



## minnesota inter-county association

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anoka benton blue earth · carver · dakota · olmsted · rice · st. louis · scott · sherburne · stearns · washington · winona

June 12, 2009

Dear MICA Members and Other Interested Parties:

The following “*2009 End of Session Report*” is our annual overview of the legislative changes affecting counties. Because the governor has not yet announced his unallotments, we will issue a revision when that information become available. The “*2009 End of Session Report*” is not meant to be comprehensive but rather give a broad-brush view of the various policy areas of concern to counties. In some instances, more comprehensive summaries have been shared with your staffs. In other instances, we can readily provide or steer you or your staffs to any more detailed summaries you may desire.

I hope you find MICA’s “*2009 Legislative Session Report*” useful. If you have any questions or need more details about a particular item, please do not hesitate to contact our office.

Sincerely,

A handwritten signature in cursive script that reads "Keith E. Carlson".

Keith E. Carlson





# 2009

## End-of-Session Report



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anoka-benton-blue earth-carver-dakota-olmsted-rice-scott-sherburne-st. louis-stearns-washington-winona

The Minnesota Inter-County Association is a voluntary organization of Minnesota counties that contain developing areas. The Association is a vehicle for planning and implementing projects and programs of similar interest to member counties. The 13 member counties comprise a major portion of the state's population and a significant share of its industrial and high-tech resources.

In recent years, county government has become the fastest growing and most dynamic level of government in the State of Minnesota. Present trends at the federal and state level require counties to take an active role in the design, administration and funding of programs for which they are responsible. These factors can only be addressed when counties are coordinated and assertive in addressing the problems and issues that confront them.

The MICA Board of Directors, through its Strategic Mission Statement, establishes the priorities for the organization. The intent of these priorities is to enable MICA to provide the kind of creative and proactive influence at the Legislature and within county government that represents and enriches our communities, our industries and our citizens.

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# 2009 Legislative Session Report

## TAXES & PROPERTY

### TAX RELIEF

#### TAX BILL(S) & UNALLOTMENTS

##### PROGRAM AID CUT, LEVY LIMITS LARGELY UNCHANGED

#### County Program Aid Reduced

While it is certain that county program aid will be cut at the time this is being written, it is unknown how much those cuts will be. That is because instead of being determined by the legislature, they will be set by the governor via “unallotment,” where he unilaterally cuts expenditures to balance the state’s budget. He has broad discretion in the manner in which he calculates those cuts and how he distributes the cuts among the various programs.

An additional \$500,000 aid payment was appropriated to Beltrami County in 2009 to be distributed to the Red Lake Band of Chippewa for implementing the Fostering Connections to Success and Increasing Adoptions Act of 2008.

#### Levy Recertification for Aid Reductions

Local governments may recertify their levy by January 15 of the year in which it is payable if their December property tax aid and credit payments are reduced due to an unallotment.

#### Levy Limits Remain with New Special Levies

Levy limits continue in place for 2010 and 2011. However, new special levies were created:

- to pay for up to 50% of the “hold” costs for sex offenders being petitioned for civil commitment to the extent the state does not fund that 50% share
- to pay the first year costs of maintaining and operating a new public safety/courts facility the funding for which was obligated prior to the imposition of levy limits in 2008. This amount is rolled into the county’s levy limit base in subsequent years; and
- for reductions in the market-value based credits.

#### Truth-in-Taxation Hearing Requirements Relaxed and Advertisement Eliminated

The truth-in-taxation notice that is retained must identify the date of a board meeting after November 24 where the budget and levy will be discussed and where the public will be allowed to speak. (Unlike prior law this requirement applies regardless of if the county’s levy increase is under the rate of inflation.) The meeting shall not be held before 6:00 p.m. but other business can be conducted at that meeting. The meeting no longer must be on the first Thursday of December. The date(s) of meeting(s) where the public will be allowed to speak must also be included with the published minutes of the meeting at which the preliminary levy is adopted. The previously-required separate newspaper advertisement of the time and place of the truth-in-taxation hearing with budget, levy and tax rate comparisons is eliminated. All these changes are effective for taxes levied in 2009 taxes and thereafter.

#### Green Acres Restrictions “Fixed”

The Legislature “fixed” last year’s green acres legislation (reducing taxes for certain agricultural land) by:

- eliminating the seven year payback,
- reinstating the qualification of land in CRP, RIM, CREP and other set-aside programs for green acres if previously used for agricultural purposes,
- providing that nonproductive land transferred to a son or daughter will continue to qualify for green acres until 2013,
- previously enrolled non-productive land will not be required to pay back any deferred taxes if unenrolled by 2010,
- previously enrolled nonproductive land will continue to qualify for green acres until the earlier of either 1) when it is sold, subdivided or transferred, or 2) the 2013 assessment, and

# TAXES & PROPERTY TAX RELIEF

- by creating a new Rural Preserve Property Tax program with valuation provisions similar to green acres for either nonproductive land previously enrolled in green acres or nonproductive land that is part of an agricultural homestead as long as either is enrolled for at least ten years and has professionally drafted conservation management plan.
- An owner of green acres property who is subject to two or more final enforcement actions for violations of agricultural chemical and water laws will upon notice to the county auditor be subject to a penalty of the loss of the tax reduction attributable to green acres law for the current and two preceding years.
- The 50% limit on the total acreage of an agricultural homestead that can be 2b nonproductive land, which can be enrolled in the new Rural Preserve Property Tax program was eliminated.

## Property Tax Exemptions

In response to the *Under the Rainbow Child Care Center, Inc. v. County of Goodhue* decision, the Legislature essentially codified the six-part test from the *North Star* decision while providing that an organization may fail to meet:

- being supported by material donations, gifts, or government grants for services to the public in whole or in part;
  - whether a material number of the recipients of the charity receive benefits or services at reduced or no cost, or whether the organization provides services to the public that alleviate burdens or responsibilities of government
  - whether the beneficiaries of the charity are restricted or unrestricted, and, if restricted, whether the class of persons to whom the charity is made available is one having a reasonable relationship to the charity's objectives
- if there is reasonable justification based on the factual basis provided to the assessor.

Nonprofit nursing homes or boarding care facilities that are certified to participate in the medical assistance programs or that certify to the commissioner of revenue that they do not discharge residents due to their inability to pay were explicitly exempted as were several new electric generation facilities and an elderly living facility in Minneapolis.

## Property Classification Changes

- The opt-out for the special valuation for aggregate "reserve" lands (being kept for future mining) also applies to the 2e classification. Therefore if that property is zoned residential or commercial that higher class rate will apply rather than 1% on all the land's market value.
- The lower tier of agricultural homestead land and buildings (not including the residence) qualifying for the 1% class rate is increased to \$1,140,000 for taxes payable in

2011. For taxes payable in 2010 the lower tier is limited to \$1,010,000.

- The class 4c (seasonal recreational) classification is extended to marinas that provide access to the public. The amount of land that can qualify for the classification is limited to 800 feet of shoreline, and up to 6 acres. Commercial buildings on the premises continue to be classified as class 3a commercial. Class 4c property has a class rate of 1 percent on the first \$500,000 of market value and 1.25 percent on the value in excess of \$500,000, and is subject to the state's seasonal-recreational property tax.
- The Commissioner of Revenue, in consultation with the Commissioner of Agriculture, is to study the property tax treatment of properties used for horse breeding and horse boarding under current law and report to the Senate and House Tax Committees by February 1, 2010. The owner of property that had been classified as agricultural in 2008 based on its use for horse breeding or boarding may appeal 2009 reclassifications to the commissioner if the property's use has not substantially changed, and the commissioner must resolve the appeal by issuing a written order.

## Library Maintenance of Effort

Beginning in 2009, the library maintenance of effort is reduced proportionate to any reductions in a county's levy plus aid base due to program aid and credit reductions occurring after levy certification but no more than 10%. For 2009, the aid cuts used to calculate the reduction include the 2008 aid unallotments. Beginning in 2010, the basic MOE before any reductions for aid cuts for those counties not at the minimum level of effort will be set with reference to the operating expenditures in the second or third preceding year, whichever is less. If certified program aid is less than the prior year, then the MOE shall be reduced proportionate to the cut as percentage of the county's prior year levy plus aid actually paid but in no case greater than 10%. In no case shall the MOE be reduced below the minimum level of effort - .82% of adjusted net tax capacity or \$12.62 per capita in 2009. The minimum level of effort will be determined using a three year average of adjusted net tax capacity beginning in 2011. Notification of the regional library system is required if a county elects to reduce its MOE due to aid or credit cuts.

## Maintenance of Effort and Cost Share Moratorium

A moratorium effective until July 1, 2011 is imposed on the implementation of new or increased MOE or matching fund requirements unless the spending is required by federal law and there would be a cost to the state budget without the increase.

# TAXES & PROPERTY TAX RELIEF

## Reform of Funding of Human Services

The commissioner of human services, in consultation with county groups, client groups, and the commissioner of revenue are to develop a proposal for establishing and transitioning from the current human services maintenance of efforts and matching fund requirements to a new consolidated local county property tax contribution. A number of criteria (not including a uniform tax rate) are identified to be considered in coming up with the recommendation. The report is due to the legislature by February 1, 2010.

## Public Finance

**Emergency Debt Certificates.** A city, county, or town may issue emergency debt certificates if both of the following occur in a fiscal year:

- The governmental unit's current year revenues are expected to be reduced below their budgeted amounts (i.e., the amount set in the budget used to set the property tax levy)
- The reduction is so large that current year expenses will exceed current year receipts

The maximum amount of certificates that may be issued is limited to the expected reduction in receipts plus the costs of issuance. The certificates must mature within two years of the end of the fiscal year in which they were issued. The certificates are excluded from net debt limits and the levy to service them may be in excess of or in addition to the preliminary certified levy.

**OPEB (Retiree Health Care) Bonds.** The authority to issue bonds to fund liabilities for other post-employment benefits is limited to those instances where the county has acted to limit its post-retirement benefits to just the minimum level required by state law (to allow under-65 retirees to purchase health insurance from the employer at the same price as the cost for active employees) for new hires.

**C-BED (community-based energy development) Revenue Bonds.** Authorizes counties to enter into joint powers agreements with other counties for purchase of energy or for acquisition of interests in electric generation facilities using renewable sources. If the county enters into a multiyear agreement to purchase energy or acquires an interest in electric generation facilities using renewable sources including a C-BED project, the county may finance the estimated cost by issuing revenue bonds if the annual debt service together with the amounts paid by the county for purchase of energy in any year do not exceed the project revenues.

**County bonds for public safety radio systems outside of CIP bond cap.** County bonds issued for the public safety radio systems do not count against the dollar limits on the amount of county capital improvement program (CIP) bonds.

## Special Assessment to Abate Nuisances

A county may specially assess a property to abate a public nuisance.

## TIF Changes

**Four-year knock-down rule.** Extends the four-year knock-down rule to six years for TIF districts that were certified between January 1, 2005, and April 20, 2009. The knock-down rule requires development activity to take place on a parcel within four years after certification. Failing this, the parcel is dropped from the TIF district and is only recertified (with its then value) as part of the district when the requisite activity takes place.

**Five-year rule.** Extends the five-year rule to ten years for districts certified on or after July 1, 2003, and before April 20, 2009. The five-year rule requires the development authority to complete the district's in-district activities within five years after certification of the district.

## Employer's Duties for Health Premiums Credit

The requirement that employers who offer section 125 (cafeteria) plans provide statements of health care premiums to all participating employees is replaced to instead require employers to provide statements on request to employees who may be eligible for the 20 percent health care premiums credit on their state income tax return.

## Property Tax and Mortgage Registry Tax Administration

- **The minimum for payment via semi-annual installments** was increased from \$50 to \$250.
- **Correction of the published notice of delinquent taxpayers** was limited to only having to republish the notice for those taxpayers whose initial notice was in error, not republication of the entire list.
- **The statutory definition of "tax" which includes "fees"** was clarified so as to not exempt tax exempt properties from special assessments.

## TAXES & PROPERTY TAX RELIEF

- **The threshold for distributing the 3 percent nonstate portion of the mortgage registry tax for multi-county properties was increased from \$1 million to \$10 million.** If the principal debt or obligation secured by a multiple county mortgage exceeds the threshold, the nonstate portion must be distributed to each of the counties where the property is located.
- **County and special boards of appeal and equalization.** Effective for taxes payable in 2010 and thereafter, if a county board of appeal and equalization or special board of equalization fails to satisfy the training and quorum requirements, owners and taxpayers who could have appealed to that board can appeal to the commissioner. A fee of \$500 per tax parcel will be assessed to the county. A special board of equalization is made subject to the same training and quorum requirements that apply to county boards of equalization effective immediately.
- **The age requirement for the senior deferral program is changed** so that only one spouse must be at least 65 years old at the time deferral is initially granted. The other spouse must be at least 62 years old. Under present law both spouses must be at least 65 years old for a married couple to qualify for the deferral.

### Disrupted Access Abatements

Cities may abate the city share of the property tax on business property with a market value of \$250,000 or less if a public transportation project has impeded access to the business for more than three months resulting in a loss of revenue to the business. Any abatement granted will be paid directly to the owner or the lessee by the city. Effective for taxes payable in 2010 through 2014.

### Credit and Debit Card Authorized for Deputy Registrar Transactions

Credit or debit cards are explicitly authorized for payment of deputy registrar fees and that a surcharge may be imposed to cover the cost of the transaction. (The language was "corrected" to include the license fees and taxes in the vetoed transportation policy bill and the revisor's bill that was not passed by the House.)



# 2009 Legislative Session Report

## TRANSPORTATION & RISK MANAGEMENT

### UNEVENTFUL COMPARED TO PREVIOUS YEARS

#### Omnibus Transportation Finance Bill Passes

Unlike the past few years, the transportation funding bill was one of the first omnibus finance bills to pass the Legislature and be signed by the Governor. Because most transportation funds are constitutionally dedicated, they were not used to help solve the state's huge general fund deficit. Although general fund dollars for metro transit were cut by \$13 million, the Legislature provided for an alternative revenue stream to cover most of the shortfall (see the following paragraph). The decline in revenues from MVST and license tab fees (\$75 million below projections), and the need to replenish a depleted balance in the trunk highway fund meant that trunk highway revenues will be reduced by \$155 million. \$120 million of that reduction will come from the State Road Construction Program and the remaining \$35 million will come from other areas of MnDOT's budget including infrastructure operations and maintenance, infrastructure investment support, and MnDOT buildings.

The finance bill also addressed a projected \$63 million operating deficit plus the \$13 million general fund cut to metro transit as well as an \$8 million projected deficit for Greater Minnesota transit in the coming biennium. The projected deficit facing metro area transit was addressed by shifting funds from the livable communities and right-of-way acquisition loan funds, federal stimulus money, Met Council efficiencies, use of reserves, reducing MVST to suburban providers, and increasing the percentage of MVST allocated to transit for two years. Greater Minnesota's transit deficit was also reduced by the MVST percentage shift. (The bill reaffirms that in FY2012, the MVST split will be 60% for highways, 36% for metro transit and 4% for Greater Minnesota transit.) The net result of these changes will reduce the projected deficits for metro transit and Greater Minnesota transit to \$3 million and \$2 million respectively. A provision that would have prohibited fare increases or reductions in bus services through fiscal year 2011 was removed.

Other provisions in the finance bill include:

- CSAH funding is increased by \$95M over the previous biennium and MSAH are increased by \$22.3M
- \$40M in new trunk highway bonds authorized, half of which shall be used for construction of interchanges. The other half shall be used as a local

match for federal grants.

- Increases airport development grants by \$2.25 million for FY 2010
- Authorizes a pilot program for local governments to use design-build for transportation projects
- Road authorities must designate an individual to serve as a business liaison between the road authority and affected businesses on transportation projects. The business liaison must consult with affected businesses before and during construction to investigate means of mitigating project impacts to businesses including signage.
- Allows MnDOT to make grants to local governments for replacement for rehabilitation of a fracture-critical bridge under certain conditions.
- Gives MnDOT the authority to plan, construct and operate passenger rail.
- Allows the Met Council to contract with the U of M Center for Transportation Studies for assistance in creating a report that assesses the effectiveness of local and regional land use and transportation planning strategies that reduce or manage travel demand through land use and access to alternative transportation options.
- Allows the Met Council to establish a pilot program to sell half price transit fares to eligible charitable organizations for use by homeless persons
- The State Patrol budget was not cut

#### Bonding Bill Signed, One Transportation Project Vetoed

The bonding bill that the Legislature passed included a significant number of transportation related projects, only one of which was vetoed (\$3M for the Rail Service Improvement Program).

Bonds were authorized for the following projects:

- Local Bridge Replacement and Rehabilitation \$10M
- (includes \$300,000 for Staples highway overpass)
- Commuter and Passenger Rail Corridors Program \$26M
- Met Council Transit Corridor Program \$12.5M
- Central Corridor \$8.5M
- Duluth Airport Terminal Facilities \$4.9M
- Port Development Assistance \$4M
- Minneapolis Northtown Rail Yard Bridge \$0.6M

# TRANSPORTATION & RISK MANAGEMENT

## Federal Stimulus Legislation Boosts Transportation Funding

The American Recovery and Reinvestment Act of 2009 gave a major boost to transportation in Minnesota. \$502 million is available for highways and bridges with local governments getting approximately \$150 million of that amount. As of May 19<sup>th</sup>, \$320.4 million of the \$502 million has been obligated with \$48.4 million in outlays. Minnesota will also receive \$94 million for capital needs for both metro and Greater Minnesota transit.

## Transportation Policy Bill Vetoed

The omnibus transportation policy bill was vetoed by Governor Pawlenty. In his veto message the Governor cited his concerns with language related to the high-speed rail line to Chicago, the creation of a council to improve transit access and railroad labor provisions. Vetoed provisions include:

- Authorizes local governments to allow the operation of mini trucks on designated roadways under their jurisdiction
- Exempts propane and heating oil haulers from seasonal weight exemptions under certain conditions
- Modifies MnDOT's mission and goals to include reduction in greenhouse gas emissions
- Construction mitigation projects include rail transit projects except for the Central Corridor
- Establishes a Minnesota Council on Transportation Access to make recommendations for improving transit access throughout the state
- Requires MnDOT to submit final environmental impact statements for two segments of highway Hwy 14 (near New Ulm and Owatonna)
- All new trunk highway bridge projects must include bicycle and pedestrian accommodations if both sides of the bridge are located in a city where the bridge links a trail or bikeway
- Allows license tab fees to be paid by credit or debit card

## Local Governments Can Regulate Mini Trucks

Even though the transportation policy bill, which included a provision authorizing local governments to allow the operation of mini trucks on designated roadways under their jurisdiction, was vetoed, separate legislation was enacted that allows counties, cities or townships to authorize the operation of mini trucks on designated roadways under its jurisdiction.

## New Requirements for Mitigation of Transportation Construction Impacts on Business

The omnibus jobs and economic development finance bill, the omnibus transportation finance bill and the tax bill all had provisions regarding mitigation of transportation construction impacts on business. The jobs and economic development bill appropriated \$100,000 to develop a construction mitigation pilot program to make grants for up to 5 projects statewide

available to local governments to mitigate the impacts of transportation construction on small businesses. The transportation finance bill requires road authorities to designate an individual to serve as a business liaison between the road authority and affected business on transportation projects. The business liaison must consult with affected businesses before and during construction to investigate means of mitigating project impacts to businesses including signage. The tax bill includes a provision that allows cities to abate the city share of the property tax on business property with a market value of \$250,000 or less if a public transportation project has impeded access to the business for more than three months resulting in a loss of revenue to the business, effective for taxes payable in 2010 through 2014.

## Design-Build Now Available For Counties

A pilot program that allows local governments to use design-build for transportation projects was included in the omnibus transportation finance bill that was signed by the Governor. A project selection council including MnDOT's State Aid Division, county and city officials as well as representatives of the construction industry may select up to 15 projects over the next three years, no more than ten of which can be on the CSAH or MSAH system. The council must submit annual reports to the Legislature summarizing the selection process and evaluating the process and results including recommendations for future legislation.

## Efforts to Mandate Reductions in Vehicle Miles Traveled Modified

Legislation was introduced that would have required MnDOT, the Metropolitan Council and local governments to revise their comprehensive plans to reduce greenhouse gas emissions through a reduction in vehicle miles traveled. As a result of concerns raised by county and city lobbyists, all provisions that imposed mandates on local governments were removed. The legislation, which was incorporated into the omnibus finance bill, allows the Met Council to contract with the U of M Center for Transportation Studies for assistance in creating a report that assesses the effectiveness of local and regional land use and transportation planning strategies that reduce or manage travel demand through land use and access to alternative transportation options.

## Failure to Use Seat Belts is Now a Primary Offense

After several years of dogged determination, Senator Steve Murphy (DFL Redwing) was finally successful in making a seat belt violation a primary offense. This applies to the driver and all passengers regardless of age. The legislation also includes a provision that allows a driver to exceed the speed limit by 10 miles per hour when the driver is passing another vehicle on two-lane highways where the posted speed limit is 55 miles per hour or higher.



## 2009 Legislative Session Report

# PUBLIC SAFETY & CORRECTIONS

### 2009 Short-Term Success with Manageable Budget Cuts

In the area public safety and corrections, the 2009 Legislative Session was a relative success for counties. Counties essentially came out ahead with the repeal of short-term offenders and only slight reductions in county public safety and corrections grants. Funding for the ARMER Communication was expanded and included some new opportunities for local units of government. The Legislature also clarified that counties may use administrative fines for most basic traffic violations and keep a substantial amount of the fine revenue. Given the significant budget crisis faced by the state in 2009, results of this last legislative session in the areas of public safety and corrections would have to be considered a good result for counties.

#### Repeal of Short-Term Offender Mandate

After six years and several million dollars of lost property taxes, the state has finally repealed this underfunded mandate. Given the substantial budget crisis faced by the state, it did not seem likely going into 2009 that we would see a full repeal of the short-term offender law. In 2007 the Legislature substantially increased the reimbursement to about half the actual cost for the first time in this program's history, but unfortunately that funding level lasted only one year. The Legislature again cut the reimbursement in 2008 to address the looming budget crisis. The reimbursement was back down to a per diem of \$9.00 a day.

The repeal of short-term offenders will be phased in starting on July 1, 2009. All short-term offenders sentenced prior to that date will serve out their sentence within the county jail at the same per diem counties received last year. The appropriation in the final bill stayed the same as the base funding in 2008, which means the per diem for these last short-term offenders will likely be around \$9.00 a day.

The House bill paid for the additional cost by giving the DOC the no longer needed short-term offender county grant funding and giving the DOC an additional \$8.9 million this biennium to cover the cost for these prisoners. The repeal was made possible by a lower than projected prison population over the next few years in conjunction with the opening of the new units at the Faribault State Prison. Nonetheless, there may still be opportunities to rent beds to the state at the going market rate. The Omnibus Public Safety Finance Bill specifically indicated that the DOC should look for opportunities to rent from counties.

#### County Corrections Grants

The state did cut general county probation grants by \$2 million over the biennium. This is less than 1% of the existing grant program's base funding. The DOC has discretion where to implement this reduction within all of their community service programming. Therefore, we cannot give you an accurate number as of now on how much this will affect CCA grants and CPO reimbursements.

The Legislature also adopted the Governor's recommendation to eliminate three smaller pass-through grants to counties in the DOC budget. These are not general grants going to all counties, but were grants some counties qualified for separately. The following are the three grants that are eliminated:

- (\$367,000) Eight-day temporary hold juvenile facilities. There are four counties (Brown, **Carver**, Polk and **Washington**) that currently receive operational funding for their respective eight-day detention centers for juveniles, as defined in MS 241.0221 Subd. 5C. This is the same program that Olmsted County backed out of last year.
- (\$195,000) Eliminating the funding for two day-reporting centers. The day-reporting center option for monitoring lower-risk offenders released from prison, providing pre- and post-release services under contract with community providers, will no longer be available.
- (\$206,000) Eliminating restorative justice grants. These are small grants for sentencing circles, community conferencing and other community initiatives.

The positive news is that with the elimination of the short-term offender program, county funding of the public safety bill is a net gain despite these cuts.

# PUBLIC SAFETY & CORRECTIONS

## Administrative Penalties

State law now specifically authorizes local units of government, including counties, to issue administrative penalties replacing the standard criminal citation for vehicle safety tickets (MS169.999). The list of specific vehicle safety statutes where an administrative fine can be levied is included at the end of this section. The local unit of government (LUG) cannot assess a fine that exceeds \$60 of which 2/3rds stays with the LUG and 1/3rd goes to the state general fund. Half of the LUG's share of the administrative penalty must be credited to their law enforcement budget. The person receiving the administrative penalty as opposed to the normal citation would avoid being charged the \$75 state surcharge in addition to whatever fine is required for the ticket.

In order to institute administrative penalties, the LUG has certain steps to follow. The governing board must specifically authorize the issuance of administrative citations for a particular offense allowed under the statute. The ordinance must also prohibit their peace officers from issuing an administrative penalty that is not authorized by the statute. The LUG must provide a neutral third party to hear and rule on challenges to administrative citations. The LUG must maintain a separate category in all their financial reports regarding the collection of administrative fines. They are prohibited from mandating a quota for issuance of administrative citations. The LUG must use the standard administrative penalty citation form to be developed by the Commissioner of Public Safety by October 1, 2009. Administrative citations may not be issued to an individual who has a commercial driver's license.

Counties are strongly encouraged to develop an administrative penalty structure which will allow for greater revenue flow for minor offenses. Counties should also consider working with some of their cities to jointly administer this citation system because it will provide an economy of scale for fine collection and appeals. (A list of the statutes for which administrative penalties can be issued is at the end of this section.)

## ARMER Communication Network

The state has maintained its commitment for the statewide public safety communications systems (ARMER). There was no attempt to raid any of the funds raised by the 65¢ on telephone bills and those resources have been maintained for public safety communications efforts. The final finance bill contained a \$5 million new grant program to assist local units of government in transitioning 911 systems to handle Web phones and other next-generation communication systems. It also has \$9.9 million over the biennium for the state to develop this next generation 911 system.

The state also restructured the governance of the statewide radio board. The state designated the Statewide Radio Board as Minnesota's State Interoperability Executive Committee. Under this designation, the Board is required to: (1) develop a statewide plan for local and private public safety communication interoperability that integrates with the MN emergency operation plan; (2) develop guidelines and standards for local and private public safety communications interoperability within MN; (3) promote coordination and cooperation among public safety agencies; (4) advise the Commissioner of the Department of Public Safety; (5) develop guidelines and standards for the use of interoperability frequencies on all frequency spectrums assigned to public safety; and (6) develop guidelines and standards that support interoperability with adjoining states and bordering Canadian provinces.

## Booking Fee

The \$10 cap on jail booking fees was eliminated. Now the only restriction on the amount of the booking fee is that it must not exceed what is necessary "to cover costs incurred by the county in the booking of that person." Therefore, as of August 1 of this year, you may modify your booking fees to cover your actual booking costs. MICA would strongly suggest that county jails develop a defensible record of the costs incurred for booking per-person and make sure it is noted in your board records when adopting a specific booking fee. Thanks to Keith Carlson for successively shepherding this provision into the local government mandate reduction bill (HF1849).

## Court and Public Defender Funding

The courts and public defender cuts were minimal. They are essentially around a 1% reduction over their present base funding. The Legislature was able to balance their budget by increasing fees by \$41.6 million. They also had about \$5 million in fund transfers from surpluses in some dedicated accounts.

## Appointment of Judicial Referees

The courts now have authority to appoint a referee to run conciliation courts statewide. Currently, the authority is limited to the second and fourth judicial districts, and this section allows it statewide. Counties should consider working with the courts to identify individuals who may do the functions of both as the conciliation court referee and the neutral third party to hear challenges to administrative citations under MS169.999.

## Electronic Notice of certain Juvenile Offenders at School Facilities

Currently required notice to school superintendents or principals of certain juvenile offenders in attendance at their facilities can now be done by electronic means, e.g. e-mail or fax.

# PUBLIC SAFETY & CORRECTIONS

## Brandon's Law for Missing Persons

The state specifically mandates certain requirements for dealing with missing adults. This law expands the "Minnesota Missing Children's Program" to include adults who are missing and endangered. It lists the duties of law enforcement agencies in accepting and investigating missing person cases. The act provides that the BCA shall offer guidance if there is a delay in determining which law enforcement agency must take a missing person report. The Legislature also created a working group, lead by the BCA, to develop standardized forms and procedures to be used by law enforcement in missing person cases.

## Apprehension and Detention Orders

The state clarified that apprehension and detention orders against persons on conditional or pre-trial release in Community Corrections Act (CCA) counties extends outside the issuing county. Therefore, the order issued by one county may be exercised by peace and probation officers throughout the state.

## Notice of Decision Not to Prosecute

Under current law, a prosecutor must provide victims of domestic assault and harassment with information on civil protection orders. This year the state included victims of criminal sexual conduct in the list of those that must be notified.

## Seatbelts

The Legislature finally adopted the provision making failure to wear a seatbelt a primary offense, thereby allowing an officer to stop an individual solely on the probable cause of a violation of the seatbelt law. Previously one could only be cited if stopped for another offense. This provision will take effect June 9 of this year. Rep. Tom Rukavina (DFL-Virginia) successfully offered an amendment that would permit a driver to exceed the speed limit by 10 mph when passing another vehicle on a two-lane highway with a speed limit of at least 55mph.

The Legislature further required appropriate restraints for children under age of eight years of age and individuals shorter than 4'9" while a passenger. The law defines "child passenger restraint system" as a device that meets federal standards. Prior to the change, a child passenger restraint system was required to transport children who are under age four, after which age the child is required to wear a seatbelt. These changes go into effect July 1, 2009.

## Criminal and Traffic Surcharge

The criminal surcharge did not increase from its present \$75. The Legislature clarified that the criminal and traffic surcharge shall only be imposed once per case, even if the defendant is convicted of more than one offense in a case. There are differing applications across the state from county to county. A potential negative effect on counties was a provision requiring the criminal and traffic offender surcharge to be assessed on a person who completes a diversion or similar program for a traffic offense. If a county adopts administrative penalties for traffic offenses, this would circumvent the surcharge as it relates to those specific traffic violations. The Legislature did increase the parking surcharge from \$4 to \$12.

## Local Correctional Officers Contracts

State law requires that correctional officers who are subject to a merger of local correctional facilities are entitled to their accumulated vacation and sick time.

## Evidence-based Probation Practices

Mandates a study and report to the Legislature on evidence-based practices in probation with corroboration from county corrections.

## MN Justice Information Services (MNJIS)

The two information service divisions at the BCA – the CriM-Net Program Office and the Criminal Justice Information Systems (CJIS) – were reorganized into one new organization, MN Justice Information Services (MNJIS).

## ITV

The Legislature did not adopt any changes regarding interactive television appearances in criminal proceedings. The Supreme Court has put together a task force that will start working this summer to develop consensus and protocol for ITV appearances in criminal matters. This would be a significant savings to counties in reducing transportation costs for sheriffs' offices.

## County Based Revocation Center Pilot

Four different community corrections entities are encouraged to create a report on how they would develop intermediate sanction revocation centers. **Olmsted County** is included as one of these four entities. The goal is to look at different possible options for dealing with individuals who violate their term of release from prison as opposed to simply sending them back to prison. There is no obligation to do anything and the Legislature is simply asking for insight from these jurisdictions on how they would do intermediate sanction revocation centers.

# PUBLIC SAFETY & CORRECTIONS

## National Instant Criminal Background Check System

Minnesota adopted the federal National Instant Criminal Background Check System (NICS) Improvement Act of 2007, which requires states to include mental health records in the information provided to the FBI's background check system for gun purchases. The federal Act also requires states to provide a process by which a person who has become firearms ineligible for mental health reasons can have his or her eligibility restored following treatment and recovery from the disqualifying condition. That federal legislation was prompted by the fatal shootings of 33 college students at Virginia Polytechnic Institute and State University in Blacksburg, Virginia on April 16, 2007. In the present enactment, Minnesota complies with the joint requirements of the federal Act by directing the timely reporting to NICS of firearms disqualifying mental health records, and by providing a process for restoring firearms eligibility when appropriate. With that, it is expected that Minnesota will qualify for incentive funding being provided under the federal enactment.

## Prostitution and Human Trafficking

The state has updated several of the statutes dealing with prostitution and human trafficking during this last session: 1) expands the availability of these prosecutions on driving record data; 2) enhances penalties for repeat offenders of human trafficking and prostitution; 3) expands the definition of a public place for enhancing a prostitution charge to include, "steam room, sauna, massage parlor, shopping mall and other public shopping areas"; 4) provides a 20-year felony for engaging in the sex trafficking of an individual under the age of 18 years of age and a 15-year felony for engaging in the sex trafficking of any other individual; 5) created an enhanced 25-year felony sentence for a repeat sex trafficking offense; 6) adds solicitation, inducement, and promotion of prostitution to the "crime of violence" definition which results in a firearm prohibition.

## Sheriffs and Coroners Practicing Law

The law prohibiting sheriffs, deputy sheriffs, and coroners from practicing law was repealed.

## *What Did NOT Happen...*

**Public Defender CHIPs** representation was not seriously considered by the 2009 Legislature. With the Board of Public Defense refusing to represent adults in CHIPs cases last year, the issue will be coming to a head this summer with cases arising out of Rice and Crow Wing counties.

**Adam Walsh Act** is a federally mandated national sex offender registry program that if not adopted by the state will cause a reduction in federal grants. Minnesota did not act on any of the requirements created by this Act and the administration will ask for an extension so as not to lose federal grant dollars. If Minnesota adopts provisions in the federal law, that could lead to significant unfunded mandates for their local units of government.

**Medical Marijuana** bill moved further in the process this year by actually reaching the governor's desk. The governor sided with law enforcement and vetoed the bill. Interestingly, on the day he vetoed the bill he hired one of the bill's chief lobbyists, former Representative Chris DeLaForest, to be the Director of Legislative and Cabinet Affairs within the governor's office.

**Expansion of Health Care in Jails** so that individuals who are under the Minnesota Care program retain coverage while jailed did not occur. Minnesota Care does not allow individuals to remain covered during pretrial incarceration nor allow them to get back under coverage quickly after serving time like other public funded healthcare.

**Expansion of the payables list** proposed by the court failed to survive the process. The court proposed to increase the number of misdemeanors that can be placed on the payable list and treated as petty misdemeanors for collection purposes. The big savings for counties from this proposal would have been in processing individuals who have outstanding warrants for unpaid misdemeanor fines. They would have been sent to collection agencies instead of possibly ending up on our caseload if they are picked up with an outstanding warrant.

## PUBLIC SAFETY & CORRECTIONS

Administrative citation for a vehicle operator may be issued for the following violations:

- 169.14 Speed under ten miles per hour in excess of the lawful speed limit
- 169.30 Failure to obey stop or yield signs
- 169.46 Hitching a sled, bicycle, or other similar device onto any motor vehicle
- 169.467 – 169.469 Motor vehicle safety
- 169.47 Unsafe equipment
- 169.471 No television or headphones while driving
- 169.475 Use of wireless communication device
- 169.48 Vehicle Lighting
- 169.49 Headlamps
- 169.50 Rear Lamps
- 169.51 Clearance and Marker Lamps
- 169.52 Projecting Load; Light or Flag
- 169.522 Slow-moving Vehicle, Sign Required
- 169.53 Lights for Parked Vehicles
- 169.541 Lighting Exemption for Law Enforcement; Standards
- 169.55 Lights on All Vehicles
- 169.56 Auxiliary Lights
- 169.57 Vehicle Signals
- 169.58 Identification Lamps
- 169.59 Warning Lights
- 169.60 Distribution of Light
- 169.61 Composite Beam
- 169.62 Certain Lights Permitted on Old Motor Vehicles
- 169.63 Number of Lamps
- 169.64 Prohibited Lights; Exceptions
- 169.65 Specifications for Lighting and Other Devices
- 169.66 Hearing on Specifications
- 169.67 Brakes
- 169.68 Horn, Siren
- 169.69 Muffler
- 169.693 Motor Vehicle Noise Limits
- 169.70 Rear View Mirror
- 169.71 Windshield
- 169.72 Tire Surface; Metal Studs
- 169.721 Unsafe Tires; Definitions
- 169.722 Rules for Tire Safety
- 169.723 Tires Considered Unsafe
- 169.724 Prohibition; Operating Automobile with Unsafe Tires
- 169.725 Tire Safety Enforcement
- 169.726 Automobile Sale Prohibited Unless Tires Are Safe
- 169.727 Unsafe Tires; Misdemeanor
- 169.73 Bumpers, Safeguards
- 169.733 Wheel Flaps on Truck and Trailer
- 169.734 Automobile Fenders
- 169.74 Safety Glass
- 169.743 Bug Deflector
- 169.75 Flares, Flags, or Reflectors Required





# 2009 Legislative Session Report

## HEALTH & HUMAN SERVICES

### 2009 LEGISLATIVE SESSION: FINAL CHAPTER NOW WRITTEN

While the 2009 legislative session officially ended on May 18, 2009, the responsibility for filling the \$2.7 billion budget hole shifted to Governor Tim Pawlenty. In the waning days of the session, Pawlenty indicated that there would be no special session, no government shut-down and, if the Legislature, in his opinion, could not complete the task at hand, he would exercise his executive authority to cut spending through a process known as “unallotment.” He subsequently asked the Legislature to submit recommendations, but received little response.

On Tuesday, June 30, the last day of the fiscal year, the Administration presented its final unallotments to the Legislative Advisory Commission in the amount of \$2.7 billion. As anticipated, cuts to health and human services were part of the solution (\$73 million in FY2010 and \$127.7 million in FY2011, for a total of \$200.7 million). The HHS cuts are as follows:

	FY2010	FY2011	FY2010-11		FY2010	FY2011	FY2010-11
<p><b>Suspend DD Waiver Allocation Waiver Growth Factor</b></p> <p>Note: This unallotment will be implemented by suspending, for 18 months (from January 2010 to June 2011) the 1% growth factor in DD waiver county allocations.</p>	(1,493)	(4,481)	(5,974)	<p>of methamphetamine abuse treatment and prevention grants. Two other grant categories (prenatal alcohol and fetal alcohol syndrome intervention) remain on the list of unallotments.</p>			
<p><b>Suspend ICF/MR Occupancy Rate Adjust</b></p>	(225)	(225)	(450)	<p><b>Temporarily Cap Chemical Dependency Payment Rates</b></p> <p>Note: The reduction will be achieved by capping CD treatment payment rates at 160% of average.</p>	(3,622)	(3,622)	(7,244)
<p><b>Reduce County Mental Health Grants</b></p> <p>Note: The cuts are for adult mental health grants only. They will start with this July’s payment and will continue through CY 2010. The cuts will mimic DHS’ estimate of the increased FMAP (Federal Medicaid Participation Rate) for mental health targeted case management.</p>	(5,000)	(3,770)	(8,770)	<p><b>Restructure State Operated Services – Revenue</b></p> <p><b>Restructure State Operated Services – Expenditures</b></p> <p>Note: DHS had initiated a plan to transform SOS into a statewide specialty health care system. The Minnesota Sex Offender Program is not impacted by these changes.</p>	3,550	5,870	9,420
<p><b>Temporarily Eliminate Two Chemical Dependency Grants</b></p> <p>Note: The amount to be unallotted was decreased by \$600,000, reflecting removal of the category</p>	(393)	(393)	(786)	(422)	(4,588)	(5,010)	

# HEALTH & HUMAN SERVICES

	FY2010	FY2011	FY2010-11		FY2010	FY2011	FY2010-11
<b>Child Support Enforcement County Grants</b>	(3,400)	(3,400)	(6,800)	<b>Suspend Construction Projects, Grant Red</b>	(3,600)	(3,600)	(7,200)
Note: Eliminates all state grants to counties for child support administrative costs. Through the federal stimulus bill, counties are eligible to receive new federal matching funds for child support incentive payments; the stimulus funds will offset the loss of the unallotted state funds.				<b>Delay Continuing Care Grant Payments By One Month</b>	0	(2,500)	(2,500)
<b>Eliminate Carry-Forward of AICW Grant</b>	(600)	0	(600)	<b>Limit ICF/MR Variable Rates</b>	(182)	(700)	(882)
<b>Reduce Children &amp; Community Serv. Grants (CCSA)</b>	(16,900)	(22,500)	(39,400)	<b>Reduce PCA Worker Hours to 275/Month</b>	(825)	(1,326)	(2,151)
Note: Block grant funds to counties reduced by 25% in FY2010 and 33% in FY2011.				Note: The Legislature had already Reduced the number of hours a PCA could work to 310 hours per month/ per individual. <b>Legislators have identified this as an instance where The Governor has exceeded his authority by changing legislated policy, as opposed to merely reducing or eliminating legislative appropriations.</b>			
<b>Eliminate Emergency GA/MSA</b>	(6,000)	(9,000)	(15,000)	<b>Suspend Nursing Facility Rebasing</b>	(3,420)	(2,520)	(5,940)
Note: This unallotment is somewhat mitigated by the availability of federal stimulus dollars, including the newly-enacted state expansion of emergency assistance funded through TANF stimulus funds.				<b>Add'l 1.5% Reduction - Non-Primary Care</b>	(2,100)	(2,775)	(4,875)
<b>Elim. Special Diet Funding - MSA Grants</b>	(2,133)	(3,200)	(5,333)	<b>Add'l 1.5% Reduction – Specialists</b>	(1,905)	(2,445)	(4,350)
<b>Group Residential Housing (GRH) - 5% Supp. Service Rate Reduction</b>	(467)	(706)	(1,173)	<b>Elim. MA Critical Access Dental Payments</b>	0	(6,200)	(6,200)
<b>Elim. Funding for Redesign Council</b>	(350)	0	(350)	<b>Elim. GF Funding for Outreach Incentives</b>	(1,196)	(6,374)	(7,570)
Note: This takes away the one-time funding for the new council, comprised of legislators, as well as DHS and county representatives, that would have helped offset expenses of the counties' redesign project.				Note: This program is currently funded with a combination of GF and HCAF dollars; the HCAF appropriation for this program will continue. The effective date is January 1, 2010.			
				<b>Aligning Asset Limits</b>	0	(6,100)	(6,100)
				<b>Note: This is another instance where legislators believe that the Governor has exceeded his authority by changing legislated policy, as opposed to merely reducing or eliminating legislative appropriations.</b>			

# HEALTH & HUMAN SERVICES

**FY2010 FY2011 FY2010-11**

<b>End GAMC Effective March 1, 2010</b>	(15,000)	0	(15,000)
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Note: Governor Pawlenty previously eliminated GAMC through use of the line-item veto, effective May 2010. His unallotment ends the program several weeks earlier.

<b>Increase Managed Care Withhold to 9.5%</b>	(3,788)	(8,413)	(12,201)
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<b>Add'l Inpatient Hospital Payment Delay</b>	0	(5,500)	(5,500)
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<b>Add'l Non-Inpatient Acute Payment Delay</b>	0	(23,400)	(23,400)
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When the legislative session opened on January 6, the state was facing a \$4.8 billion projected budget deficit. The problem grew even worse when the February forecast indicated a \$6.3 billion projected deficit. Fortunately, Minnesota received \$1.8 billion in federal stimulus money, which somewhat softened the blow.

Even with the federal money, a balanced state budget was not attained during the legislative session, and unallotments announced by the Governor will begin taking place on July 1, 2009.

Unallotment has only been used three times in the previous 30 years: (1) Governor Perpich unallotted \$109.8 million in 1986; (2) Governor Quie unallotted \$195.1 million in 1980; and (3) Governor Pawlenty unallotted \$281 million in 2003. While unallotment allows the Governor to unilaterally withdraw funding for programs in order to balance the budget, it does not provide authority to change eligibility criteria for the state's public health programs, such as Medical Assistance and Minnesota-Care for parents.

When the state reduces funding within the M.A. program, it also loses the related federal dollars. Therefore, the M.A.-related unallotments will cost the state an additional \$72.05 million that it would have otherwise received from the federal government.

**Omnibus Health and Human Services Bill  
(Chapter 79)**

The Omnibus Health and Human Services bill, signed by the Governor late in the session, reduces \$489 million in HHS in the first biennium (2010-2011) and \$741.5 million in the second biennium (2012-13). The Governor did line-item veto the \$381 million appropriation for General Assistance Medical Care (GAMC) in the second year of the biennium.

**Key provisions include:**

- The State-County Results, Accountability and Service Delivery Reform Act, which was the counties' alternative to the Governor's 15 regional human services authorities. **Note: Through unallotment, Governor Pawlenty cut \$350,000 in one-time funding for the Redesign Council.**
- Changing the treatment of self-employment business assets in Medical Assistance and MinnesotaCare. Effective January 1, 2011, or upon Federal approval, whichever is later. Reflects savings of \$130,000 in FY-2011 and \$5.6 million in FY12-13.
- The Governor's proposal that one-time TCM payment in the amount of \$32.7 million be recovered from counties. One-half of the payment is due by February 1, 2010; the other half no later than May 1, 2011.
- Elimination of the use of a broker in the metropolitan area for Access Transportation Services (ATS). This occurred when the House agreed to the Senate proposal in conference committee. This will save the state \$4.788 million for FY10-11 and \$4.545 million for FY12-13. Reimbursement rates for ATS in the rural and super-rural areas of the state will be increased.
- The Governor's proposal to limit disabilities waiver growth. CADI waivers growth is limited to 95 per month.
- The reduction of rates to most long-term care and basic care providers by 3%; the reduction of rates for specialty physicians by 5%. **Note: Through unallotment, Governor Pawlenty reduced rates for long-term care and basic care providers an additional 1.5%, as well as an additional 1.5% for specialty physicians.** Specialty physicians do not include preventive services, office or other out-patient services billed by general/family practice, internal medicine, geriatrics, pediatrics or advanced practice nurse and physicians' assistants. Mental health services, dental, medical transportation and prescription drugs are also not included.
- The limitation of personal care attendant (PCA) hours to 310 per month/per individual and requirements for training and enhanced supervision. PCA recipients must need help with at least one activity of daily living (ADL), such as dressing, grooming, bathing and toileting, to qualify for public assistance. **Note: Through unallotment, Governor Pawlenty further reduced the maximum hours to 275 per month. Legislators have expressed their concern that this exceeds the Governor's authority and changes legislated policy.**
- The reduction of the work participation cash benefit for persons exiting DWP or MFIP from \$75 to \$50 per month.
- The limitation of adult foster care rates to 95% of current rates.
- MinnesotaCare coverage for youth aging out of the foster care system.

# HEALTH & HUMAN SERVICES

## The following items were not included in the final budget:

- The Governor's proposed cuts to the Statewide Health Improvement Program (SHIP). SHIP remains fully funded at \$47 million for the biennium. This will go a long way toward addressing the statewide initiative intended to reduce obesity and smoking.
- The Senate's proposal requiring counties to pay an increased cost share for the Minnesota Extended Treatment Option (METO).
- The Governor's Northstar Care for Children proposal.
- The Governor's proposal to break up the CCSA block grant into smaller, targeted allocations.
- The proposal to merge the Health Care Access Fund into the General Fund. Instead, it was preserved as a dedicated account.
- Cuts to health care eligibility for adults without children or MinnesotaCare eligibility for parents. Federal MOE language forbade states that accepted stimulus money from changing eligibility in these health care programs.
- Cuts to optional services (chiropractic, dental, podiatry, rehabilitation services).
- Reductions to MFIP.
- Extension of MFIP 60-month limit.

### Elimination of GAMC Effective March 2010

(Note: Through unallotment, GAMC coverage will end one and one-half months sooner than would have occurred as a result of the line-item veto of GAMC funding for 2011).

Although the Governor signed the Omnibus Health and Human Services bill, there was one very large line-item veto. General Assistance Medical Care (GAMC) will be eliminated next year, which will cut \$381 million per year from the state budget. More than 30,000 Minnesotans who receive GAMC are at or below 75 percent of the poverty line, meaning they make no more than \$8,000 per year. It is estimated that about 70 percent of individuals on GAMC have a mental illness, chemical dependency or both and usually some other co-occurring condition, such as diabetes or HIV. Simply put, GAMC recipients are the poorest of the poor and the sickest of the sick. These individuals rely on the program for emergency care and medications. Although the Administration has suggested that some of these individuals may qualify for MinnesotaCare, most are not able to afford the required premiums.

Opponents argue that costs will increase in the long run when those dropped from GAMC show up in emergency rooms, where hospitals are both morally and legally obligated to provide care without regard to payment. It is estimated that hospitals receive 40 percent of the GAMC funding in terms of inpatient and outpatient services. They already face millions of dollars in uncompensated care and will likely be required to lay off thousands of people if this program is eliminated.

In his veto message, Governor Pawlenty stated that the rate of growth in health and human services spending is forecasted to grow by 15 percent in the next biennium and by 30 percent in the following biennium and simply cannot be sustained. He further indicated that the impact of the line item veto would not occur immediately, so the Legislature has the opportunity to address the change further if it so chooses. In response, the House, on the Sunday before adjournment, spent several hours on the floor in an attempt to override the line item veto. It failed on a party-line 87-47 vote. Ninety votes are needed to override a Governor's veto.

Also in his message to the Legislature regarding the Omnibus Health and Human Services bill, the Governor made reference to two items directly affecting counties. First, he indicated that he had "significant concerns regarding provisions prohibiting a special transportation broker, as well as the provisions related to the automatic renewal of MinnesotaCare eligibility." Secondly, he noted that he was "disappointed in the county human services redesign provisions contained in the bill." He indicated that they are timid and lack boldness. He noted that counties can already do multi-county human services delivery, program by program, under current law. He opined that the requirements for multiple binding agreements with the state simply add complexity and bureaucratic structure to the current process.

### Special Transportation Broker

Beginning last fall, a Special Transportation Services Work Group was convened to look at the issue of Special Transportation Services (STS) and Access Transportation Services (ATS). The work group reviewed the issues of certification denials, the down-coding from STS to ATS, which has a lower reimbursement rate, and the issue of increasing the reimbursement rate for rural and super-rural counties. Several bills were introduced, and most included the elimination of the broker model. Counties testified against the measure, indicating that we simply do not have the resources to take over the functions of the broker, and that this was yet another cost shift. Unfortunately, the measure to eliminate the broker in the metro area for ATS was included in the Omnibus Health and Human Services bill. The Legislature was able to book savings for the state in the amount of \$4.788 for FY10-11 and \$4.545 for FY1213 by doing so. Faced with very little time to react to this legislative change (July 1, 2009), the 11 metropolitan counties are in the process of reviewing their options as they prepare to take over the responsibility for ATS services.

### State-County Results, Accountability and Service Delivery Reform Act

Early in the session, Governor Pawlenty proposed legislation that would have removed the obligation of individual counties to administer human services and transfer authority to 15 human

# HEALTH & HUMAN SERVICES

services authorities, which would have been comprised of a number of consolidated county entities. Under his original proposal, a single county with a population of 250,000 people or more would have been allowed to serve as its own authority, with smaller counties required to form consortia based on minimum population levels and geographic proximity. Joint powers boards would have been required, and DHS would have been in charge of assigning those counties not picked up by a consortium. Finally, by June 1, 2012, and each June thereafter counties would have been required to meet performance standards as defined by DHS.

The Administration indicated that the intent of the proposal was to create savings within the system, while enhancing oversight, ensuring increased accountability and improving the overall effectiveness of the services delivered to Minnesotans using human services. Participating counties were also given the incentive to “earn back” part of the county aid that they would otherwise lose under the Governor’s budget proposal.

Counties responded with their own redesign initiative. While the Governor’s proposal would consolidate service delivery through an artificially-simplified design that may interfere with already-established cooperative agreements, the counties’ alternative proposal would redesign the structural relationship between the state and counties to promote greater accountability and productivity. It is an opt-in approach that would build on current relationships and regional needs.

Up until the very end of session, the Administration expressed its concerns that the county initiative would create a new council, and that the proposal makes no provision for those counties that are not selected to be part of a collaborative group. The Administration indicated that it was flexible in terms of its original maximum of 15 regional human services authorities, and that it had lowered the threshold of being one’s own authority for counties with populations of 250,000 to 65,000. In the end, the counties agreed to change the population threshold to 55,000, as opposed to its original 30,000. The counties’ initiative was amended into the Omnibus Health and Human Services bill and has become law.

**Note: Through unallotment, Governor Pawlenty cut \$350,000 in one-time funding for the Redesign Council.**

## Personal Care Assistance (PCA) Reform

Early in the session, the Office of the Legislative Auditor (OLA) released a report regarding the state’s Personal Care Assistance Program. It was noted that the cost for PCA use has gone up 164% in the last five years (from \$153 million in 2002 to \$404 million in 2007). The report reflects that the program provides important, but increasingly costly services, and that demand is only going to increase in the coming years. There was a general discussion about the need for improved state oversight and regu-

lation. Specifically, it was noted that the program lacks state guidance on the training of PCAs. The report also notes that there has been a certain amount of fraud associated with the program. For example, the report cites cases where PCAs had put in claims for more than 24 hours per day/per caregiver. In response, the Legislature made some changes, including:

- Changing eligibility, thereby saving \$24 million. As many as 600 people are expected to be impacted. Beginning January 1, 2010, PCA recipients must need help with at least one activity of daily living (ADL), such as dressing, grooming, bathing and toileting, to qualify for public assistance. In July 2011, the ADL requirement is increased to two.
- Limiting PCA hours to 310 per month/per individual. **Note: Through unallotment, Governor Pawlenty further reduced the maximum hours to 275 per month. Many legislators believe that the Governor has exceeded his authority in this case.**
- Requiring training.
- Requiring enhanced supervision.

It should be noted that DHS, in consultation with advocates, consumers and legislators, will work toward developing alternative services for people with mental illnesses and behavioral challenges who will no longer be eligible for PCA services.

## Corporate Foster Care

Early in the session, we were informed that the Association of Residential Resources in Minnesota (AARM) would be proposing legislation to make licensing changes for corporate foster care facilities that care for three or fewer people. Because the inspection fee issue has been contentious in the past, MICA met with AARM representatives for the purpose of amending the language to ensure that counties will retain the authority to collect inspection fees for these facilities. The language was agreed to and included in the Omnibus Health and Human Services bill.

## MR/RC Overspending Repayment

In 2007, counties worked to convince DHS to cancel repayment requirements for MR/RC waiver over-expenditures by certain counties in 2004. Three of the four counties – St. Louis, Fillmore and Steele - were relieved of the repayment obligation. Carver County was not given relief and is required to pay back nearly \$1 million by June 30, 2009. This year, at MICA’s request, Representatives Paul Kohls (R: Victoria) and Joe Hoppe (R: Chaska) introduced legislation, which would have required that Carver County be given the same relief as the other three counties.

# HEALTH & HUMAN SERVICES

With the agreement of Chairman Tom Huntley, Representative Kohls offered the bill as an amendment to the Omnibus Health and Human Services bill. During the floor discussion, Representative Huntley agreed that it was not fair that Carver County was the only one of four counties responsible for repaying the state and agreed to continue working with Representative Kohls on this issue. Representative Kohls then withdrew the amendment.

## HHS Mandate Relief (Chapter 174)

Early in the session, a Health and Human Services Budget Division Legislative Mandates Working Group was created. The group was chaired by Senator Ann Lynch (Olmsted). At Senator Lynch's request, MICA provided a list of mandates and MOEs to be reviewed. Several hearings were held, and MICA was given the opportunity to testify. We are happy to report that mandate relief legislation reached final passage by unanimous vote in both the House and Senate just 30 minutes before the Legislature adjourned on May 18.

Several items made it into the final package, including:

- Authorizing the placement of children in out-of-state Rule 5 residential treatment facilities if they are closer than an in-state institution. Counties can claim reimbursement for the treatment expenses through Medical Assistance, but the facility must be inspected and certified according to Minnesota standards.
- Permitting the cremation of indigent deceased persons under certain circumstances. Counties must attempt to contact the decedent's spouse or next of kin. If a faith tradition is not known, the county may cremate the body.
- Allowing monthly caseworker visits of children in foster care to be provided by other agency staff involved with the case – not just the case manager.
- Giving counties two extra days to complete level of care determinations for children placed in facilities for emergency treatment (from three working days to five working days).

## Anoka County

At the request of Anoka County and MICA, a bill that would allow DHS and county agencies access to the Department of Corrections' data for background studies conducted by county agencies, was introduced by Senator Linda Scheid and Representative Gail Kulick Jackson. Shortly after its introduction, the DOC contacted Anoka County and agreed to work with counties in an attempt to procure better data.

Also at the request of Anoka County and MICA, Representative Jim Abeler and Senator Linda Berglin introduced legislation

designed to help prevent Medical Assistance fraud. The legislation requires capital and operating expenses of a trade or business to be considered earned income to the household if the capital and operating costs are used for personal expenses. It also requires the specified assets to be disclosed to the local agency at the time of application and at the time of eligibility redetermination and verification upon request of the agency. This proposal was a reaction to a situation involving individuals who were funding elaborate lifestyles out of their business expense accounts. Since this is presently not accounted for when determining eligibility, these people qualified for Medical Assistance, despite having substantial assets. The proposal was included in the Omnibus Health and Human Services bill. The fiscal note reflects savings of \$130,000 for FY2011 and \$5.6 million for FY12-13.

## Mental Health Maintenance of Effort (Chapter 167)

Due to tough economic times, counties have shown a need for flexibility as it relates to maintenance of effort (MOE). To that end, an agreement was reached between the counties, the state and the advocacy community, making it easier for counties to predict how much they must spend each year and to determine what will actually count towards that spending. It was agreed that base funding can be decreased due to major changes in funding from the state and federal governments, but it has to be done on a proportional basis. Also, counties can have their base reduced if they experience a substantial decline in population and their mental health expenditures are substantially higher than the state average. Under that scenario, however, the commissioner must determine that mental health services in the county will not be hurt.

Counties had many opportunities to testify on this measure. MICA county representatives did an excellent job presenting county concerns relative to MOEs. Many legislative committee members expressed their concern with regard to the process, which they saw as clearly archaic and unworkable.

In the end, the compromise proposal agreed to by counties, DHS and the mental health advocacy community reached final passage by huge margins. The Senate vote was 62-1; the House vote was 134-0. Governor Pawlenty signed the measure into law on May 22.

## Human Services Reform (Chapter 88)

In an effort to provide a more equalized way of funding and providing human services, DHS is being required to develop a proposal and submit it to the Legislature by February 2010. The commissioner, in consultation with counties, advocacy and provider organizations, as well as the Department of Revenue is being directed to develop a proposal for establishing and transitioning from current maintenance of effort and matching

# HEALTH & HUMAN SERVICES

fund requirements to a new consolidated local county property tax contribution across all mandated health and human services. The following objectives shall be considered in designing the new system:

- providing a funding mechanism that is relatively simple to predict and administer at both the state and local levels;
- providing application across programs;
- maintaining current services, adjusted for fluctuations in demand for services;
- clarifying property tax impacts of funding decisions;
- ensuring that all eligible citizens have equal access to mandated services; and
- enabling the service system to maximally focus county staff time on service delivery.

In addition, efforts to control state and county costs and service utilization rates shall focus on eligibility, level of difficulty, and other programmatic priorities. The new system must be designed and implemented in a way that:

- ensures that counties have the resources available to continue to serve clients at the current level;
- ensures the ability to earn federal match funds;
- provides for as much stability as possible in overall property tax demands after full implementation;
- provides that increased county contributions shall be in a form that clearly indicates the impact on local property taxes at both the state and county level; and
- provides for mechanisms that mitigate property tax increases in a county in any given year.

## Youth Aging Out of Foster Care (Chapter 106)

Young people in foster care have the option of staying in foster care past their 18<sup>th</sup> birthday if they feel they are not yet ready to live on their own. A specific plan will be developed that relates to his or her vocational, educational, social or maturational needs and, to the extent that funds are available, any foster care, housing or counseling benefits tied to the plan. Additionally, counties must provide the young person with a name and phone number of someone that they may contact if they need help or information up until age 22.

## Other Proposals That Did Not Pass

**Northstar Care for Children:** About half-way through the session, the Governor's Northstar Care for Children proposal was discussed and amended into a child welfare bill in the House. Under Northstar, the rates for foster care would have been lowered and the savings would have been used to raise the rates for adoption care. Proponents argue that this would provide incentives for families to adopt children, rather than keeping them in foster care limbo. In the end, an amendment was offered to take the foster care language out, while leaving in the increase for adoption care. While the bill as introduced was budget neutral, the proposal then had a fiscal impact and died of its own weight.

**CCSA Block Grant Changes:** In his budget, the Governor recommended converting the CCSA Block Grant into smaller, targeted allocations. His proposal broke it down as follows: (1) 56.5% for Children's Services; (2) 28% for Mental Health and Chemical Dependency; and (3) 15.5% for Adult and Disability. This proposal was heard and amended into an MFIP bill in the House, but the bill ultimately failed to pass out of committee and did not become law. **Note, however, that, as a result of the unallotment process, CCSA grants are being cut by 25% in FY2010 and 33% in FY2011.**

**METO Cost Share:** The Minnesota Extended Treatment Options program is a program of last resort for certain developmentally disabled clients who usually have a dual diagnosis and who are a danger to either themselves or others. METO is a 50-bed facility located in Cambridge. Toward the end of session, the Senate added language to the Omnibus Health and Human Services bill that would have required counties to pay an increasing cost share for any resident in METO. The county's payment would have been made from its own resources and would consist of a certain percentage of care spent on the client according to the following schedule: (1) 10 percent for the first 90 days; (2) 20 percent for days 91 to 270; and (3) 50 percent for any days over 271. Because the program is very expensive (\$800 per day), this was a significant concern to counties. The proposal would have booked several millions of dollars in state savings (\$2.7 million for FY10-11 and \$9.6 million for FY12-13, but was not included in the final bill.





## 2009 Legislative Session Report

# PUBLIC HEALTH

### PUBLIC HEALTH PROVISIONS

The Legislature debated several items of interest in the public health arena. First and foremost was the preservation of the budget for the Statewide Health Improvement Program (SHIP). SHIP remains fully funded for two years - \$20 million for FY2010 and \$27 million for FY2011. This is truly a success and shows the commitment that the Legislature has to prevention. In his proposed budget, Governor Pawlenty had recommended cutting the budget for the program nearly in half (to \$24 million) and extending it from two years to four. Because SHIP is funded through the Health Care Access Fund, the Governor did not “unallot” in this area.

#### Other Key Issues:

- No cuts to local public health grants.
- The shift for the Local Public Health Block grant is included. Payments will change from monthly to quarterly, and the April 2010 payment will be delayed until July 2010.
- The colorectal cancer prevention pilot project is funded for one year.
- An Autism Spectrum Disorder Task Force was created.
- A \$50 fee for monitoring of wells that are unsealed and owned by federal, state, or local governments is included. Government entities would now also be charged the fees for drilling new wells (\$215) and sealing wells (\$50).

#### Other Bills of Interest

**Primary Seat Belt (Chapter 165):** After many years and countless efforts, a legislative proposal allowing law enforcement to pull over a vehicle solely for a seat belt violation has finally become law. The legislation makes a seat belt violation a primary offense in all seating positions – regardless of age. This was the last year that Minnesota would have been eligible to receive more than \$3 million in federal funds in return for passing primary seat belt legislation.

**Booster Seats (Chapter 82):** Minnesota now requires booster seats for children up to age 8 beginning on July 1. The legislation requires children to be in a restraint system until their eighth birthday or until they reach 4 feet 9 inches tall. The former law on child restraints only covered children up to age 4. Violation of the law will be a petty misdemeanor with the driver fined up to \$50.

#### BPA Ban in Certain Children’s Products (Chapter 40):

Kids’ sippy cups and baby bottles will be made safer as a result of legislation banning the use of Bisphenol-A (BPA). The bill bans the manufacture after January 1, 2010, and retailers from selling them after January 1, 2011. Numerous peer-reviewed research studies have found BPA to be a carcinogen and endocrine disrupter. The chemical is widely used in consumer products such as eyeglasses, sports helmets, electronic toys and lining for beverage or liquid cans. A compromise was worked out between the Legislature, the Governor and industry to limit application of the ban to cups and bottles intended for use by children age 3 or younger. (Chapter 40).

#### Bills that Did Not Pass or Were Vetoed

**Medical Marijuana:** Both the Senate and House passed a medical marijuana bill, which would have made Minnesota the 14<sup>th</sup> state to enact this legislation. As in the past, law enforcement vehemently opposed the proposal, stating that the bill posed “serious public safety and health risks.” Governor Pawlenty responded by vetoing the bill. The advocates of the measure have indicated that they will be back next year with legislation to put the proposal before “the people” through a constitutional amendment. Governors do not sign constitutional amendments; therefore, Governor Pawlenty would be unlikely to have significant impact on such a proposal. However, it is anticipated that law enforcement will continue to ramp up its opposition to this very controversial proposal.

**Freedom to Breathe:** There were a couple of attempts to weaken the “Freedom to Breathe Act,” which was passed by the 2007 Legislature. One amendment would have allowed smoking rooms, which were defined as enclosed, ventilated rooms attached to a bar. That amendment failed on a vote of 63-69. A second amendment that would have allowed for free-standing “smoking shelters” failed on a tie vote (67-67).

## PUBLIC HEALTH

There was also an effort to strengthen the smoking ban. SF359 (Pappas), which would have prohibited people from smoking in motor vehicles with children present, was defeated in the Senate Transportation Committee. A number of members argued that the bill was too intrusive in the activities of citizens.

**Dime a Drink:** Senator Steve Murphy and Representative Karen Clark introduced the so called “dime a drink” bill, which would have provided much-needed funding for an aggressive chemical dependency prevention initiative. The program would have been funded by an increase in alcoholic beverage taxes, which, as expected, was strongly opposed by the liquor industry. Industry testified that small businesses were already failing, and that additional taxes would be burdensome and would contribute to their further demise. While liquor taxes were included in the omnibus tax bill that passed the Legislature, Governor Pawlenty was quick to veto the bill.

**Tobacco Tax Increase:** SF1990 (Dibble)/HF2194 (Murphy), would have increased the tobacco tax, with the proceeds used to fund certain public health goals. When putting together its tax proposal, the House included an undedicated cigarette tax increase. However, Minnesota enacted a large tobacco tax increase recently, and Congress just enacted an equally-large increase. This created opposition significant enough to prevent the proposal from being included in the final tax bills that the Legislature sent to the Governor (both vetoed).

**Prescription Fraud:** SF1709 (Ortman), which would have created the Minnesota Prescription Program to Prevent Fraud and Abuse Act, failed to pass. The bill would have provided that a pharmacist may not dispense a written prescription issued by a Minnesota practitioner if the prescription was not written on a tamper-resistant prescription drug form. The bill was voted down in the Senate Health Budget Committee.

## CONCLUSION

It was a long, brutal session. There were 2,407 bills introduced in the House and 2,166 in the Senate, but only 179 were passed by both bodies and presented to the Governor. As was previously noted, the Legislature passed significant spending bills, while the tax packages to support the spending were vetoed. This left a gaping hole in the budget, which the Governor handled unilaterally through the use of unallotment.

The 2010 Legislature will reconvene on February 4, 2010.



# 2009 Legislative Session Report

## ENVIRONMENT

LEGACY FUNDING PASSED; INDUSTRY PAINT RECYCLING BILL VETOED

### Some Non-Legacy Funding Increases But Some Cuts too

- **SCORE Grants** increase \$500,000 for the biennium. The current minimum grant of \$55,000 per county will be proportionately increased or decreased for any funding change relative to FY 2001 funding levels. Reduced reporting requirements will be implemented for SCORE for the April 2010 report
- A **Compost Grant Program** provides \$500,000 in competitive compost grants for the biennium
- **SSTS Inventory Grants** of \$700,000 were provided for the biennium
- **BWSR's Feedlot Cost Share Grants** were increased by \$1 million
- **PCA's Feedlot Grants** were cut by \$320,000 for the biennium.
- **BWSR's Cost Share Grants** were reduced by \$1,470,000 for the biennium
- **BWSR's Drainage Assessment Grants** were reduced by \$800,000 for the biennium.
- **BWSR's Natural Resources Grants** were reduced by \$404,000 for the biennium

### Existing Payments in Lieu of Taxes (PILT) Un- changed - for Now

No reductions in PILT were enacted by the Legislature. The governor may still unallot a portion of those payments.

### Legacy Bill Funded Several Initiatives

Programs of county concern that were funded include the following (amounts are for the biennium):

- **Anoka County Rum River/Cedar Creek Initiative** - \$1.9 million
- **Anoka County Conservation District/Metro Landscapes** - \$1 million
- **Dakota County Habitat Protection** - \$1 million
- **St. Louis River and Duluth Harbor Restoration** - \$750,000

- **St. Croix Watershed Monitoring** - \$500,000
- **County SSTS Programs** - \$3.5 million
- **DNR for Regional Significance Parks and Trails Grants** - \$8.87 million
- **Met Council for Metro Regional Parks and Trails** - \$27.78 million
- **Historical Society for Statewide Historic and Cultural Grants** - \$6.75 million
- **Dept. of Education – Grants to Regional Library Systems** - \$8.5 million
- **Dept. of Agriculture Forest Protections Reserve /State Invasive and Exotic Tree Pest Plans Update** - \$2 million
- **Public Facilities Authority for TMDL Grants** - \$21.65 million
- **PCA for TMDL development, databases and rules** - \$18 million
- **DNR for TMDL Study Development & Implementation** - \$2.1 million
- **DNR for Non Point Source Restoration and Preservation** - \$500,000
- **BWSR for Non Point Protection/Restoration and Source Water Protection – Riparian Buffers** - \$6.5 million
- **BWSR for Non Point Protection/Restoration and Source Water Protection – Water Retention** - \$5.9 million
- **BWSR for Non Point Protection/Restoration and Source Water Protection – Watershed /WMO Grants** - \$6 million
- **BWSR for Non Point Restoration – Wellhead Protection Areas** - \$2 million
- **BWSR for Targeted Non-Point Restoration Technical Assistance** - \$2.75 million
- **BWSR for Feedlot Water Quality Projects and Assessments – Riparian Waters** - \$4 million
- **BWSR for Streams and Lakeshore Water Quality Protection Grants** - \$4.16 million
- **PCA for Ground Water protection** - \$5 million
- **DNR for Forests for the Future /Upper Mississippi River Project** - \$36 million
- **DNR for up to \$400,000 individual grants for enhancement, restoration, or protection of forests, wetlands, prairies, and habitat for fish, game, or wildlife** - \$4 million

# ENVIRONMENT

## Compostable Bags Required for Yard Waste Disposal in Metro Area

Yard waste in the Twin City metro area must be disposed of in compostable yard waste bags. Standards are set for bags that are labeled compostable and sold in Minnesota

## E-Waste Changes

The way manufacturers are assigned their annual recycling obligations was changed by eliminating the retailer reporting requirements and assigning each manufacturer their prorated share of national sales, which should result in an increase in the total amount of e-waste that is recycled each year. There was also a 25% cap put on the amount of carryover credits a manufacturer can use to meet their annual obligation.

## Paint Stewardship Demonstration Project Vetoed - Again

The Governor vetoed the Paint Stewardship Demonstration Project bill again. He stated the bill did not provide a guarantee that counties would lower their property taxes to offset the \$6 million in savings from not having to pay for the cost of waste paint collection and disposal.

## Pesticide Disposal

The Department of Agriculture's obligation to designate a place in each county for disposal of unused agricultural pesticide is changed from every year to every other year. The department must still designate a place in each county for disposal of unused nonagricultural pesticide every year.

## Greenhouse Gas Reduction

The Met Council will contract with the U of M Center for Transportation Studies for assistance in creating a report that assesses the effectiveness of local and regional land use and transportation planning strategies that reduce or manage travel demand through land use and access to alternative transportation options .

## Regulation of Coal Tar Contamination

The commissioner of the Pollution Control Agency is required to notify local units of government of the potential for contamination of storm water ponds from the use of coal tar pavement products by January 15, 2010. The commissioner is required to

establish a schedule, by January 15, 2010, that requires local units of government regulated under NPDES/SDS permits to report the total number of storm water ponds under their jurisdiction. Requires the commissioner to develop best management practices for state agencies and local units of government to use in cleaning up contaminated storm water ponds, make those best management practices available on the agency's Web site, and incorporate them into their next permitting cycle .

## Mississippi River Corridor Critical Area

A number of changes were made to the Mississippi River Corridor Critical Areas program by codifying existing requirements and requiring the Department of Natural Resources (DNR) to adopt new rules for the program, including new districts within the area and the development of new guidelines and standards within each district.

The program is currently administered by the DNR and provides coordinated planning and management for the portion of the Mississippi River corridor from Ramsey and Dayton, to the southern boundary of Dakota County in order to protect and preserve the corridor. Executive Order 79-19 provides the guidelines and standards currently being used for planning and managing the area.

The commissioner of natural resources is allowed to adopt rules necessary to administer the Mississippi River Corridor Critical Area program. The Metropolitan Council is required to incorporate standards established under the program into its planning, and work with local units of government and the commissioner to insure adoption and implementation of the standards.

The commissioner is required to establish districts with the Mississippi River Corridor Critical Area. The law provides direction on what the commissioner shall consider when establishing the districts. (Currently there are four districts for the program - rural open space, urban diversified, urban developed and urban open space.) The commissioner is required to minimize the number of districts within any one municipality and take into account existing ordinances. The commissioner is required to establish minimum guidelines and standards for each of the districts including the key resources to be protected and the land uses to be allowed in the district. The commissioner is allowed to provide certain exceptions. Requires the guidelines and standards to protect or enhance certain key resources and features, such as wetlands, bluffs, shorelines and riverbanks, scenic views, and water quality. The commissioner is required to map the bluffs and bluff related features and provide a preliminary map based on definitions provided for bluff face/bluff, bluff line, base of bluff, steep slopes, and very steep slopes.

## ENVIRONMENT

The program's standards are required to be used by local units of government, state and regional agencies, the Metropolitan Council, and the commissioner. All local units of government or regional or state agencies are required to notify the DNR of all developments in the corridor that require discretionary action (defined as all actions that require a public hearing, including variances, conditional use permits, and zoning amendments) at least ten days before taking action on the application. The commissioner is allowed to exempt certain types of applications from the notification requirement. Requires the commissioner to recover the costs of reviewing the notification information.

The commissioner is required to adopt rules to meet the requirements of this section and start the rulemaking process no later than January 15, 2010. The program shall be administered in accordance with Executive Order 79-19 until the rules are adopted.





## 2009 Legislative Session Report

# GENERAL GOVERNANCE

### Modest Mandate Relief, New Phased Retirement Program

#### Mandate Relief

- An 18-month moratorium is placed on the implementation of new or increased MOE or matching fund requirements. To avoid causing a problem with the federal stimulus bill that may require some increased spending, the counties will remain responsible if the county is currently providing the federal MOE or match and the federal government increases those requirements.
- A proposed state rule that requires the adoption or amendment of an ordinance or other regulation for a county to comply is delayed until July 1 or January 1 following its publication of its final notice of adoption in the *State Register* unless:
  1. it's an emergency rule,
  2. the rule's promulgation was required by law,
  3. that it is pursuant to federal law or regulation
  4. or the governor waives the requirement.
- A county that has accepted responsibility for an abandoned cemetery may prohibit further burials in the abandoned cemetery
- The threshold for being a qualified newspaper in which legal notices can be published is reduced from a circulation of at least 500 copies regularly delivered or distributed to a circulation of at least 400 copies regularly delivered or distributed.
- The threshold for itemization of claims that must be published is increased from \$300 to \$2,000.
- A resolution adopted by the county board to decrease commissioners' salaries or per diem payments may take effect at any time
- The ability for county officers to appeal the number of clerks they may hire to district court is eliminated.
- All minimum salaries for county officers are abolished.
- The threshold at which competitive bids must be solicited under the Uniform Municipal Contracting Law - currently \$100,000 - is made applicable to contracts the costs of which are specially assessed and to HRA's.
- The requirement for a county board to annually review out of state travel policies is eliminated
- The requirement for Dakota and Anoka counties to prepare comprehensive plans for townships is eliminated

- County Facility Groups that were required to inventory county facilities, review and comment on proposed joint facilities and comment to the commissioner of education on proposed school facilities is eliminated

#### Phased Retirement for Employees Age 62 and Older

PERA General plan members age 62 or older who have worked for a minimum of the five previous years in a PERA covered position on at least a half-time basis may while still employed receive their pension without any offset for earnings in excess of the social security earnings limit (\$14,160 in 2009) if they reduce their hours at least 25 percent from their previously regularly scheduled work hours and to no more than half time. No termination of service or length of separation requirements apply. The county board has sole discretion to determine if and the extent to which a postretirement option position under this section is available. Postretirement option employment shall be for an initial period not to exceed one year. Postretirement option employment may be renewed annually but not beyond the age for retirement for receipt of full social security benefits. No service credit is earned during postretirement option employment nor any contributions made on the employees behalf.

#### Criminal Background Checks

A public employer may not inquire into or consider the criminal record or criminal history of an applicant for public employment until the applicant has been selected for an interview unless the employer has a statutory duty to conduct a criminal history background check. This does not prohibit the employer from notifying applicants that law or the employer's policy will disqualify an individual with a particular criminal history background from employment in particular positions.

#### Increased Unemployment Taxes

The Displaced Worker unemployment compensation tax surcharge is increased from .1 to .12%.

#### Unemployment Compensation

- A shared work agreement whereby employees who reduce their weekly hours to at least 32 hours and no less than 20 hours and during that period draw proportionately reduced unemployment benefits was authorized

# GENERAL GOVERNANCE

under certain conditions if a shared work plan is submitted by the employer and approved by the commissioner of employment and economic development.

- An employee who elects to become temporarily unemployed in order to avoid the layoff of another employee is eligible for unemployment benefits if:
  1. The election is authorized under a collective bargaining agreement or written employer policy;
  2. The employer has accepted the employee's election;
  3. The employer provides a written certification that the employee's election prevented another employee with the employer from being laid off due to lack of work; and
  4. Both the employee and the employer, at the time of the election, expect the employee's unemployment from the employer to be temporary

A qualifying employee must meet all the other unemployment benefit eligibility requirements including being available for suitable employment with a different employer.

## Buy American Requirement

Effective the later of a) January 1, 2010 or b) when a purchase contract in effect on June 1, 2009 expires, a "Buy American" requirement is imposed for uniforms and safety and protective equipment of employees unless a similar item is not manufactured or available for purchase in the United States. There is no prescribed penalty for noncompliance.

## Veterans Grievance Rights

The grievance rights for veterans are limited to either under the veterans' preference law or under any collective bargaining agreement – one or the other, not both. Teachers, previously excluded from the veterans preference act, can now elect to grieve under its terms in lieu of under any collective bargaining grievance rights.

## Utilization of State Purchasing Contract

For a contract estimated to exceed \$25,000, a county must consider the availability, price and quality of supplies, materials, or equipment available through the state's cooperative purchasing venture before purchasing through another source.

## Non-Conforming Lots

When a nonconforming structure in a shoreland district with less than 50 percent of the required setback from the water is destroyed by fire or other peril to greater than 50 percent of its estimated market value, the structure setback may be increased if practicable and reasonable conditions are placed upon a zoning or building permit to mitigate created impacts on the adjacent property or water body.

For shoreland lots of record on the date of adoption of local shoreland controls that do not meet the requirements for lot size or lot width, the following conditions apply:

- A nonconforming single lot may be allowed as a building site without variances from lot size requirements, provided that:
  - (1) all structure and septic system setback distance requirements can be met;
  - (2) a Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080, can be installed or the lot is connected to a public sewer; and
  - (3) the impervious surface coverage does not exceed 25 percent of the lot
- For a group of two or more contiguous lots of record under a common ownership, an individual lot must be considered as a separate parcel of land for the purpose of sale or development, if it meets the following requirements:
  - (1) the lot must be at least 66 percent of the dimensional standard for lot width and lot size for the shoreland classification consistent with Minnesota Rules, chapter 6120;
  - (2) the lot must be connected to a public sewer, if available, or must be suitable for the installation of a Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080, and local government controls;
  - (3) impervious surface coverage must not exceed 25 percent of each lot; and
  - (4) development of the lot must be consistent with an adopted comprehensive plan.
- A group of two or more contiguous lots of record under a common ownership unable to meet the above requirements must be combined with one or more contiguous lots so they equal one or more conforming lots as much as possible.
- Contiguous nonconforming lots of record in shoreland areas under a common ownership must be able to be sold or purchased individually if each lot contained a habitable residential dwelling at the time the lots came under common ownership and the lots are suitable for, or served by, a sewage treatment system consistent with the requirements of section 115.55 and Minnesota Rules, chapter 7080, or connected to a public sewer.

## Building Permits

State building permit fees are established by statute. Local fees supersede the state fees where local officials provide the inspection services. If plan review services are provided by the state and inspection is done by local officials, the state shall charge 75% of its plan review fee and the county or city 25% of its plan review fee per its adopted fee schedule.