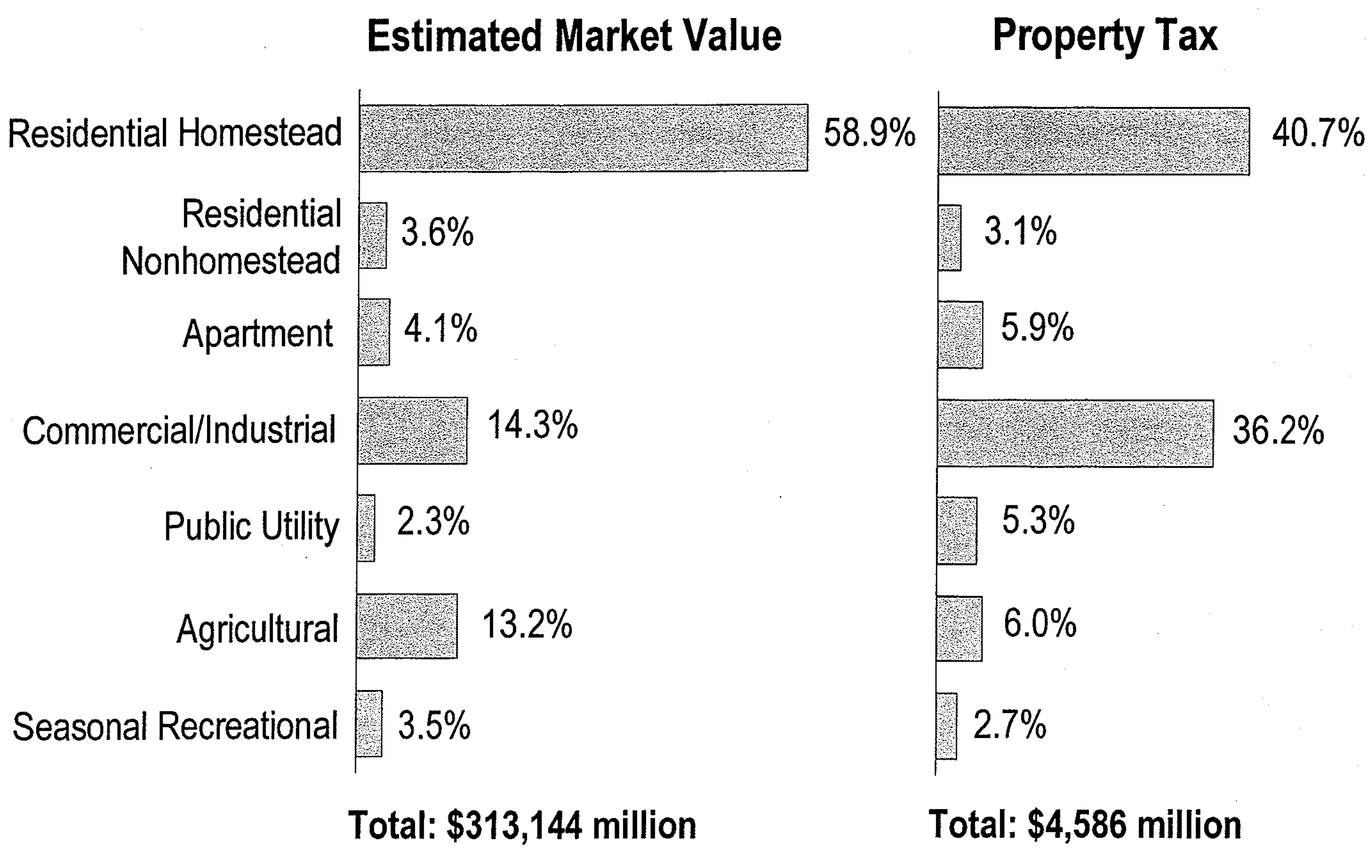
October 2002

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

Where property taxes come from

Total property taxes statewide were $4,586 million for calendar year 2002. The total amount of property value (excluding the value of exempt property) was $313,144 million. The graphs below show the breakdown of the state's total property tax base by market value and by taxes paid.

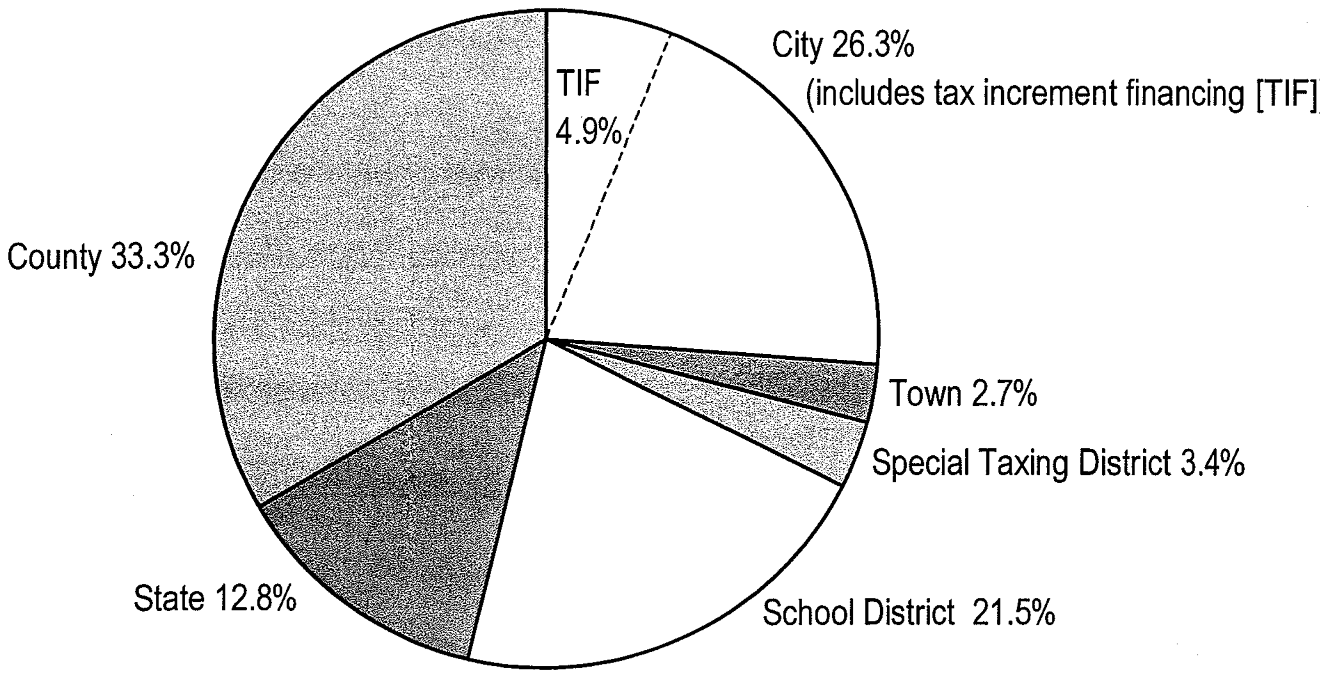
Statewide Shares of Market Value and Property Tax by Property Type (taxes payable 2002)



Where property taxes go

The total property tax burden in Minnesota was $4,586 million for calendar year 2002. The pie chart below shows the distribution of the tax among the various types of taxing jurisdictions.

Statewide Property Tax by Type of Government,*
Taxes Payable 2002
(Total: $4,586 million)



*Amounts shown are after allocation of property tax credits.

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

HOUSE RESEARCH | Short Subjects

Joel Michael and Karen Baker

October 2002

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. §§ 469.1813-469.1815 (2002). Abatements may be either permanent forgiveness or temporary deferral of property tax. Abatements can serve similar purposes to tax increment financing (TIF), a widely used development tool. The legislature enacted the abatement law in 1997 to provide an alternative to TIF and to supplement it.

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., because the assessor's market value is too high or the classification is incorrect). Minn. Stat. § 375.192 (2002).

For what purposes may abatements be used?

The law allows abatements to be used for a broad range of projects and 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 the number of jobs in the area
- Construction of public facilities or infrastructure (e.g., streets and roads), but not for many government buildings (e.g., city halls or schools) or social and recreational facilities
- 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

Which local governments can grant abatements?

Counties, cities, towns, and school districts may grant abatements of the taxes they impose. The governing body grants an abatement 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. State law limits the duration to 10 years. The maximum term is extended:

- To 15 years if only two of the three political subdivisions (city/town, county, and school district) grant an abatement

- To 20 years if the abatement is provided to a "qualified business" (defined as manufacturing, agricultural processing, mining, research and development, warehousing, and high technology businesses)

How do the mechanics of abatement work?

The abatement resolution, approved by the political subdivision, specifies the duration and the amount of property taxes that will 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, tax attributable to a portion of the parcel's market value, or in other ways. The local government adds the abatement to its property tax levy for the year. (The abatement levy is not subject to levy limits.) The owner pays property tax on a parcel 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 given back to the property owner.

May abatements be used to pay bonds?

The abatement law authorizes the issuance of bonds to be paid back with the abatements. For example, bonds could be issued to construct public improvements or to pay for a site for a business. As the property owner pays the abated taxes, they are directed to pay off the bonds. These 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.

How do abatements compare with TIF?

The legislature designed the abatement law to provide an alternative to and to supplement TIF. The two programs can be used for similar purposes and both rely upon property tax funding. Both programs have very similar bonding powers. However, abatement and TIF differ in many important respects. Some these differences include:

- TIF can be used for longer durations (up to 25 years in some cases) than abatements (typically 10 years).
- TIF requires approval only by the municipality (usually the city) to capture all local property taxes, while abatement requires each city/town, county, and school to approve to capture its taxes.
- TIF use is subject to many more legal restrictions than abatement. These include a blight test for redevelopment districts, but-for findings, limits on what increments may be spent on, and so forth. Abatement is more flexible.

How widely has abatement been used?

The abatement law does not require reporting of abatements to the state. Property tax data reported to the Department of Revenue shows 127 abatements of $3.3 million of taxes for property taxes payable in 2002. These amounts do not include abatements by cities with populations under 2,500 and by school districts.

For more information: Contact legislative analyst Joel Michael at 651-296-5057 or Karen Baker at 651-296-8959. Also see the House Research publication *Tax Increment Financing*, October 2002.

HOUSE RESEARCH | Short Subjects

Nina Manzi and Karen Baker

October 2002

Renter's Property Tax Refund Program

What is the renter's property tax refund program?

The renter property tax refund program (sometimes called the "renters' credit") is a state-paid refund that provides tax relief to renters whose rent and "implicit property taxes" are high relative to their incomes. "Rent constituting property taxes" is assumed to equal 19 percent of rent paid. If that rent constituting property tax exceeds a threshold percentage of income, the refund equals a percentage of the tax over the threshold, up to a maximum amount. As income increases, the:

- threshold percentage increases;
- portion of tax over the threshold that the taxpayer must pay increases; and
- maximum refund decreases.

The program uses household income, a broad measure that includes most types of income. Deductions are allowed for dependents and for claimants who are over age 65 or disabled.

What are the maximums?

For refund claims filed in 2003, based on rent paid in 2002 and 2002 household income, the maximum refund is $1,250. Renters whose income exceeds $44,000 are not eligible for refunds.

What is the average refund and total amount paid?

2001 Statewide Renter Property Tax Refunds
Filed in 2001 (based on 2000 incomes and payable 2000 taxes)

	Number of returns	Total amount	Average per return
Under 65 years old	197,645	$83.2 million	$421
Senior/disabled	74,609	$36.0 million	$482
Total: all homeowners	272,254	$119.2 million	$438

How are claims filed?

Refund claims are filed using Minnesota Department of Revenue Schedule M-1PR. Claims filed before August 15, 2003, will be paid beginning in August 2003. The deadline for filing claims based on taxes payable in 2003 is August 15, 2004; taxpayers filing claims after that date will not receive a refund. Forms are available on-line at www.state.mn.us/ebranch/mdor/01forms.html.

The table on the following page shows the refund amount for two example families with different incomes—a married couple without dependents in the metro area, and a married couple without dependents in greater Minnesota (a single person living alone would qualify for the same refund amounts).

How do refunds vary depending upon the filer's income and rent constituting property taxes?

Although the property tax refund threshold, copayment rates, and maximum refund amounts are the same statewide, the average rent is higher in the metro area than in greater Minnesota. The metro area family paid monthly rent in 2002 of $713, the fair market rent for a one-bedroom apartment in the metro area. (19% of $713 x 12 = $1,626, which is their property tax.) The greater Minnesota family paid monthly rent in 2002 of $346, the fair market rent for a one-bedroom apartment in many greater Minnesota counties. (19% of $346 x 12 = $789, which is their property tax.) Taxpayers who are over age 65, disabled, or have dependents are allowed a subtraction from income in determining the refund.

Married couple both under age 65, no dependents

		Metro area		**Greater Minnesota**	
		Taxpayer #1	**Taxpayer #2**	**Taxpayer #3**	**Taxpayer #4**
1	Gross income	$15,000	$30,000	$15,000	$30,000
2	Deduction for dependents	0	0	0	0
3	Household income (1 – 2 = 3)	15,000	30,000	15,000	30,000
4	Rent constituting property tax	1,626	1,626	789	789
5	Statutory threshold percentage	1.5%	2.8%	1.5%	2.8%
6	Threshold % x income (3 x 5 = 6)	225	840	225	840
7	Property tax over threshold (4 – 6 = 7)	1,401	786	564	0
8	Copay percentage	20%	35%	20%	35%
9	Taxpayer copay amount (7 x 8 = 9)	280	275	113	NA
10	Remaining tax over threshold (7 – 9 = 10)	1,121	511	451	NA
11	Maximum refund allowed	1,250	760	1,250	760
12	Net property tax refund	$1,121	$ 511	$ 451	$ 0

For more information: Contact legislative analyst Nina Manzi at 651-296-5204 or Karen Baker at 651-296-8959.

HOUSE RESEARCH | Short Subjects

Joel Michael and Nina Manzi

November 2002

Revenue Recapture Program

Purpose of Revenue Recapture

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

Agencies permitted to use Revenue Recapture

The following agencies may use the Revenue Recapture program:

- State agencies
- University of Minnesota
- Minnesota district courts
- Counties
- Cities for public ambulance service and public library debts
- Governmentally owned hospitals and Regions Hospital
- Agencies responsible for child support enforcement
- Agencies that administer low-income housing programs

Debts subject to recapture

The debt (minimum amount of $25) must be owed to or collectable by one of the qualifying governmental agencies. The debtor must be an individual; the law does not apply to corporations. The creditor does not need to obtain a court judgment or order to enforce the debt. Qualifying debts include:

- Unpaid taxes, interest, and penalties
- Contractual or statutory obligations
- Criminal fines
- Court-ordered restitution for a crime
- Child support obligations
- Overpayment of public assistance
- Unpaid MinnesotaCare insurance premiums

Obligations of low-income individuals (incomes between $8,800 and $16,630 in 2001, depending upon family size) to repay Medical Assistance cannot be recaptured. Debts barred by the statute of limitations also cannot be recaptured.

Types of refunds subject to recapture

Revenue Recapture applies to:

- Individual income tax refunds
- Property tax refunds
- Sales tax rebates
- Sustainable forest tax payments
- Lottery prizes

Notice and other procedures

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

Priorities among types of debts

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

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

Administrative costs

In order to use Revenue Recapture, the creditor (government agency) must pay a fee of $10 per claim that is deducted from the amount recaptured. Of this $10, $2.85 is set-aside in a dedicated, revolving fund to pay DOR's cost of operating the program; the rest goes to the state's general fund.

Amount of refunds recaptured and types of debts satisfied

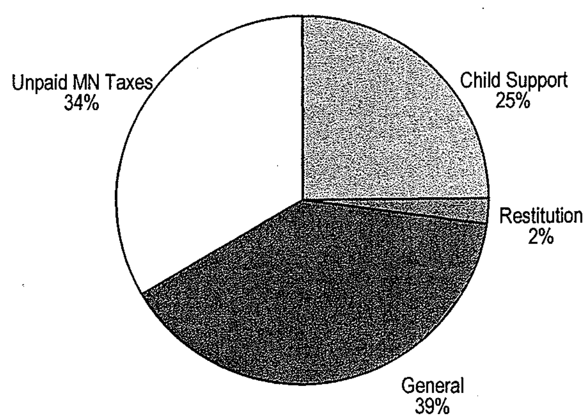
The table to the right shows the number of taxpayers subject to Revenue Recapture and amount of refunds offset by category for calendar years 1997 to 2001. The number of taxpayers increased significantly in 1999 to 2001 with the payment of sales tax rebates. The rebates generated tax refunds for many individuals who normally do not receive refunds. With the end of rebates, calendar year 2002 Revenue Recapture amounts will likely decline significantly.

Revenue Recapture Amounts CY1997-2002

	Number of Taxpayers	Amount of Recapture
1997	110,746	$27,728,038
1998	136,726	37,255,523
1999	270,466	81,543,352
2000	280,766	62,907,645
2001	300,093	70,471,518

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

The graph shows the percentage of Revenue Recapture amounts for calendar years 1997 to 2001 by the four major types of debts for which the law sets priorities.



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

HOUSE RESEARCH | Short Subjects

Karen Baker and Steve Hinze **October 2002**

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 only 3 percent of his or her household income. The state pays any amount over 3 percent, which is 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 is calculated at the rate on unpaid state taxes (a floating rate), but 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:

- Property must be owned and occupied as a homestead by a person 65 years of age or older (If married, both must be 65 years old);
- Total household income must be $60,000 or less for the calendar year preceding the year of the initial application;
- 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), do not exceed 75 percent of the assessor's estimated market value for the current year.

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. No *further* property taxes may be deferred until income falls below the $60,000 threshold. However, enrollment will not be terminated from the program, and can remain until the owner's income falls below the $60,000 threshold, at which point the owner must notify the state so the deferral can begin again.

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 may offer. 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;
- the qualifying homeowner dies;
- the homeowner notifies the Commissioner of Revenue, in writing, of intent to withdraw from the program; or
- the property no longer qualifies as a homestead.

How does this program differ from a reverse mortgage?

A reverse mortgage loan is a loan arrangement with a lender, secured by a mortgage (lien), where the homeowner **receives** a monthly payment from the lender. The total dollar amount is established at the beginning of the arrangement. The full amount, plus interest, is due when the home is sold. The lender charges closing costs, which can be substantial.

The senior deferral program also constitutes a lien on the property, but the homeowner does not need to guess "up-front" how many dollars are needed. Rather any tax amount over 3 percent of income is automatically deferred. Interest, not to exceed 5 percent, is charged on the deferred tax as it is accumulated.

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 web site at www.taxes.state.mn.us/proptax/forms/programs.html.

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

HOUSE RESEARCH | Short Subjects

Karen Baker and Nina Manzi October 2002

Targeting Property Tax Refund

What is targeting?

The "additional property tax refund," generally referred to as "targeting," directs property tax relief to homeowners who have large property tax increases from one year to the next.

Who qualifies?

A homeowner qualifies if the property tax on the home has increased by more than 12 percent over the previous year's tax, and if the increase is over $100.

The homeowner must have owned and lived in the same home for both years. If any improvements were made to the home, that portion of the tax increase resulting from the improvements must be subtracted when determining the refund.

How does targeting work?

The refund equals 60 percent of the increase over the greater of (1) 12 percent or (2) $100. The maximum refund is $1,000. The following example shows how the refund is calculated.

Payable 2002 Property Tax	$1,400
Payable 2003 Property Tax	2,000
Tax increase – 2003 compared to 2002	$600
Taxpayer pays 1st 12% or $100 of increase (12% x 1,400)	168
Remaining increase eligible for relief ($600 - $168 = $432)	432
State pays 60% of excess over 12% increase up to a $1,000 maximum (60% x $432 = 259)	$259
Amount of 2003 increase paid by taxpayer ($600 - $259)	$341

The taxpayer's $600 increase (i.e., 42.9 percent) is reduced to an out-of-pocket property tax increase of $341 (i.e., 24.4 percent) as a result of the $259 refund.

The taxpayer pays the full $2,000 amount of the 2003 property tax to the county, the first half in May and the second half in October. The taxpayer applies to the state for a targeting refund, which is paid in September 2003 at the same time the regular homeowner property tax refund ("circuit breaker") is paid.

Does targeting have any other restrictions?

No, unlike the regular property tax refund, the targeting refund is not tied to the taxpayer's household income. Under the regular homeowner property tax refund, the taxpayer's household income may not exceed a specified maximum and the amount of household income affects the amount of the refund.

However, the targeting refund does not use income as a factor, nor is there any limitation on the taxpayer's household income. Therefore, many higher income taxpayers who do not qualify for the regular property tax refund due to income restrictions are eligible for the targeting refund.

Is targeting a new program?

No, the first targeting program was enacted in 1980. With the exception of a few years in the 1980s, the program has been in effect for over 20 years, although miscellaneous changes have been made to the program during that time.

What are statewide amounts?

The amounts paid out for the targeting program have been very low in recent years, with total refunds equaling $1.7 million in 2001. The table below shows the statewide amount, with a breakdown for the metro and the 80 nonmetro counties for the past five years.

Targeting Refunds, 1997 – 2001 (dollars in thousands)

	Filed 1997	Filed 1998	Filed 1999	Filed 2000	Filed 2001
Total Metro	$1,549	$449	$663	$594	$804
Total Nonmetro	$2,263	$974	$974	$725	$898
State	$3,881	$1,424	$1,637	$1,320	$1,702

Due to various property tax relief and reforms made by the state, homeowners' taxes have not generally increased significantly in past years. In addition, some taxpayers may not be aware of the targeting program, resulting in lower total refunds statewide than would be the case if the program were more widely known.

How are claims filed?

Refund claims are filed using the Minnesota Department of Revenue Schedule M-1PR, the property tax refund form. There is a separate schedule on the back of the M-1PR ("Schedule 1 – Special Refund") for the targeting program. The taxpayer files for this refund after receiving their property tax statement in January. Claims filed before August 15, 2003, will be paid beginning in late September 2003. The deadline for filing claims based on taxes payable in 2003 is August 14, 2004; taxpayers filing claims after that date will not receive a refund. Forms are available on-line at www.state.mn.us/ebranch/mdor/01forms.html.

For more information: Contact legislative analyst Karen Baker at 651-296-8959 or Nina Manzi at 651-296-5204. Also see the House Research Short Subject *Homeowner's Property Tax Refund Program*, October 2002.

HOUSE RESEARCH | Short Subjects
The Constitution and the Legislature

Joel Michael

October 2002

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 rebates to residents, graduated 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 (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";
- 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. In fact, the Minnesota Supreme Court has not struck down a tax statute for violating the Uniformity Clause in the last two 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);
- Contamination tax imposing higher property tax rates on polluted property, depending upon whether the owner was a responsible party and whether the owner had entered a response plan, *Westling v. County of Mille Lacs*, 518 N.W.2d 815 (Minn. 1998).

For more information: Contact legislative analyst Joel Michael at 651-296-5057. Also see the House Research publication *Constitutional Restrictions on Taxation of Nonresidents,* September 2002.

Steve Hinze and Karen Baker October 2002

The Fiscal Disparities Program: Commercial-Industrial Tax Base Sharing

What is the fiscal disparities program?

The fiscal disparities program is a system for the partial sharing of commercial-industrial (C/I) property tax base among all jurisdictions within a geographic area. In Minnesota, two programs are used: the primary one was created in 1971 and operates in the seven counties of the Twin Cities metropolitan area; a smaller-scaled version was created in 1995 and operates on the Iron Range in northern Minnesota.

What purposes do fiscal disparities serve?

Three main objectives have been cited for commercial-industrial tax base sharing:

- *Support for a regional approach to development.* Tax-base sharing spreads the fiscal benefit of business development spawned by regional facilities such as shopping centers, airports, freeway interchanges, and sports stadiums. It also may make communities more willing to accept low-tax-yield regional facilities such as parks.

- *Equalization in the distribution of fiscal resources.* Communities with low tax bases must impose higher tax rates to deliver the same services as communities with higher tax bases. These high tax rates make poor communities less attractive places for businesses to locate or expand in, exacerbating the problem. Sharing C/I tax base can reduce this effect.

- *Reduction in competition for commercial-industrial development.* Communities generally believe that some kinds of C/I properties pay more in taxes than it costs to provide services to them. This encourages communities to compete for these properties by providing tax concessions or extra services, which can weaken their fiscal condition. Tax base sharing reduces the incentive for this competition.

How does the fiscal disparities program work?

Contributions to the areawide tax base. Each taxing jurisdiction contributes 40 percent of the growth in its C/I tax base since the year of enactment to an abstract entity called the "areawide tax base." The contribution value is not available for taxation by the jurisdictions where the property is located.

Distributions from the areawide tax base. Each municipality receives a share of the areawide tax base through a formula based on its share of the area's population and its relative property tax wealth (tax base per capita). The municipality is allowed to tax this distribution value at the same rate as the tax rate paid by its residents. All taxing jurisdictions whose boundaries encompass the municipality are also allowed to tax the municipality's distribution value (i.e., counties, school districts, and special taxing districts).

Calculating the property tax for each commercial-industrial property. The property tax statement for each C/I property has a local portion and an areawide portion, based on the relative amount of the tax base that is contributed versus the relative amount that is retained for the municipality where the property is located.

How has the metropolitan area program grown?

In the first year of implementation (1975), the areawide tax base included 6.7 percent of the total metro C/I tax base, and 2.1 percent of the total metro tax base. For 2002, the areawide tax base was 30.2 percent of the total metro C/I base, and 10.1 percent of the total metro tax base.

How much do fiscal disparities affect tax burdens?

A House Research study based on taxes payable in 2000 found that the average homestead tax in St. Paul, which is one of the largest net beneficiaries of the program, was 12.9 percent lower because of fiscal disparities. The study also found that the average homestead tax in Eden Prairie, which is one of the largest net contributors, was 4.8 percent higher. Homestead effects throughout the area varied between these extremes.

For commercial-industrial properties, average taxes were 11.5 percent lower in St. Paul due to fiscal disparities and 10.4 percent higher in Bloomington, another suburban city that is a large net contributor. Commercial-industrial properties elsewhere in the metro area fall in line between these extremes.

The study looked only at the direct effect of fiscal disparities, i.e., the redistribution of tax base, and made no attempt to factor in alternative development patterns that might have occurred without fiscal disparities.

What about the Iron Range Program?

Tax effects of the Iron Range fiscal disparities program are much smaller in magnitude since the percentage of tax base being contributed is so low due to the relative infancy of the program.

For more information: Contact legislative analyst Steve Hinze at 651-296-8956 or Karen Baker at 651-296-8959. Also see the House Research publication *Minnesota's Fiscal Disparities Programs: Twin Cities Area and Iron Range*, February 2000.

HOUSE RESEARCH | Short Subjects

Joel Michael

September 2002

The Minnesota Estate Tax

The estate tax equals a percentage of the taxable estate

Minnesota imposes a tax on the estates of individuals who are residents of the state when they die or who own real property in Minnesota on their deaths. The tax is imposed under a graduated rate schedule on the taxable estate. The taxable estate is generally the fair market value of the estate on the day the decedent died, less deductions (e.g., transfers to a surviving spouse and charitable bequests) and an exemption amount. *See the box to the right for the exemption and rate amounts.*

Exemption Amount and Tax Rates

Exemption. The exemption amount is $700,000 for individuals dying in 2002-03, but is scheduled to increase to:

- $850,000 for 2004
- $950,000 for 2005
- $1,000,000 for 2006 and later

Because transfers to surviving spouses are exempt, a $1 million exemption allows a married couple with a joint net worth of less than $2 million to avoid the tax

Tax rates. The tax rates range from 4.8% to 16%. The top rate applies to the amount of the taxable estate over $10,040,000.

The Minnesota tax evolved as a creature of the federal estate tax

The rules under the estate tax are determined largely by reference to the rules under the similar federal estate tax. For the 16 years ending December 31, 2001, the Minnesota estate tax was directly linked to the federal tax as a "pick-up" or "soak-up" tax equal to the credit allowed under federal estate tax for state death taxes. As a pick-up tax, the Minnesota tax imposed no additional tax burden on estates. For each dollar of state tax paid, federal tax was reduced by an equal amount. However, Congress repealed this credit in 2001, so that it will be completely eliminated for decedents dying after December 31, 2004. In 2001, the legislature chose to continue imposing the estate tax under the rules in effect before Congress repealed the credit. As a result, the tax now is a stand-alone estate tax and imposes a real tax burden on estates and their heirs.

Few estates pay the tax; it is a progressive source of revenue

Fewer than 2 percent of estates pay the estate tax. The small number of estates paying tax results from the exemption amount and the fact that amounts left to surviving spouses are deductible. The decedents with taxable estates are, almost by definition, some of the most affluent individuals in the state. Most evidence also suggests that recipients of bequests from taxable estates also have above average income and assets. Thus, the tax is a "progressive" source of revenue; it rises as a percentage of income as income rises.

The estate tax provides a modest, but volatile, source of general fund revenue

All revenues from the tax are deposited in the general fund. The Department of Finance (February 2002 forecast) estimates that the tax raises about $65 million per fiscal year. *See the box to the right for the last five years of actual collections.* These revenues constitute about 0.5 percent of general fund revenues or 0.55 percent of state tax revenues. Revenues from the tax are very volatile, since they depend on the deaths of a few individuals. If one very wealthy individual dies, collections can soar. For example in July 2002, the Department of Revenue received a check from one estate for tax of $55 million (compared with estimated revenues for the whole year of $65 million and total collections of $54.2 million in 2001). In other years, revenues may fall quite a bit below estimates.

Estate Tax Revenues FY 1998-2002 (millions)

1998	$48.9
1999	61.6
2000	58.1
2001	54.2
2002	68.2

Source: Department of Finance

Repeal of the federal credit creates an incentive for high net worth Minnesota residents to move to another state

The repeal of the federal credit creates an incentive for affluent, elderly Minnesotans to consider changing their domiciles to a state without an estate tax. When Minnesota imposed only a pick-up tax, the federal treasury paid the effective burden of the tax. As a result, Minnesota residents had no reason to change their domiciles to another state to avoid the Minnesota tax. However, in 2001 Congress eliminated the credit. *See the table to the right for the phase-out schedule.* Repeal of the credit makes the state tax a "real" tax that reduces the amount of money and other property that can be left to heirs. Affluent individuals may be willing to change their domiciles to avoid paying potentially multi-million state estate tax liabilities. The fact that many of these individuals have second homes in states that will not have stand-alone estate taxes increases their ease of doing so. (Alabama, Florida, and Nevada, for example, are prohibited by their state constitutions from imposing a state tax that exceeds the federal credit; Texas has taken no action to impose an estate tax and seems unlikely to do so.) If these individuals change their domiciles, they would also avoid the state income tax, since most of these states (Florida, Nevada, and Texas, again) do not have individual income taxes.

Phase-out of State Death Tax Credit Under the Federal Estate Tax

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

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

HOUSE RESEARCH | Short Subjects

Pat Dalton

October 2002

The Minnesota Sales Tax Base

Most tangible goods and some services are subject to the tax

The sales tax is a tax on final retail sales. Items purchased for resale (i.e., goods bought by a retailer from a wholesaler) are exempt. In Minnesota the rule of thumb is that tangible personal property is taxable unless specifically exempted and services are not taxable unless specifically included. Intangible personal property, such as stocks and bonds, are not subject to the sales tax. Real property (i.e., land and buildings) and improvements to real property, such as home remodeling, are also exempt from the sales tax.

Minnesota excludes food, clothing, and certain other "necessities" from the sales tax

Minnesota excludes both food for home consumption and clothing from the sales tax base. Of the 45 states and the District of Columbia that impose a sales tax, 25 exempt food for home consumption while one taxes food for home consumption at a reduced rate. Only four other states exempt clothing:

- Massachusetts
- New Jersey
- Pennsylvania
- Rhode Island

The rationale often given for exempting food and clothes from the sales tax base is that these items are basic necessities. Other items that are excluded from the sales tax base for the same reason include home heating fuels, prescription drugs, certain medical devices, and caskets and funeral urns.

Minnesota excludes a number of business purchases from the sales tax

The other major types of tangible goods exempted from the sales tax are business purchases. Minnesota excludes from the tax many items used *directly* in the production of taxable goods and services. It also excludes capital equipment used in manufacturing, machinery used in farming, and mining equipment. The rationale for these exemptions is that if both the inputs and outputs of a good are taxed, the result is tax "pyramiding" or double taxation. Items purchased by a business but not used directly in production of the good or service, such as office equipment and supplies, are still taxable.

Although many inputs to taxable goods and services are exempt, businesses that provide nontaxable services, intangible property, and improvements to realty pay taxes on their purchases since they are considered the final user of those items. For example, a printer may buy paper exempt as an input to its taxable output but a law firm will pay sales tax on the paper. Although there is no sales tax on home remodeling, the contractor will pay sales tax on all the materials it buys to use in the project. A little over 40 percent of sales taxes are paid by businesses.

Minnesota taxes a limited number of services

Minnesota only taxes services specifically listed under the definition of a taxable sale in statute (Minn. Stat. § 297A.61, subd. 3). The major taxable services include:

- lodging
- admission to places of amusement and recreation
- parking
- laundry and drycleaning
- motor vehicle washing, rustproofing, and towing
- building cleaning services
- detective and security services
- pet grooming, care, and boarding
- lawn, garden, and tree care, maintenance, and removal
- massage (except for medically provided or necessary massage)

A shift to a service-based economy is eroding the sales tax base

When Minnesota enacted the sales tax in 1967, services accounted for about 40 percent of all personal consumption expenditures. By 1999, services made up almost 60 percent of personal consumption expenditures. Also, a number of goods (i.e., music, video, greeting cards), which are taxable in tangible form, can now be delivered to consumers in a nontaxable, intangible (digital) form. As long as Minnesota continues to exempt most services and intangible (digital) goods from the sales tax, the base will grow at a much slower rate than the economy as a whole.

A move to remote sales is also eroding the sales tax base

Another force eroding the sales tax base is the increasing amount of remote sales through catalogs and over the Internet. The state cannot require a business to collect the sales tax unless the business has a physical presence in this state (the legal term is "nexus"). Although a purchaser owes a complementary use tax if the sales tax is not collected by the seller, it is hard for the state to collect the use tax. Estimates of business compliance with the use tax range from 50 to 95 percent depending on the industry, type of product purchased, and the size of the business. Virtually no use tax is collected from private consumers.

For more information: Contact legislative analyst Pat Dalton at 651-296-7434. Also see the House Research handout *A Presentation on Recent Policy Trends: Sales and Use Tax*, December 2000, and *The Internet and Minnesota Sales Tax Collections*, pending.

Pat Dalton

October 2002

The Streamlined Sales Tax Project (SSTP)

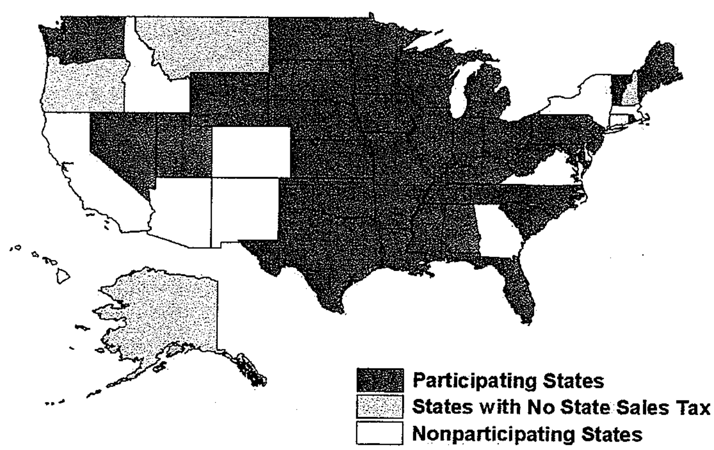
What is SSTP?

The Streamlined Sales Tax Project (SSTP) is a voluntary effort by a number of states to "simplify and modernize the sales and use tax administration in states in order to substantially reduce the burden of sales tax administration for all sellers and all types of commerce." The project was organized in March 2000 under the auspices of the Federation of Tax Administrators, the National Conference of State Legislatures, and the Association of Governors.

Which states are participating in the project?

Minnesota is one of 34 out of 45 states that impose a sales and use tax that are voting participants in the project. The District of Columbia is also a voting participant. To be a voting participant, a state must either pass enabling legislation or their governor must issue an executive order authorizing participation.

SSTP Participation



How are decisions made in SSTP?

SSTP is divided into two groups—a project group and the Implementing States Group. The project group consists of staff from tax agencies in the participating states that develop recommendations for coordination and simplification related to sales tax definitions, tax administration, and use of technology for sales tax collection. Nonparticipating states may attend project meetings and participate in discussions as observer states, however they may not vote on recommendations.

The states that are voting participants in SSTP also make up the Implementing States Group. This is the group that votes to accept, reject, or modify the recommendations proposed by SSTP. Provisions accepted by this group make up the Streamlined Sales and Use Tax Agreement.

Why is Minnesota participating in SSTP?

Minnesota is a member of SSTP because it hopes that sales tax simplification among the states will ultimately allow the state to collect sales tax on sales by remote sellers. The state cannot require sellers to collect our sales tax unless they have a physical presence in the state (the legal term is nexus). The reason for this prohibition is that the duty to collect the tax is considered an undue burden on interstate commerce. The most recent Supreme Court case dealing with this issue is *Quill v North Dakota* in 1992.

The inability to require remote sellers to collect sales tax is an important issue in the age of Internet commerce. A recent study by the University of Tennessee estimated that Minnesota lost $270 million in sales tax revenue in 2001 due to remote sales over the Internet.

The long-term goal of the project is to simplify state sales tax systems enough so that either (1) Congress will pass legislation to require remote sellers to collect sales tax for states that have simplified their systems; or (2) the federal courts will overturn the *Quill* decision and determine that the simplification is sufficient to remove the undue burden on interstate commerce.

What will a streamlined sales tax system include?

The streamlined sales tax system developed by SSTP includes the following features:

- uniform definitions for common terms such as sales price, food, prepared food, and clothing;
- rate simplification;
- uniform sales tax bases within each state at the state and local level;
- uniform sourcing rules (i.e., where a sales occurs);
- simplified administration for use and entity-based exemptions;
- uniform audit procedures and joint audits for multi-state businesses; and
- third-party collection systems and other new technology models for sales tax collection.

The project plans on finalizing the agreement that details the requirements of the simplified system by the end of 2002, although development of uniform definitions will be an ongoing process.

How has Minnesota's sales tax law changed due to SSTP?

In 2001, the state adopted the authorizing legislation to participate in SSTP (the Uniform Sales and Use Tax Administration Act). At the same time it adopted the streamlined sales tax system agreement provisions that were developed at that point. It is one of only four states to take that step (the others are North Carolina, Wyoming, and South Dakota). In 2002, the legislature made additional changes to reflect agreement additions and modifications adopted by the Implementing States since January 2001.

For more information: Contact legislative analyst Pat Dalton at 651-296-7434. For further information on the streamlined sales tax project visit the project web site at www.geocities.com/streamlined2000/.

HOUSE RESEARCH | Short Subjects

Karen Baker and Mike Bull

October 2002

Electric Utility Property Taxation

Types of electric utilities in Minnesota

There are four types of electric utilities in Minnesota: each is briefly discussed below. In general, all are subject to property taxation, with the exceptions of municipal utilities (who often make in lieu payments), most property owned by distribution co-ops, and the personal property of electric generation facilities.

Investor-owned (IOUs)

Investor-owned (IOUs) are private, for-profit corporations whose rates are regulated by the Minnesota Public Utilities Commission (PUC). There are five IOUs that serve Minnesota. They generate, transmit, and distribute their own electricity to their retail customers.

Rural electric association (co-ops)

Rural electric associations (co-ops) are nonprofit organizations whose rates are overseen by a board composed of co-op members. The two basic types are:

- **Distribution cooperatives** provide distribution electric service to Minnesota consumers. There are 45 distribution co-ops. The distribution co-ops pay a fee of 10 cents per customer in lieu of the property tax on their distribution lines located outside of incorporated areas. Substations and any property within incorporated areas are subject to property tax.
- **Generation and transmission cooperatives** generate and transmit electricity to distribution co-ops. There are six generation and transmission cooperatives that serve Minnesota distribution co-ops.

Municipal utilities (Munis)

Municipal utilities (Munis) are public, nonprofit utilities overseen by local public utilities commissions or city councils. As with co-ops, there are two kinds of municipal utilities.

- **Distribution Munis** provide distribution electric services to retail customers. There are 126 distribution Munis in Minnesota.
- **Municipal power agencies (MPAs)** provide distribution Munis with generation and transmission services. There are six MPAs.

Both distribution Munis and MPAs are generally exempt from property tax, but an MPA pays in lieu payments to each taxing authority within whose taxing jurisdiction its property is situated.

Independent power producers (IPPs)

Independent power producers (IPPs) are nonutility power producers that generate electricity solely for sale at wholesale (e.g., NRG). IPPs are generally private corporations.

New generation facilities personal property tax exempt

In addition to the real property (lands and buildings) owned by a utility, a utility's attached machinery and other personal property is taxable (i.e., transformers, turbines, etc.) in Minnesota. However, since 1994, the legislature has passed 16 laws exempting new electric generation facilities from personal property taxation. All facilities built in Minnesota since that date have had their attached machinery and other personal property exempted from property tax.

What is the market value and taxes of the utilities?

Statewide Utility Market Value and Property Taxes by Type of Property Taxes Payable in 2002
(all figures in millions)

Type of Property	Market Value Amount	Market Value % of Total	Net Tax Amount	Net Tax % of Total
Land and buildings	$645	10.0%	$24.2	10.9%
Electric generation machinery	1,546	24.1	41.5	18.7
Other machinery	1,126	17.5	40.7	18.4
Transmission lines	1,372	21.4	52.1	23.6
Distribution lines	172	2.7	6.7	3.0
Pipelines	1,558	24.3	56.0	25.3
Total	$6,419	100.0%	$221.2	100.0%

House Research Department

Wind production tax

The 2002 Legislature replaced the property tax on wind energy conversion systems installed after January 1, 1991, with a tax on the production of electricity from these facilities. Rates of tax are based on the size of the system.

- A large-scale system (nameplate capacity of more than 12 megawatts) will pay 0.12 cents per kilowatt-hour.
- A medium-scale system (nameplate capacity between two and 12 megawatts) will pay 0.036 cents per kilowatt-hour.
- A small-scale system (nameplate capacity of two megawatts or less) will pay 0.012 cents per kilowatt-hour.
- Conversion systems (nameplate capacity of 0.25 megawatts or less) and small-scale systems owned by a political subdivision are exempt from tax.

The revenues are distributed to the local governments in the same manner as property taxes. The new tax is effective beginning in 2004.

For more information: Contact legislative analysts Karen Baker, 651-296-8959 or Mike Bull at 651-296-8961. Also see the House Research publication *Primer on Minnesota's Property Taxation of Electric Utilities*, October 2002.

HOUSE RESEARCH | **Short Subjects**

John Williams **October 2002**

2002-03 Transportation Appropriation Bill

The transportation appropriation bill for the 2002-03 biennium appropriated over $3.5 billion, with most of the money going for highways.

The appropriations bill

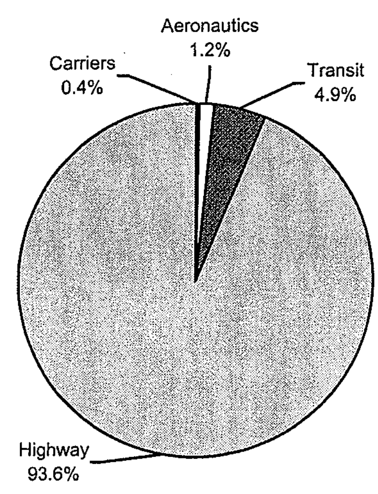
The appropriation bill for transportation agencies for the 2002-03 biennium totaled $3.575 billion. This amount was later reduced by $4.1 million in the 2002 budget balancing bill.

The money was appropriated for the Department of Transportation (MnDOT), the Metropolitan Council's transit functions, and transportation-related activities of the Department of Public Safety (DPS).

Highways predominate in the transportation appropriation bill, accounting for about 90 percent of the spending by mode. Dedicated funds account for over 94 percent of the total spending, and of these, almost all are dedicated highway funds. General fund spending in the bill amounts to less than 6 percent.

MnDOT receives about 90 percent of the money in the bill, with DPS receiving about 6 percent, and transit operated or assisted by the Metropolitan Council receiving the remainder.

2002-03 Appropriation by Mode



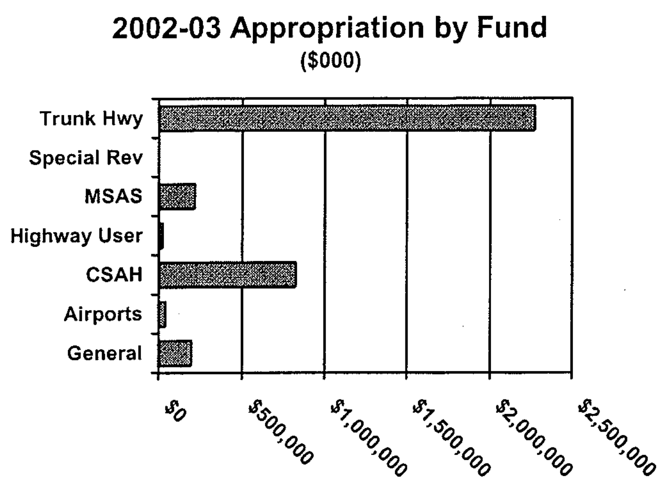
Transportation Modes

Highway: State highway construction, maintenance, administration, law enforcement; state aid for county and city streets and highways

Transit: Operating assistance for metropolitan and Greater Minnesota transit systems

Aeronautics: State aeronautics activities; aid for local airports

Carriers: Motor carriers, railroads, waterways, pipelines



Transportation Funds

Trunk Hwy: The state trunk highway fund for construction, maintenance, and administration of the 11,000-mile state trunk highway system

Special Rev: The special revenue fund for fees that pay for state services

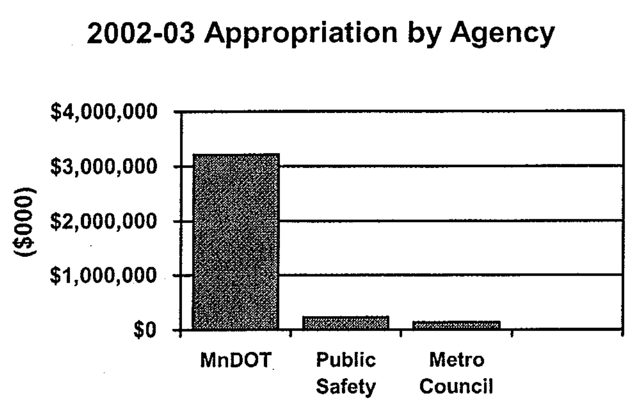
MSAS: The municipal state-aid street fund to aid state-aid street construction and maintenance in cities over 5,000 population

Highway User: The state highway user tax distribution fund (appropriations directly from this fund go to pay cost of collection for vehicle license taxes)

CSAH: The county state-aid highway fund for county state-aid highway construction and maintenance

Airports: The state airports fund used to support state aeronautics activities and aid local airport construction and maintenance

General: The state's general fund



Transportation Agencies

MnDOT: State trunk highway construction, maintenance, and administration; aeronautics; greater Minnesota transit assistance; motor carrier services; ports, railroads, and waterways; state aid to local roads

Public Safety: State patrol; driver licensing; vehicle registration; traffic safety; pipeline safety

Metro Council: Metro Transit; Metro Mobility; assistance to opt-out systems and other metro area transit systems

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

HOUSE RESEARCH | **Short Subjects**

John Williams

September 2002

County State-Aid System

What is it?

The county state-aid highway (CSAH) system is a network of about 30,000 miles of highways owned by the counties. All 87 counties participate in the system. Counties receive money from the county state-aid highway fund for the construction, improvement, and maintenance of these highways.

How are highways included in the system?

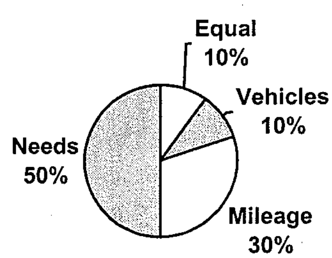
Counties propose highways to the Minnesota Department of Transportation (MnDOT) for inclusion in the system. The department makes the final decision based on criteria in state rules. The criteria focus mainly on traffic levels, functional classification, and a highway's role in connecting communities or markets. There are about 30,000 total miles on the county state-aid system, comprising about two-thirds of all county highway miles.

How is it financed?

The CSAH system is financed by the County State-Aid Highway Fund, which is established by the Minnesota Constitution to provide money to counties for county state-aid highways. Counties now receive about 28 percent of all highway user tax (gas tax and vehicle license tax) revenue. Money in the fund is used for construction, improvement, and maintenance of county state-aid highways.

How is the money divided?

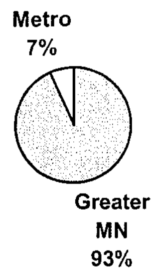
Money in the county state-aid fund is allocated to the counties by a formula provided in statute:



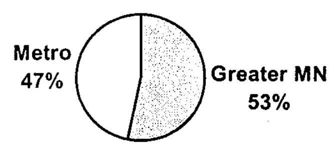
- 10 percent is divided equally among all counties.
- 10 percent is divided among all counties according to their total of registered motor vehicles.
- 30 percent is divided among all counties based on their total lane-miles of state-aid highway.
- 50 percent is divided among all counties based on their money needs. This is defined as the total amount each county needs in order to bring all their state-aid highways up to state standards.

County State-Aid (CSA) System: Geographic Breakdown

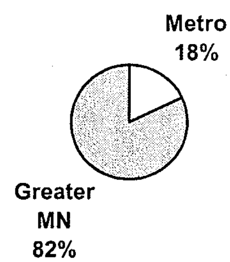
Total CSA Mileage 2001



Average Daily Traffic on CSA Roads 2001



Distribution of CSA Dollars 2001



For more information: Contact legislative analyst John Williams at 651-296-5054. Also see the House Research publication *Highway Funds: Where They Come From, Where They Go*, September 2002. For information on the state-aid system for cities see *Municipal State-Aid System*, September 2002.

HOUSE RESEARCH | Short Subjects

John Williams October 2002

Greater Minnesota Transit Financing

Minnesota gives operating assistance to numerous transit systems outside the metropolitan area, including systems as large as Duluth and as small as circulating vans in rural counties.

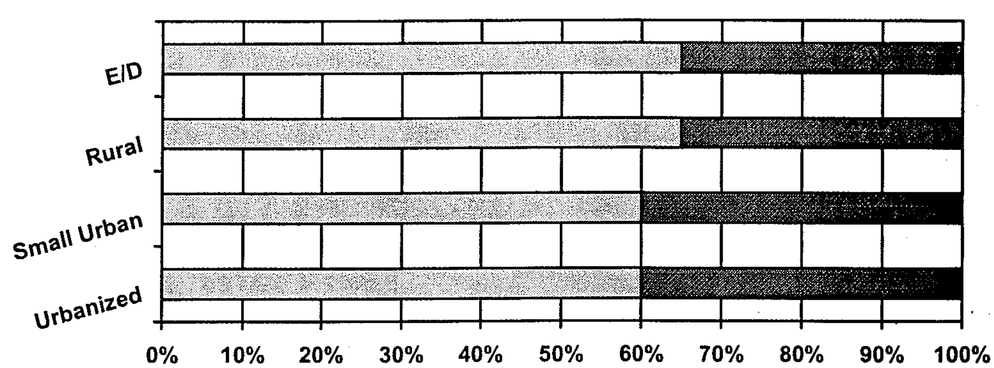
Greater Minnesota transit assistance

The Department of Transportation (MnDOT), through its Office of Transit, provides operating assistance to some 75 transit systems around the state. Systems are put into one of four categories:

Category	Examples
Urbanized	Duluth, Rochester, St. Cloud regular route systems
Small urban	Brainerd, Mankato, Winona, Faribault, Cloquet systems
Rural	Counties, smaller towns, Indian tribes, social service agencies
Elderly/disabled	Special services primarily for elderly and disabled in Duluth, Rochester, Moorhead, St. Cloud

Each local system pays a fixed local share of its total operating costs, and the remainder not covered by federal assistance is paid by the state.

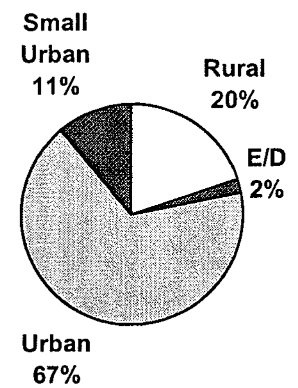
State Share **Fixed Local Share**



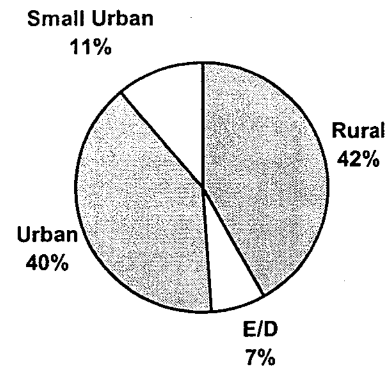
State assistance State operating assistance to greater Minnesota transit totals about $17 million in each year of the 2002-03 biennium.

Ridership and state assistance The high per-rider cost of rural systems means that they receive a higher percentage of state assistance in proportion to their total ridership.

Greater MN Transit Ridership 2000

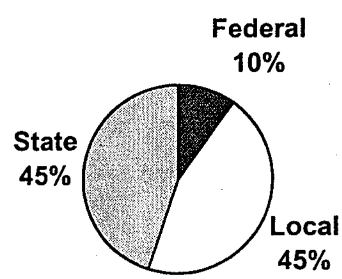


State Assistance 2000



Funding sources State assistance and local sources are the main sources of operating funds for greater Minnesota transit systems. Federal funding is a relatively small part of the picture. "Local sources" includes both farebox revenue and local tax revenue.

Greater MN Transit Funding Sources 2000



Beginning in fiscal year 2003, local property taxes can no longer be used to pay any part of the local share, and will be replaced by state funds from a dedication of 1.25 percent of revenues from the motor vehicle sales tax.

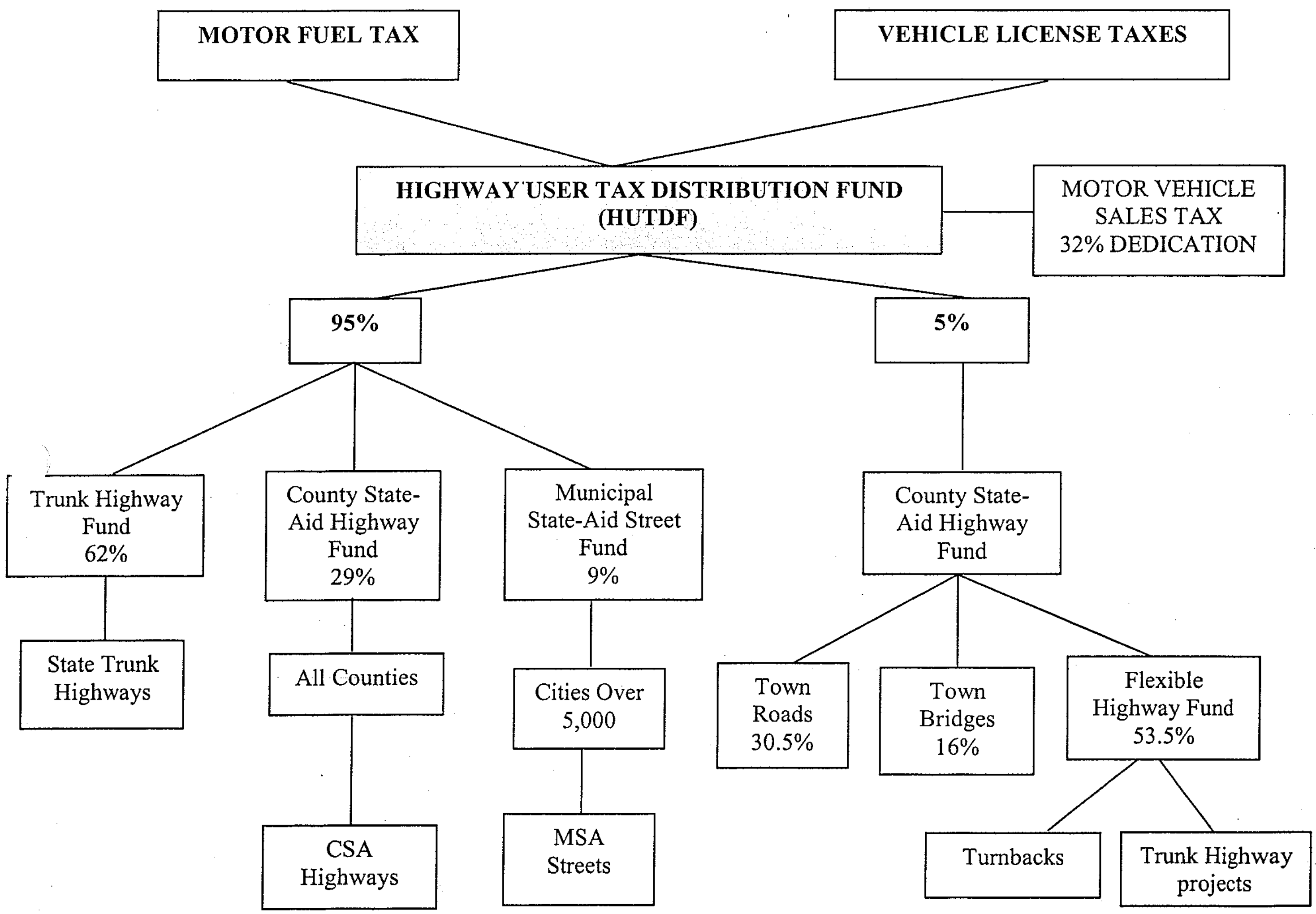
For more information: Contact legislative analyst John Williams at 651-296-5045.

HOUSE RESEARCH | Short Subjects

John Williams

September 2002

Highway Funds
Where They Come From, Where They Go



Where the money comes from

The Minnesota Constitution dedicates two types of **highway user taxes** exclusively to highway purposes.

The first is the **state tax on motor fuel**, currently 20¢ per gallon on both gasoline and diesel fuel. Tax revenue from nonhighway use of these fuels is not dedicated to highways, and this revenue is refunded or placed in special funds for motorboat safety, snowmobile trails, etc.

The other is **state license taxes on motor vehicles**. Taxes on cars, light pickup trucks, and vans are based on value, while taxes on trucks and buses are based on weight and age.

State law (not the constitution) dedicates 32 percent of the revenue from the **motor vehicle sales tax** to the HUTDF, to replace revenue lost when auto license taxes were capped beginning in 2001.

Where the money goes

By constitutional requirement highway user tax revenue goes into the **highway user tax distribution fund**. Of the money in the HUTDF, **95 percent** is allocated to these three funds:

- **62 percent** to the **trunk highway fund** for the construction, maintenance, and administration of the 11,200 mile state trunk highway system.
- **29 percent** to the **county state-aid highway fund** allocated among all 87 counties for construction and maintenance of 30,000 miles of county state-aid highways.
- **9 percent** to the **municipal state-aid street fund,** limited by constitutional provision to cites with populations over 5,000.

The remaining **5 percent** is not divided according to a constitutional formula, but is allocated by law to the county state-aid fund. From there it is further allocated:

- 30.5 percent to a fund for construction and repair of **town roads**.
- 16 percent to a fund to replace and repair **town bridges**.
- 53.5 percent to a **flexible highway account** that can be used for trunk highway projects or for former trunk highways that have been turned back to city or county jurisdiction.

The constitution allows the legislature to revise the allocation no more than once every six years. The last change was made effective in 1998, so it cannot be revised until 2004.

For more information: Contact legislative analyst John Williams at 651-296-5054. Also see the transportation area of the House Research web site: www.house.mn/hrd/issinfo/trans.htm.

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 Department | 600 State Office Building | St. Paul, MN 55155 | 651-296-6753 | www.house.mn/hrd/hrd.htm

HOUSE RESEARCH | Short Subjects

John Williams

November 2002

Metropolitan Transit Financing

In the Twin Cities metropolitan area public transit is operated or assisted by the Metropolitan Council, relying heavily on funding from the state.

The Metropolitan Council is the region's primary transit agency

Transit services provided or assisted by the Metropolitan Council include:

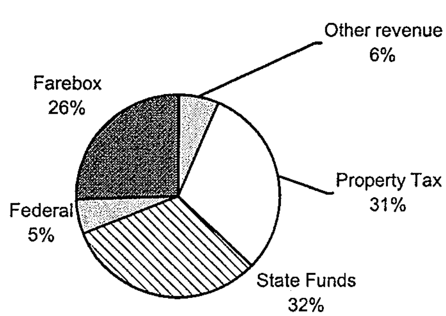
- **Metro Transit.** The Twin Cities' regional regular-route bus system. The council took over operation of the system when the Metropolitan Transit Commission was abolished in 1994.
- **Metro Mobility.** The demand-activated system that provides door-to-door transportation for eligible disabled persons.
- **"Opt-out" Systems.** Systems operated by one or more suburban communities to replace Metro Transit service.
- **Community-based Transit.** Rural and small-urban systems that receive operating assistance from the council.

The state is the largest funding source for metropolitan transit

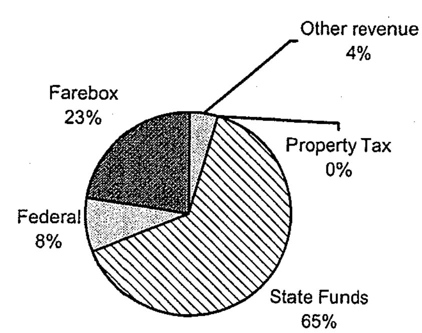
For many years the operating costs of Metro Transit and its predecessor systems came mainly from a combination of farebox revenue, state assistance, and a property tax in the metropolitan transit taxing area. The property tax also was the source for the council's assistance to community-based systems. The opt-out communities retained most of the transit property taxes collected in their jurisdictions and used these funds to subsidize their systems' operating costs.

This system was drastically changed by the 2001 Legislature, which abolished the property tax for transit operations and replaced it with a dedicated 20.5 percent of revenues from the state motor vehicle sales tax. This makes the state by far the largest contributor to metropolitan transit operating funds. The dramatic changes between 2000 and 2003 reflect the magnitude of the 2001 funding shift.

Metropolitan Transit Operations CY 2000

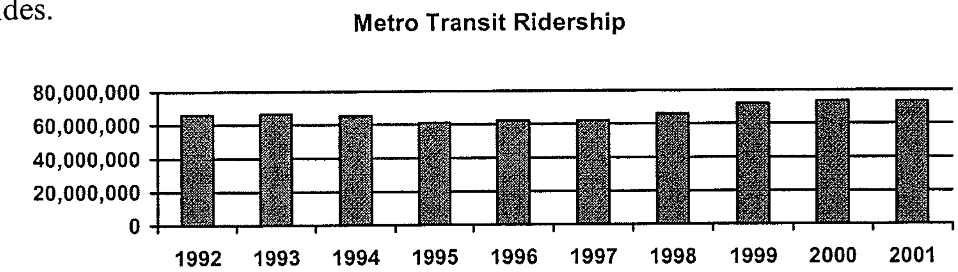


Metropolitan Transit Operations CY 2003



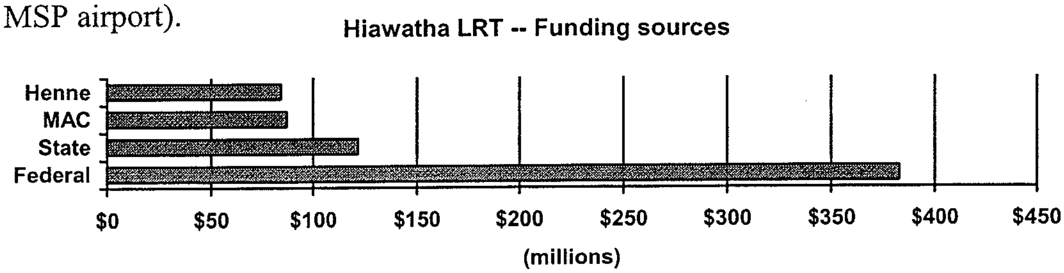
Metro Transit is the region's main regular-route system

Metro Transit has a fleet of some 950 buses, and in 2001 provided about 73 million rides.



The council will operate light rail transit in the Hiawatha corridor

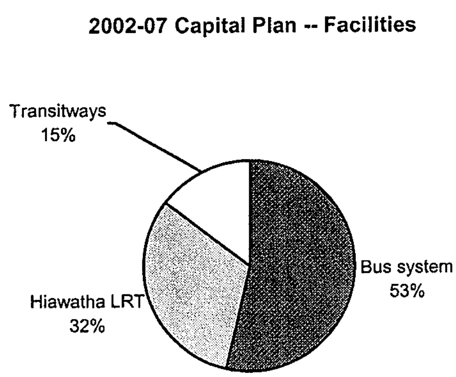
The Metropolitan Council will operate light rail transit (LRT) in the Hiawatha corridor between downtown Minneapolis and Bloomington when it begins operations (now scheduled for April 2004). The LRT line is being built with a combination of federal assistance, state bonding money, and contributions from Hennepin County and the Metropolitan Airports Commission (for the segment at MSP airport).

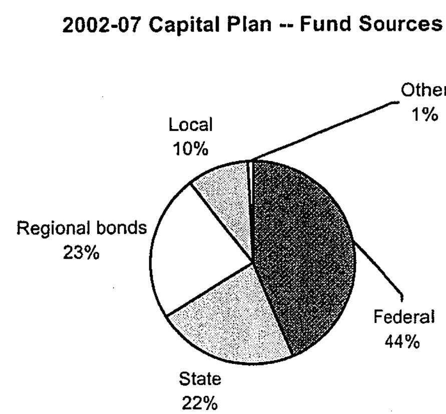


Operating funds for the Hiawatha line have not yet been secured, but some of the suggested sources in addition to farebox revenues have been state general fund appropriations, a dedicated portion of motor vehicle sales tax revenue, and federal congestion mitigation and air quality (CMAQ) funds.

The council has an ambitious capital plan for transit

Based on its 2020 transit master plan, the council has proposed a six-year capital plan for 2002-2007 that contemplates spending almost $1.4 billion on transit capital improvements, including new buses, bus garages and facilities, the Hiawatha LRT line, and transitways (which could eventually be exclusive busways or light rail or commuter rail corridors).





For more information: Contact legislative analyst John Williams at 651-296-5045. Also see the House Research Short Subject *Greater Minnesota Transit Financing*, October 2002.

HOUSE RESEARCH | Short Subjects

John Williams

October 2002

Minnesota Aeronautics Programs and Funding

Minnesota supports aviation and local airports with dedicated state taxes on aviation fuel, aircraft, and air flight property.

Dedicated taxes

Minnesota has three sources of aeronautics funding. All of these revenues are deposited in the State Airports Fund.

- **Aviation fuel tax**

  A tax on fuel used in aircraft, with the rate declining from 5¢ to 1/2¢ per gallon as the taxpayer consumes more fuel in a year.

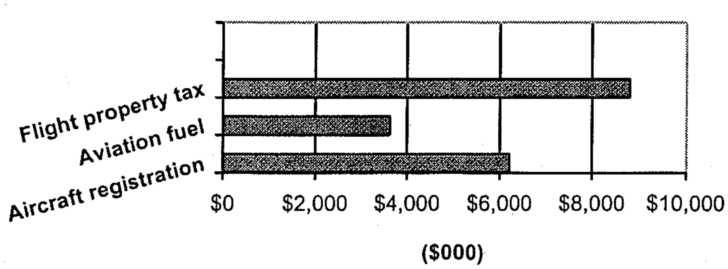
- **Aircraft registration tax**

  A tax of 1 percent of an aircraft's taxable value, imposed on nonairline aircraft based in Minnesota or used in the state for more than 60 days a year. The taxable value is the aircraft's base price, reduced by 10 percent in the second year of life and by 15 percent in the third and subsequent years of life, down to a minimum of 25 percent of base price. The minimum tax is $50.

- **Airline flight property tax**

  A tax paid by commercial airlines in lieu of local property taxes on aircraft and flight equipment. Airlines' tax capacity is multiplied by a tax rate that is determined based on the state airports fund's revenue needs (appropriations from the fund less revenue from the other two taxes).

Aviation Tax Revenue FY 2001



State airports fund

Revenue from aeronautics taxes is dedicated by law to the State Airports Fund. Money in the fund is appropriated biennially to the Department of Transportation (MnDOT) for regulation and development of aeronautics in Minnesota.

Federal funds

In addition to appropriations from the state airports fund, MnDOT also receives some $80 million per year in federal airport improvement program (AIP) funds that it distributes as grants to local airports. This money comes from the federal aviation trust fund, financed by aviation user charges such as a federal aviation fuel tax and airline ticket taxes.

Aeronautics programs

MnDOT administers programs for the publicly owned airports in the state that are not operated by the Metropolitan Airports Commission.

The largest activity in the state aeronautics program is **airport development and assistance**, which receives over 90 percent of the aeronautics budget. This activity provides state and federal assistance to publicly owned airports in greater Minnesota. It includes construction and maintenance grants as well as operation of electronic navigation aids and automated weather systems.

The other main activity of the aeronautics program is **aviation support**, which includes:

- Operation of the aeronautics office
- Administration of the aircraft registration program
- Conducting pilot safety training
- Inspection and licensing of public and private airports, heliports, seaplane bases, and commercial aviation operations
- Dissemination of weather information to pilots
- Civil Air Patrol funding
- Promotion of local scheduled air service

MnDOT also uses its aircraft to provide **air transportation services** to other state agencies that reimburse the department for those costs.

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

HOUSE RESEARCH | Short Subjects

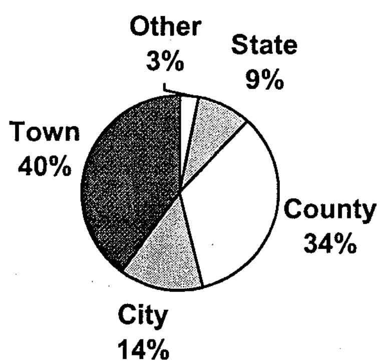
John Williams October 2002

Minnesota Highway Mileage

Minnesota has over 135,000 miles of streets and highways, one of the largest such totals in the country. The table below shows highway mileage as of June 2002.

State trunk highways	Interstate highways	914
	Other trunk highways	11,019
	Total state trunk highways	11,933
County highways	County state-aid highways	30,385
	Other county highways	15,016
	Total county highways	45,401
City streets	Municipal state-aid streets	2,818
	Other city streets	15,775
	Total city streets	18,593
Town roads	Town roads	55,210
Other roads	Roads in unorganized townships	1,234
	State and U.S. forest roads	2,354
	Indian reservations	382
	Other	384
	Total other roads	4,354

Minnesota Highway Mileage 2002



For more information: Contact legislative analyst John Williams at 651-296-5045. Also see the House Research Short Subjects *Trunk Highway Fund*, *County State-Aid Highway Fund*, and *Municipal State-Aid Street Fund*.

HOUSE RESEARCH | Short Subjects

John Williams September 2002

Minnesota Highway User Taxes

Fuel Tax

What is it?

Minnesota imposes a tax of 20 cents per gallon on both gasoline and "special fuel." About 80 percent of the revenue comes from the tax on gasoline, with the remainder coming primarily from diesel fuel and small amounts coming from propane, LNG, and other highway fuels.

Minnesota Fuel Tax Rates Over Time

1949	5¢	1975	9¢	1983	16¢
1963	6¢	1980	11¢	1984	17¢
1967	7¢	1981	13¢	1988	20¢

What does it apply to?

The tax applies only to motor fuel that is used in vehicles on the highways. Tax paid on fuel that is used in nonhighway commercial operations, principally farming, is refunded to the taxpayer. Tax paid on recreational use, such as in motorboats, snowmobiles, ATVs, and off-road vehicles, goes into dedicated funds for these activities.

Truckers who buy and use motor fuel in several states pay fuel tax to the states in proportion to the miles they travel in those states.

Where do revenues come from?

The House Research Department's annual *Major State Aids and Taxes* report shows the geographic breakdown of the revenue from each major state tax. The most recent report, using figures for 1999, indicates that 48 percent of total fuel tax revenue came from the metropolitan area and 52 percent from greater Minnesota.

Vehicle License Tax

What is it?

The state collects an annual license tax for all motor vehicles and trailers.

Automobiles are taxed at $10 annually plus 1.25 percent of base value, meaning the manufacturer's base price (without options) for a particular make and model. The tax is imposed on 100 percent of the base value in the first two years of life, with this percent going down to 10 percent in the tenth year. Cars over ten years old pay the minimum tax of $35. The auto license tax is capped at $189 in the second year of life and $99 in the third and subsequent years.

Trucks are taxed on the basis of weight and age. The tax on trucks and truck-tractors ranges from a minimum or $120 to $1,760 for a power unit hauling up to 81,000 pounds, with a 25 percent reduction after eight years of life. *Farm trucks* pay a reduced weight-based tax. *Buses* pay a tax of from $125 to $550 depending on weight, with depreciation beginning in the third year of life. *Motorcycles* pay a flat tax of $10 annually.

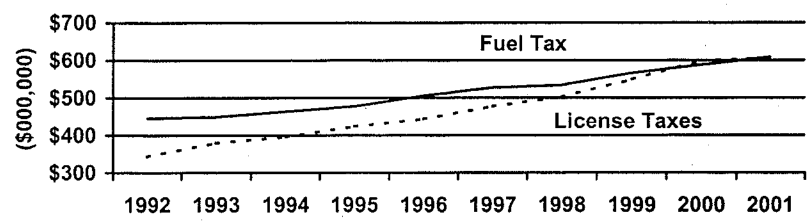
What does it apply to?

All vehicles domiciled in Minnesota pay the tax for the privilege of using the state's highways. The major exception is vehicles owned by government agencies (including school buses owned by school districts).

Where do revenues come from?

The *Major State Aids and Taxes* report shows that in 1999 about 54 percent of vehicle license tax revenue came from the metropolitan area and 46 percent from greater Minnesota.

Highway User Tax Revenues 1992-2001



The license tax figure includes money transferred from motor vehicle sales tax revenues to replace revenue lost when the auto license tax "caps" were imposed beginning in 2001.

For more information: Contact legislative analyst John Williams at 651-296-5045. Also see the transportation area of the House Research web site: www.house.mn/hrd/issinfo/trans.htm.

HOUSE RESEARCH | Short Subjects

John Williams **October 2002**

Minnesota Speed Limits

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

Basic law

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

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

Statutory limits

Minnesota law sets out the following speed limits:

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

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

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

Speed zones

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

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

Local authority

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

There are a few exceptions to this general rule:

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

- In school zones, defined as a segment of street or highway that abuts school grounds where children have access to the roadway or where a school crossing is established, a local road authority may prescribe a lower speed limit that is not less than 15 m.p.h., or more than 20 m.p.h. below the surrounding limit.

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

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

Speed violations

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

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

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

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

HOUSE RESEARCH | **Short Subjects**

John Williams

September 2002

Municipal State-Aid Street System

What is it?

The municipal state-aid street (MSAS) system is a network of about 2,800 miles of streets owned by cities with populations over 5,000. There are now 126 cities that meet this qualification, plus one city (Chisholm) which fell below 5,000 in the 2000 census but which has been grandfathered into the system. These cities receive money from the municipal state-aid street fund for the construction, improvement, and maintenance of these streets.

How are streets included in the system?

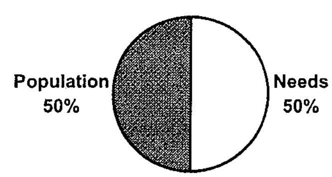
Cities propose streets to the Minnesota Department of Transportation (MnDOT) for inclusion in the system. The department makes the final decision based on criteria in state rules. The criteria focus mainly on traffic levels, functional classification, and a street's role in connecting major points within the city. Each city is limited to putting no more than 20 percent of its total street miles onto the state-aid system.

How is it financed?

The MSAS system is financed by the Municipal State-Aid Street Fund, a fund established by the Minnesota Constitution to provide money to cities with populations over 5,000 for their municipal state-aid streets. The fund receives a constitutionally guaranteed 9 percent of 95 percent of the highway user tax distribution fund. Money in the fund is used for construction, improvement, and repair of municipal state-aid streets.

How is the money divided?

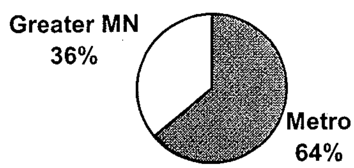
Money in the municipal state-aid fund is allocated to cities with populations over 5,000 by a formula provided in statute:



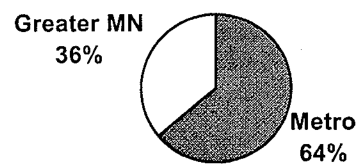
- 50 percent is divided among all cities with populations over 5,000, based on their population.
- 50 percent is divided among all cities with populations over 5,000, based on their money needs. This is the amount each city needs to bring all its municipal state-aid streets up to state standards.

Municipal State-Aid Street System: Geographic Breakdown

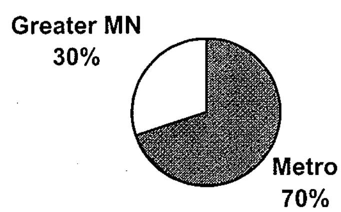
Total MSAS Mileage 2001



Total MSAS Mileage 2001



Distribution of MSAS Dollars 2001



For more information: Contact legislative analyst John Williams at 651-296-5045. Also see the House Research publication *Highway Funds: Where They Come From, Where They Go*, September 2002. For information on the state-aid system for counties see *County State-Aid System*, September 2002.

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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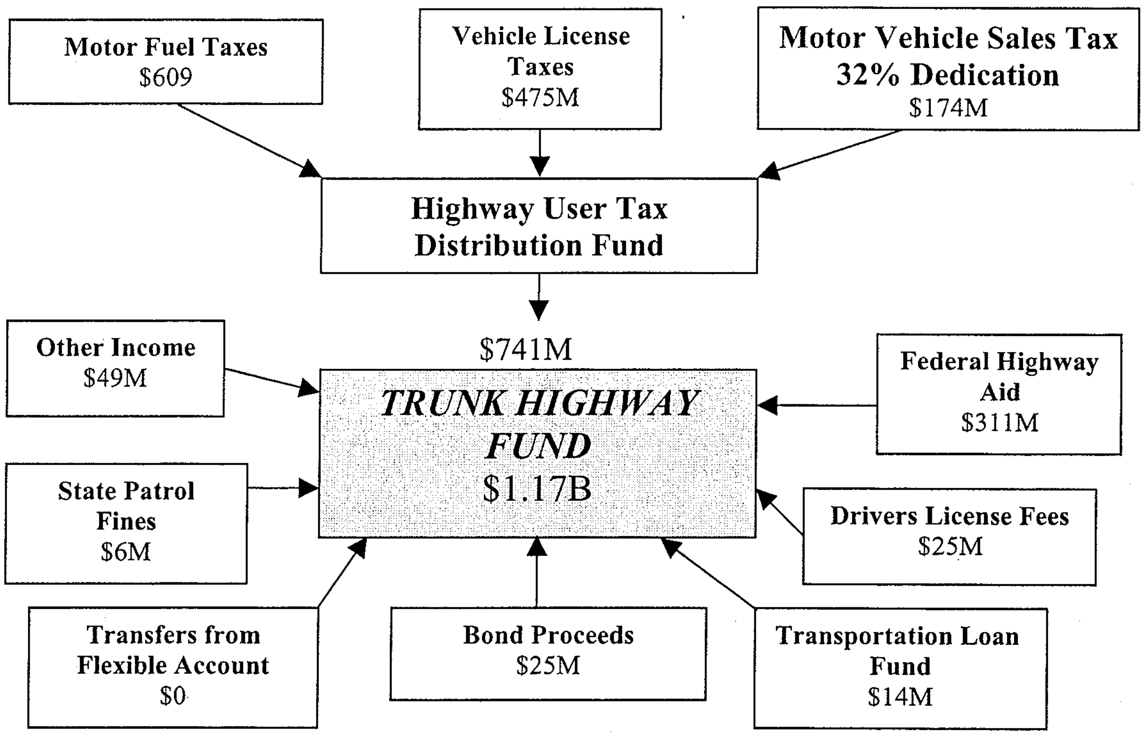
HOUSE RESEARCH | Short Subjects

John Williams

September 2002

Trunk Highway Fund

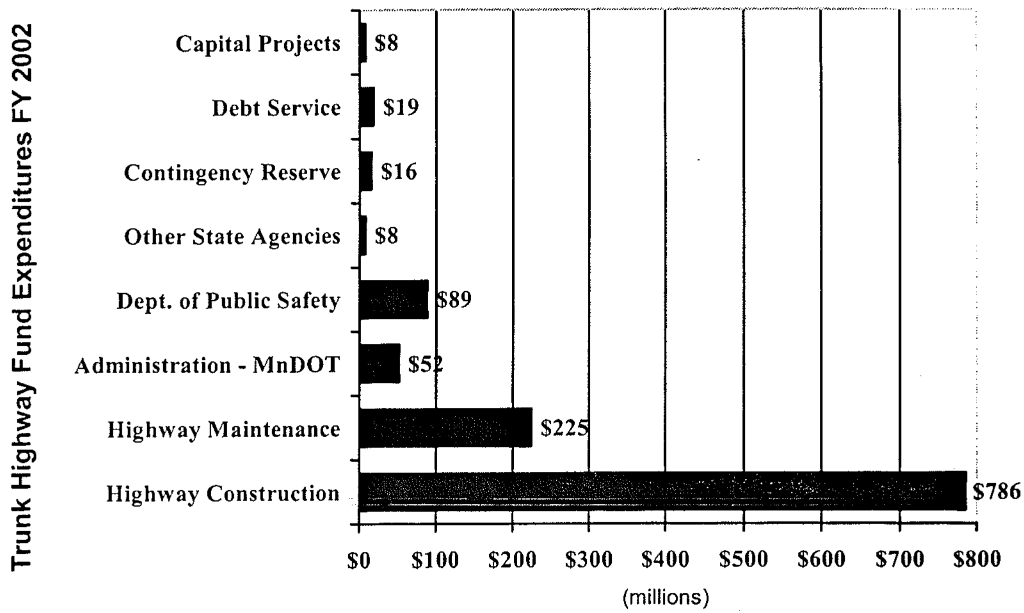
Where the Money Comes From – FY 2002



Sources of revenue to the trunk highway fund include:

- A constitutionally-prescribed share of highway user taxes (motor fuel taxes, vehicle license taxes, and a portion of motor vehicle sales tax revenues to replace revenue lost when auto license taxes were capped beginning in 2001)
- Federal highway funds which normally pay 80 percent of the cost of federally aided projects
- Driver license fees
- Transfers from the flexible account that receives part of the 5 percent "set-aside" in the highway user tax distribution fund
- A portion of fines from tickets issued by the State Patrol
- Other income such as investment earnings, advances from local government to accelerate highway projects, and other miscellaneous income
- Proceeds from sale of trunk highway bonds
- Loans to MnDOT from the transportation revolving loan fund for trunk highway projects

Where the Money Goes – FY 2002



Money in the trunk highway fund is constitutionally dedicated solely to trunk highway purposes, but the money must be appropriated by the legislature.

Highway construction is the single biggest category of expenditure, including construction contracts, contract administration, engineering, research, and purchase of right-of-way. **Maintenance** of the trunk highway system is the next-highest category.

The **Department of Public Safety** (DPS) portion mainly goes to the **State Patrol** for law enforcement on the trunk highway system. DPS also receives trunk highway funds to pay for the **driver licensing system**.

Debt service includes repayment of trunk highway bonds and repayment of advances made by local units of government to accelerate trunk highway projects.

Capital projects primarily means MnDOT buildings, covering everything from the central office in St. Paul to district office buildings to maintenance buildings and storage sheds around the state. These are paid by direct appropriations from the trunk highway fund rather than through the sale of bonds as with other state buildings.

For more information: Contact legislative analyst John Williams at 651-296-5054. Also see the transportation area of the House Research web site: www.house.mn/hrd/issinfo/trans.htm.

HOUSE RESEARCH | **Short Subjects**

Mike Bull **October 2002**

Cable Regulation

Regulatory framework

In Minnesota, the provision of cable services is regulated primarily by:

- the federal government; and
- municipal governments.

The state currently has a very limited role in overseeing the provision of cable services.

The federal role in cable regulation

The federal government, through the Federal Communications Commission (FCC), regulates:

- the rates for basic cable services
- customer service issues, including billing disputes, office hours, telephone availability of personnel, installations, outages, and service calls
- "leakage" from cable systems (interference with other broadcast and narrowcast media) and
- indecency and obscenity in cable programming.

The federal Telecommunications Act of 1996 precluded the FCC from regulating the rates of cable services other than basic cable after March 1, 1999.

The local government role in cable regulation

In Minnesota, municipalities are the "local franchising authority" for cable services. This means the municipal government contracts with one or more cable providers to provide cable services to residents and businesses within the municipality. Many details of the cable franchise agreement are then enacted in a local franchise ordinance and given the force and effect of local law.

In exchange for this granting of a franchise to serve the community, the cable provider agrees to pay a franchise fee to the municipal government. This fee is the result of negotiations between the municipality and the cable provider, and can consist of both cash and in-kind payments.

In addition to the franchise fee, or sometimes as part of that fee, the cable provider agrees to provide the municipality with a number of cable channels for local, community programming. These channels are often referred to as "public access" channels or "PEG access." PEG access stands for public, educational, and governmental access.

The state role in cable regulation

Traditionally in Minnesota, the state role in cable regulation has been somewhat limited. By statute, the state regulates:

- certain minimum aspects of a franchise agreement/ordinance, such as a minimum number of PEG access channels that a cable company must provide to municipalities of various sizes
- the conditions for access to buildings to install and repair cable infrastructure and
- the use of public utility infrastructure for cable facilities

Current issues

In recent years, there have been legislative initiatives to increase the role of the state in cable regulation. These initiatives have been thus far unsuccessful, but involve:

- making the state the "local franchising authority" for all cable franchises in the state, while
- continuing to allow local municipalities to collect franchise fees, and to use designated PEG access channels.

The Public Utilities Commission would oversee the provision of cable services, and establishing and enforcing minimum service standards.

Controversy surrounding access to buildings for the provision of satellite television has also been the focus of recent legislative attention, as has the use of cable wiring and other infrastructure to provide satellite services. These issues have not yet been resolved by the legislature.

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

Mike Bull

October 2002

Minnesota's Utility Regulatory Agencies

Three state agencies are involved in utility regulation

There are three state agencies involved with the regulation of utility services (electricity, natural gas, and telecommunications) in Minnesota. Those agencies are:

- the Minnesota Public Utilities Commission (PUC)
- the Telecommunications and Energy Divisions of the Minnesota Department of Commerce (Commerce) and
- the Residential and Small Business Utility Division (RUD) of the Office of the Minnesota Attorney General.

PUC: Agency snapshot

Description:

Independent regulatory agency with authority over telecommunication and energy utilities

Budget:

$3.99 million for fiscal year 2002; $4.16 million for fiscal year 2003 (funded through utility assessments)

Personnel:

Five commissioners, 42 staff (21 analysts – 11 energy, 10 telecommunications)

Primary functions:

- Sets rates for those utility service providers that are comprehensively regulated;
- Establishes service standards for utility service providers;
- Resolves consumer and provider complaints; and
- At the direction of the legislature, establishes utility policy for the state.

PUC commissioners:

Each PUC commissioner is appointed by the governor for a six-year term with the advice and consent of the state Senate, and is removable only for cause.

Commissioner terms are staggered, so that only one commissioner is scheduled to leave and be replaced at any one time, which minimizes the impact of the loss and replacement of commissioners on PUC decision making. Minnesota law requires that the commission be geographically and politically balanced.

In addition to these structural safeguards, commissioners are also protected procedurally from undue influence, through:

- restrictions on communications with parties appearing before the commission
- judicial-type proceedings in most instances
- open meeting law requirements
- temporary bans on employment with regulated entities

Commerce: Agency snapshot

Description:
One of two government entities with the statutory authority to intervene in PUC proceedings; advocates for the general public interest

Budget for regulatory affairs:
Approximately $3.5 million per fiscal year; (funded through utility assessments)

Personnel:
Two deputy commissioners (one for energy, one for telecommunications); 50 staff (32 analysts for commission advocacy – 22 energy, 10 telecommunication)

Primary functions:
Analysis, advocacy, and investigation

RUD: Agency snapshot

Description:
One of two government entities with the statutory authority to intervene in PUC proceedings; advocates for residential and small business utility consumers

Budget:
Approximately $750,000 per fiscal year (funded from appropriations from the general fund)

Personnel:
One division manager; eight and one-half staff (three attorneys, one analyst, one investigator, two consumer complaint mediators, and one-and-one-half support staff)

Primary function:
Advocacy

For more information: Contact legislative analyst Mike Bull at 651-296-8961. Also see the House Research publication *The Minnesota Public Utilities Commission and Related Agencies: Structure and Function*, September 2002.

HOUSE RESEARCH | **Short Subjects**

Mike Bull

October 2002

Regulation of Energy Utilities in Minnesota

Regulated energy services

Regulation of energy services is divided between wholesale services and retail services. Retail energy services are services provided directly to customers who use the energy (called retail or "end-use" customers). Retail energy services are subject to state regulatory jurisdiction, either by the Minnesota Public Utilities Commission (PUC), or some other authority designated by state law.

Wholesale energy services are activities that do not involve retail (or "end-use") customers. Wholesale services are regulated at the federal level by the Federal Energy Regulatory Commission. Examples of wholesale energy services include:

- the buying and trading of electricity and natural gas between wholesale generators and power marketers, and
- the transportation of electricity through high voltage transmission wires and natural gas through interstate natural gas pipelines.

Regulatory authority

As a general rule, the PUC has the authority to:

- establish the rates that utilities subject to PUC jurisdiction charge to retail customers in the state
- approve plans for new energy facilities, such as generation stations and transmission lines
- establish industry-wide standards, practices, and policies and
- resolve customer and provider complaints for utilities under its jurisdiction.

Not all energy utilities are subject to PUC jurisdiction. Investor-owned utilities (described below) are subject to comprehensive regulation by the PUC. However, regulation of municipal and cooperative energy utilities by the PUC is statutorily deemed unnecessary. The legislature has determined that these not-for-profit utilities are "effectively regulated" by other entities. Municipal utilities are regulated through oversight by the municipal government. Cooperative utilities are regulated by boards made up of members of each cooperative. Municipal and cooperative utilities can elect to be subject to comprehensive oversight by the PUC, but only one utility has exercised that option (Dakota Electric Cooperative Association).

Investor-owned utilities

Investor-owned (IOUs) are private, for-profit corporations whose rates are regulated by the PUC.

- The five **electric** IOUs that serve Minnesota are Allete (formerly Minnesota Power), Alliant (formerly Interstate Power), Northwestern Wisconsin Electric, Otter Tail Power, and Xcel Energy (formerly Northern States Power). These five provide generation, transmission, and distribution services to their customers.
- The six **natural gas** IOUs in Minnesota are Alliant, Great Plains Natural Gas, Xcel, CenterPoint Energy Minnegasco, Aquila (formerly Utiliticorp – People's Natural Gas and Northern Municipal Utilities), and Western Natural Gas. These utilities only distribute natural gas to end-use customers, getting their natural gas through pipelines owned by other entities that are regulated by the Federal Regulatory Energy Commission.

Rural electric associations

Rural electric associations (co-ops) are nonprofit organizations whose rates are overseen by a board composed of co-op members. There are two types of co-ops:

- **Distribution cooperatives** provide distribution electric service to Minnesota consumers. There are 45 distribution co-ops in Minnesota.
- **Generation and transmission cooperatives (G&T's)** generate and transmit electricity to distribution co-ops. The six generation and transmission cooperatives that serve Minnesota distribution co-ops are Basin Electric, Dairyland Power, East River Electric, Great River Energy, L&O Power, and Minnkota Power.

Municipal utilities

Municipal utilities (Munis) are public, nonprofit utilities overseen by local public utilities commissions or city councils. There are two kinds of municipal utilities:

- **Distribution Munis,** like their co-operative counterpart, provide distribution electric services to retail customers. In Minnesota, there are 126 electric distribution Munis and 31 natural gas distribution Munis.
- **Municipal power agencies (MPAs)** provide distribution Munis with electric generation and transmission services. The six MPAs (also known as "joint operating agencies") operating in Minnesota are Central Minnesota MPA, Heartland Consumers Power District, Minnesota MPA, Missouri River Energy Services, Northern MPA, and Southern Minnesota MPA.

For more information: Contact legislative analyst Mike Bull at 651-296-8961. Also see the House Research publication *The Minnesota Public Utilities Commission and Related Agencies: Structure and Function*, September 2002.

Mike Bull October 2002

Telecommunications Regulation in Minnesota

Regulatory framework

Telecommunications services are divided between services that are subject to federal regulation and services that are subject to state regulation.

- The provision of **interstate** and **interLATA long-distance** service is overseen by the Federal Communications Commission (FCC).
- The provision of **local long distance** service and **local telephone** service are subject to the jurisdiction of the Minnesota Public Utilities Commission (PUC).

Long distance:

- *Interstate long distance calls* are calls between states.
- *InterLATA calls* are calls between LATAs (LATAs are the areas within states the federal court established to promote competition for long distance services when it broke AT&T into Regional Bell Operating Companies–RBOCs)
- *Local long distance calls* are long distance calls within a LATA.

Federal court decisions and the FCC determine the ability of RBOCs to provide long-distance service:

- RBOCs (like Qwest) cannot provide *interstate long distance calls* or *interLATA calls*, unless the FCC determines that a RBOC has irreversibly opened its local telephone service markets to competition.
- RBOCs are allowed to provide *local long distance* calls

The rates for long distance service are largely deregulated, both at the state and federal level.

Local: The federal Telecommunications Act of 1996 required states to allow entities other than incumbent local telephone companies to compete to provide local telephone services to customers. Minnesota moved more quickly than the U.S. Congress, adopting a similar statute in the 1995 legislative session.

Types of providers

Minnesota categorizes those telecommunications providers subject to state jurisdiction as either a "telecommunications carrier" or "telephone company." Each type of provider is subject to vastly differing state regulation by the PUC.

Telephone companies

A "telephone company" is a company that provided local telephone service as a monopoly provider prior to August 1, 1995 (the date that local service was opened to competition in Minnesota). Under federal law, telephone companies are referred to as "incumbent local exchange carriers" (ILECs). There are two categories of telephone companies under Minnesota law:

- Large telephone companies, which have 50,000 subscribers or more (there are four in the state—Qwest, Sprint, Frontier, and GTE).

- Small telephone companies, which have less than 50,000 subscribers (there are 94 small telephone companies in Minnesota).

The vast majority of small telephone companies fall into one of three sub-categories:

- Cooperative telephone associations (not-for-profit organizations)
- Municipal telephone associations (publicly owned and operated) and
- Independent telephone companies (small companies with less than 30,000 subscribers)

Large companies are subject to the most comprehensive oversight by the PUC, and have their rates established by the PUC. Small companies are treated somewhat differently under Minnesota law, and are generally not as comprehensively regulated due to their size. The three types of small companies listed above are exempt from having their rates established by the PUC, unless the PUC finds after an investigation that the rates the small company is charging are not "fair and reasonable."

All telephone companies, large and small, may elect to be regulated under "alternative form of regulation" (AFOR) plans. These plans provide for minimum levels of consumer protection in exchange for allowing the telephone company more operating flexibility. Three large companies and 62 small companies operate under AFORs. The statute authorizing AFORs expires in 2006.

Telecommunications carriers

There are two categories of "telecommunications carriers."

- Long distance providers who do not provide local service (there are approximately 550 companies authorized to provide long distance services in Minnesota); and
- Competitive local exchange carriers (CLECs) – providers of local telephone service that compete with incumbent telephone companies (there are 55 CLECs operating in the state).

Telecommunications carriers are not subject to rate-regulations or earnings investigations by the PUC, but are subject to other regulatory requirements.

State telecommunications goals

Minnesota law specifies certain goals for the PUC to promote in overseeing the telecommunications industry. These goals are:

- supporting universal service
- maintaining just and reasonable rates
- encouraging efficient deployment of infrastructure
- encouraging fair and reasonable competition
- maintaining or improving quality of service
- promoting customer choice
- maintaining consumer protections and
- encouraging voluntary resolution of issues between and among competing providers.

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

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