Judicial Notice Shall Be Taken of Material Published in the Minnesota State Register

The Minnesota State Register is the official publication of the State of Minnesota’s Executive Branch of government, published weekly to fulfill the legislative mandate set forth in Minnesota Statutes, Chapter 14, and Minnesota Rules, Chapter 1400. It contains:

- Proposed Rules
- Adopted Rules
- Exempt Rules
- Expedited Rules
- Withdrew Rules
- Executive Orders of the Governor
- Appointments
- Proclamations
- Vetoed Rules
- Commissioners’ Orders
- Revenue Notices
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- State Grants and Loans
- Contracts for Professional, Technical and Consulting Services
- Non-State Public Bids, Contracts and Grants
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- Research Services - will look up, photocopy, and fax or send copies from past issues at $1.00 per page.

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<th>Facilities Management Division: Christopher A. Guevin (651) 201-2350</th>
<th>Minnesota’s Bookstore: Mary Mikes (651) 201-3203</th>
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<tr>
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<td>Attorney General: Lori Swanson (651) 296-6196</td>
<td>Auditor: Rebecca Otto (651) 296-2551</td>
<td>Editor: Sean Plemmons (651) 201-3204</td>
</tr>
<tr>
<td>Lieutenant Governor: Michelle Fischbach (651) 201-3400</td>
<td>Secretary of State: Steve Simon (651) 296-2803</td>
<td></td>
<td><a href="mailto:sean.plemmons@state.mn.us">sean.plemmons@state.mn.us</a></td>
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http://www.senate.mn

Minnesota State Court System
Court Information Office (651) 296-6043
MN Judicial Center, Rm. 135,
25 Rev. Dr. Martin Luther King Jr Blvd., St. Paul, MN 55155
http://www.mnscourts.gov

House Public Information Services
(651) 296-2146
State Office Building, Room 175
100 Rev. Dr. Martin Luther King Jr Blvd., St. Paul, MN 55155
https://www.house.leg.state.mn.us/hinfo/hinfo.asp

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**Volume 42 - Minnesota Rules**

*(Rules Appearing in Vol 42 Issues #1-26 are in Vol, #26 - Tuesday 26 December 2017)*

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**Tuesday 2 January - Monday 18 June**

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<td>8200; 8205; 8210; 8220; 8230; 8235; 8240; 8250 (proposed) ....</td>
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Commissioner’s Orders

Various agency commissioners are authorized to issue "commissioner's orders" on specified activities governed by their agency's enabling laws. See the Minnesota Statutes governing each agency to determine the specific applicable statutes. Commissioners' orders are approved by assistant attorneys general as to form and execution and published in the State Register. These commissioner's orders are compiled in the year-end subject matter index for each volume of the State Register.

Department of Natural Resources (DNR)
Notice of Orders Approving Names of Geographic Features

Statutory authority: Minnesota Statutes, section 83A.02

The following geographic features of the state were named/renamed on the effective dates as listed below. The department filed an Order Approving Names of Geographic Features with each county at the time of the naming/renaming.

Unnamed Island, located in Mattson Bay of Lake Vermilion, Section 23, Township 62 North, Range 15 West (Breitung Township), St. Louis County, Minnesota is renamed “Blue Heron Island” effective 4 February 2011.

Wahl Lake, Minnesota Public Water No. 60-329, located in section 25, Township 149 North, Range 44 West (Grove Park- Tilden Township), Polk County, Minnesota is renamed “Bakken Lake” effective 6 June 2011.

Big McDonald #2, McDonald or Schwartz Lake, Minnesota Public Water No. 56-386(03), located in sections 20,29 and 30, Township 136 North, Range 40 West (Edna Township), Otter Tail County, Minnesota is renamed “McDonald” effective 13 January 2012.

Unnamed Creek, commencing from Island Lake in Section 18, Township 49 North, Range 22 West (Haugen Township) to the confluence with Musselshell Creek in Section 19, Township 49 North, Range 22 West (Haugen Township) Aitkin County, Minnesota is named “Island Lake Creek” effective 14 August 2012.

Unnamed Creek, commencing from the intersection of proposed Island Lake Creek in Section 19, Township 49 North, Range 22 West (Haugen Township) to Horseshoe Lake in Section 24, Township 49 North, Range 23 West (Shamrock Township) Aitkin County, Minnesota is named “Musselshell Creek” effective 14 August 2012.

Petrel Creek, commencing from Section 25, Township 57 North, Range 12 West (Bassett Township) through Fairbanks Township to Section 36, Township 56, Range 13 terminating at Wolf Lake, St. Louis County, Minnesota is named “Petrell Creek” effective 3 December 2012.

Johnson’s Point, located on Pelican Lake, Section 9, Township 64 North, Range 20 West (Leiding Township), St. Louis County, Minnesota is renamed “Eagle Point” effective 3 June 2013.

Holloway Lake, Minnesota Public Water No. 31-839, located in sections 15, 22 and 27 of Township 149 North, Range 26 West (Wirt Township), Itasca County, Minnesota is renamed “Bass Lake” effective 5 November 2013.

Unnamed Lake, Minnesota Public Water No. 60-288, located in section 33, Township 148 North, Range 43 West (Woodside Township), Polk County, Minnesota is renamed “Schulstad Lake” effective 27 February 2014.

Unnamed Island, located in West Pope Lake, Section 32, Township 65 North, Range 2 West, Cook County, Minnesota is named “Moozoogitagaanesing Island” and the Unnamed Island, located in West Pope Lake, Section 32 and 33, Township 65 North, Range 2 West, Cook County, Minnesota is named “Moozoogitagaaning Island” effective 23 September 2014.

Unnamed Creek, commencing from Section 33, Township 110 North, Range 11 West (Glasgow Township) to the confluence with the Zumbro River in Section 28, Township 110 North, Range 11 West (Glasgow Township) Wabasha
Commissioner’s Orders

County, Minnesota is named “Zell Creek” effective 23 October 2014.

**Mud Lake**, Minnesota Public Water No. 18-94, located in sections 25 and 36 of Township 47 North, Range 29 West (Wolfford Township) and in sections 30 and 31 of Township 47 North, Range 28 West (Rabbit Lake Township) Crow Wing County, Minnesota is renamed “Lake Cuyuna” effective 25 November 2014.

**Unnamed Creek**, originating from Section 13, Township 107 North, Range 15 West (Kalmar Township) to where it terminates at Section 7, Township 107 North, Range 14 West (Cascade Township) Olmsted County, Minnesota is renamed “Minnow Brook” effective 13 April 2015.

**Unnamed Lake**, Minnesota Public Water No. 21-306, located in section 20 of Township 128 North, Range 40 West (Urness Township) Douglas County, Minnesota is renamed “Holl Lake” effective 25 August 2015.

**Carlson Lake**, Minnesota Public Water No. 19-155, located in section 27 of Township 27 North, Range 23 West (in the City of Eagan) in Dakota County, Minnesota is renamed “Quigley Lake” effective 9 December 2015.

**Quigley Lake**, Minnesota Public Water No. 19-66, located in section 27 of Township 27 North, Range 23 West (in the City of Eagan) in Dakota County, Minnesota is renamed “Carlson Lake” effective 9 December 2015.

**Unnamed Lake**, Minnesota Public Water No. 31-711, located in sections 23 of Township 61 North, Range 26 West (Bigfork Township) Itasca County, Minnesota is renamed “Lang Lake” effective 20 October 2015.

**Unnamed Wetland**, Minnesota Public Water No. 27-468, located in section 30 of Township 118 North, Range 22 West (in the City of Plymouth) in Hennepin County, Minnesota is renamed “Snyder Lake” effective 9 June 2016.

**Snyder Lake**, Minnesota Public Water No. 27-108, located in sections 29 and 30 of Township 118 North, Range 22 West (in the City of Plymouth) in Hennepin County, Minnesota is renamed “Kreatz Lake” effective 9 June 2016.

**Kreatz Lake**, Minnesota Public Water No. 27-467, located in section 30 of Township 118 North, Range 22 West (in the City of Plymouth) in Hennepin County, Minnesota is renamed “Unnamed Wetland” effective 9 June 2016.

**Unnamed Lake**, Minnesota Public Water No. 04-206, located in section 12 of Township 146 North, Range 34 West (Grant Valley Township) Beltrami County, Minnesota is named “Lake Tarutis” effective 28 April 2017.

**Halfbreed Lake**, Minnesota Public Water No. 82-80, located in section 19 of Township 32 North, Range 20 West (in the City of Scandia) and section 24 of Township 32 North, Range 21 West (in the City of Forest Lake) Washington County, Minnesota is renamed “Lake Keewahtin” effective 5 June 2017.

**Hornbean Lake**, Minnesota Public Water No. 19-47, located in sections 6; 31 of Township 27; 28 North, Range 22 West (in the City of Sunfish Lake and Inver Grove Heights) in Dakota County, Minnesota is renamed “Hornbeam Lake” effective 14 December 2017.
Official Notices

Pursuant to Minnesota Statutes §§ 14.101, an agency must first solicit comments from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency by publishing a notice in the State Register at least 60 days before publication of a notice to adopt or a notice of hearing, and within 60 days of the effective date of any new statutory grant of required rulemaking.

The State Register also publishes other official notices of state agencies and non-state agencies, including notices of meetings and matters of public interest.

Department of Employment and Economic Development (DEED)

Notice of Public Hearing by the Minnesota Department of Employment and Economic Development with Respect to a Proposed Project and the Provision of Funds from the Minnesota Job Creation Fund Program under Minnesota Statutes 116J.8748

NOTICE IS HEREBY GIVEN that the Minnesota Department of Employment and Economic Development (“DEED”) will conduct a public hearing on Friday, June 29, 2018 at 1:00 p.m., or as soon thereafter as reasonably possible at 332 Minnesota Street, Suite E200, in Saint Paul, Minnesota, on a proposal to provide funding through the Minnesota Job Creation Fund Program pursuant to authority granted under Minnesota Statutes 116J.8748 and Minnesota Rules Chapter 4301. This hearing is conducted in accordance with Minnesota Statutes 116J.994, Subd. 5.

Description of Project and Proposed JCF Funding:

Daikin Applied Americas, Inc. may expand in Faribault (Rice County), Minnesota. The company has extensive history of developing new, industry-leading innovations and technology. Daikin Applied Americas, Inc. manufactures technologically advanced commercial HVAC systems around the globe. The proposed project would consist of acquiring an existing 300,000 square foot warehouse and renovate it into a state-of-the-art manufacturing facility. The total project cost is $40,300,000, of which $8,450,000 would be eligible for the capital investment rebate as renovations and site improvements to the existing building. The company expects to create 132 jobs within five (5) years at an average cash wage of $22.20 per hour. The project is eligible for a job creation award of up to $1,000,000 and a capital investment rebate of up to $633,750.

All interested persons may appear and be heard at the time and place set forth above. Persons interested in participating via teleconference should contact Tom Washa, Minnesota Job Creation Fund Program Manager at (651) 259-7483 or Tom.Washa@state.mn.us prior to the date of the hearing for instructions on how to participate in the conference call.

Interested persons may mail written comments to Tom Washa at the street or e-mail address set forth above prior to the date of the hearing set forth above. All persons who appear at the meeting or participate via teleconference will be given an opportunity to express their views with respect to the proposal to award funds from the Minnesota Job Creation Fund.

Department of Health

Division of Health Regulation – Managed Care Systems Section

Notice of Application for Essential Community Provider Status

NOTICE IS HEREBY GIVEN that an application for designation as an Essential Community Provider (ECP) has been submitted to the Commissioner of Health by Assessment and Counseling Services of North Homes, Inc. Clinical services are offered at Assessment and Counseling Services of North Homes, Inc., 4225 Technology Drive, Bemidji; and Assessment and Counseling Services of North Homes Children and Family Services at 313 Main Avenue East, Deer River; 412 St. SE Suite A, Grand Rapids; and 324 West Superior Street, Suite 400, Medical Arts Building, Duluth.

An ECP is a health care provider that serves high-risk, special needs, and underserved individuals. In order to be designated as an ECP, a provider must demonstrate that it meets the requirements of Minnesota Statutes Section 62Q.19 and Minnesota Rules Chapter 4688. The public is allowed 30 days from the date of the publication of this notice to...
submit written comments on the application. The commissioner will approve or deny the application once the comment period and compliance review is complete.

For more information contact:

Anne Kukowski
Managed Care Systems Section
Division of Health Regulation
Minnesota Department of Health
P.O. Box 64882
St. Paul, MN  55164-0882
651-201-5173

Department of Health
Division of Health Regulation – Managed Care Systems Section
Notice of Application for Essential Community Provider Status

NOTICE IS HEREBY GIVEN that an application for designation as an Essential Community Provider (ECP) has been submitted to the Commissioner of Health by Cass County Health and Human and Veterans Services Public Health Division. Clinical services are offered at Cass County Health, Human and Veterans Services, 400 Michigan Avenue, Walker, Minnesota.

An ECP is a health care provider that serves high-risk, special needs, and underserved individuals. In order to be designated as an ECP, a provider must demonstrate that it meets the requirements of Minnesota Statutes Section 62Q.19 and Minnesota Rules Chapter 4688. The public is allowed 30 days from the date of the publication of this notice to submit written comments on the application. The commissioner will approve or deny the application once the comment period and compliance review is complete.

For more information contact:

Anne Kukowski
Managed Care Systems Section
Division of Health Regulation
Minnesota Department of Health
P.O. Box 64882
St. Paul, MN  55164-0882
651-201-5173

Department of Health
Division of Health Regulation – Managed Care Systems Section
Notice of Application for Essential Community Provider Status

NOTICE IS HEREBY GIVEN that an application for designation as an Essential Community Provider (ECP) has been submitted to the Commissioner of Health by Kairos Midwifery, LLC, d.b.a. A New Story Birth Center. Clinical services are offered at 16802 145th Avenue, Milaca, Minnesota; and 22 Wilson Avenue NE, Suite 205, St. Cloud.

An ECP is a health care provider that serves high-risk, special needs, and underserved individuals. To be designated as an ECP, a provider must demonstrate that it meets the requirements of Minnesota Statutes Section 62Q.19 and Minnesota Rules Chapter 4688. The public is allowed 30 days from the publication date of this notice to submit written comments on the application. The commissioner will approve or deny the application once the comment period and compliance review are complete.
Official Notices

For more information contact:

Anne Kukowski
Managed Care Systems Section
Health Regulation Division
Department of Health
P.O. Box 64882
St. Paul, MN 55164-0882
651-201-5173

Department of Human Services (DHS)

Health Care Administration

Public Notice Regarding Changes to Payment Rates and Methodologies, and Services under the Medical Assistance (MA) Program

This notice is published pursuant to Code of Federal Regulations, title 42, part 447, section 205 (42 C.F.R. § 447.205), which requires publication of a notice when there is any significant proposed change in the methods and standards for setting payment rates for Medicaid services. These changes result from legislation enacted by the 2017 Legislature.

Effective for services provided on or after July 1, 2018, the Department will increase payment by 5% above the current payment rate for personal care assistant services provided to a recipient whose assessment indicates the need for at least 12 hours of personal care services per day. In order for providers to receive the increased payment rate, the personal care assistant providing services must have completed training approved by the Commissioner. This increase does not apply to supervision of a personal care assistant. This change is estimated to result in a net spending increase of $12,000,000 in the MA program in state fiscal year 2019.

Effective for services provided on or after July 1, 2019, the Department will pay for housing stabilization services, at the lesser of the provider’s charge, or $17.17 per 15-minute unit. This change is estimated to result in a net spending increase of $10,000,000 in the MA program in state fiscal year 2020.

Effective for services provided on or after July 1, 2019, the Department will pay for housing consultation services, at the lesser of the provider’s charge, or $174.22 per session. This change is estimated to result in a net spending increase of $187,000 in the MA program in state fiscal year 2020.

For more information, or questions about submitting or reviewing comments, please contact Sean Barrett at 651-431-2298 or sean.barrett@state.mn.us. Comments may also be mailed to Sean Barrett at P.O. Box 64983, St Paul, MN 55164. Copies of this notice, and any comments received, may be reviewed by appointment at the Elmer L. Anderson Human Services building located at 540 Cedar St, St Paul, MN 55101.

Minnesota House of Representatives Agriculture Policy Committee/DFL Caucus

Minority Report to the Minnesota House of Representatives Agriculture Policy Committee Resolution

On May 19 and 20, 2018, the Agriculture Policy Committee of the Minnesota House of Representatives met to consider CS-RES03 pursuant to Minnesota Statute (M.S.) section 14.126, a committee resolution to delay adoption of the Minnesota Department of Agriculture's (MDA) proposed Groundwater Protection Rule. A vote was taken on Sunday, May 20, 2018, and the resolution passed by a vote of 9-6. The Committee Resolution was published in Volume 42, Number 50 of the State Register. As DFL leads on the House Agriculture Finance and Agriculture Policy Committees, these findings and considerations are submitted as a Minority Report to the Committee Resolution on behalf of those who opposed its adoption.
**Official Notices**

**UNTESTED PROCESS/PRECEDENT SETTING:** M.S. 14.126 was established in 2001 but according to non-partisan House Research review has never been used and invoking said statute was precedent setting. This option, while established in statute, clearly bypasses the legislative process and overreaches into executive branch authority once granted.

**CRITICAL NEED:** While many Minnesota farmers and agriculture organizations lead the way in responsible and innovative farming and conservation practices, nitrates continue to be an identified problem in wells and drinking water across the state. The Minnesota Department of Health reported that 537 public water supply wells have elevated nitrate levels above 3 parts per million. The proposed Groundwater Protection Rule would start to address rising nitrate levels by focusing on the 30 Drinking Water Supply Management Areas (DWSMAs) that have significantly elevated nitrate levels – above 5.4 parts per million. More than 110,000 Minnesotans get their drinking water from those 30 water sources.

Due to the cost of treating well water or finding new sources, Minnesota families often struggle to pay for treatment of private wells, rural communities resort to installation of treatment systems for public water systems, or contamination leads to public health issues. The purpose of the proposed rule is to minimize potential fertilizer sources of nitrate pollution to the state’s groundwater, protect our drinking water and, when possible, take action before a public water system exceeds health standards for nitrates. Continuing the development and adoption of the proposed rule, or conversely slowing its development, are directly connected to the progress made to clean drinking water.

**RULEMAKING DELAY UNNECESSARY:** The Agriculture Policy Committee’s decision to invoke the M.S. 14.126 delay is unnecessary. In proposing the Groundwater Protection Rule, the MDA is acting under the full authority granted to it in the 1989 Groundwater Protection Act, Chapter 103H.275. In addition to the administrative rule process which establishes a fair and open process, the MDA has taken additional multiple steps to ensure those who want to participate, stakeholders and members of the general public alike, have the opportunity to do so. The preparation on moving forward on an approach to address groundwater issues due to rising nitrate levels has been in process for nearly a decade with the development of the Nitrogen Fertilizer Management Plan and the release of drafts of the Groundwater Protection Rule being released over the last 12 – 16 months. MDA informally published a draft of the rule in the summer of 2017 to provide an opportunity for public input even before commencing the formal rulemaking process.

- Through a combination of public outreach meetings and Governor’s Water Town Hall meetings, more than 1,500 people attended 17 public meetings in Chatfield, Fairmont, Farmington, Hawley, Marshall, McIntosh, Roseau, St. Cloud, St. Paul, Wadena, Warren, Bemidji, Crookston, Mankato, Marshall, Rochester and St. Cloud to discuss the draft rule.

- The MDA received over 820 written comments on the rule and each of those comments was reviewed during the revision process, and comments were taken into account when the draft was ultimately developed.

- The Governor and the Commissioner announced the revised rule framework on March 6, 2018 and the MDA gave a more detailed power point presentation to agriculture stakeholder groups on March 20. In response to requests for early release, availability of maps, and extended comment period, the MDA released the proposed rule April 24, 2018 and it was published for comment in the State Register on April 30, 2018. The Geographic Information System (GIS) maps were released and made public on March 20, well in advance of April 24. The MDA is providing an 80-day public comment (rather than the standard 30 days).

- Since release of the proposed rule, the MDA has scheduled informational meetings in Thief River Falls, Fergus Falls, Little Falls, Red Wing, Kasson, Pipestone, Hutchinson, and St. Paul.

- Conversely, the established committees of the House had ample time to hold a public hearing on the proposed rule since its release on April 24th and chose not to provide an opportunity for public comment during the 2018 legislative session.

**CONCERNS WITH PUBLIC INVOLVEMENT IN M.S. 14.126 PROCEEDING:** The process used in this unprecedented M.S.14.126 procedure did not provide adequate opportunity for public involvement. While farmers are critical stakeholders, the Groundwater Protection Rule impacts all residents who rely on clean drinking water and the legislative
process should be available to all who choose to participate.

- At 5:06 pm on Friday, May 18, 2018 a meeting of the Agriculture Policy Committee of the Minnesota House of Representatives was posted for 2:00 p.m. on May 19, 2018, providing less than 24 hours' notice to the public. The posting provided inadequate advance notice to the public.

- Permanent Rules of the House (6.22) requires public testimony from proponents and opponents on every bill or resolution before a standing committee, division or subcommittee of the House. These rules serve as the guide for public involvement in decisions before the House. The public notice of the May 19th and May 20th meetings gave no indication whether public testimony would be allowed or prohibited. When the May 19 meeting convened, the Chair of the Agriculture Policy Committee announced that no public testimony would be taken. After minority members raised concerns, the Chair agreed to allow public testimony, but then during the course of the meeting, again reversed the decision, thereby adding to the confusion of the unprecedented committee action. When the committee adjourned with an anticipated second meeting scheduled for Sunday May 20, the decision to not allow public testimony was announced. That decision was again reversed when the committee commenced on May 20th and testimony was allowed.

While it was acknowledged acting on this committee resolution was setting new precedent and establishing its own process, not providing advance notice and full opportunity to testify denied public input and violated the letter and spirit of the House Rules. Given the magnitude and impact of the proposed action, members of the public, especially from outside the metro area, were not provided with an adequate opportunity to address the committee regarding the impact of the delay in the rule as it relates to access to safe drinking water.

IMPROPER EXERCISE OF POWER: M.S. 14.126 bypasses the rules and procedures of the full legislative process and grants extraordinary powers to a simple majority of a legislative committee (in this case 9 people of a 16-member committee) at the expense of participation of the remaining duly elected members of the Minnesota House of Representatives.

A bill (HF 2887) to delay the Groundwater Protection Rule from taking effect upon conclusion of the rulemaking process, which essentially lead to the same result as the committee resolution, was introduced and followed the traditional legislative process in the House. M.S. 14.126 standard bypasses the process thereby denying sitting legislative members the opportunity to vote on issues that have the full effect of law.

INAPPROPRIATE CONNECTIONS: When presenting HF 4133 (the Omnibus Agriculture Policy bill) as amended by the Senate to the House on May 18th and urging support, the Chair of the committee noted that in the spirit of compromise, the Senate deleted the section of the bill requiring legislative approval of the Groundwater Protection Rule to make the bill more palatable, but in an effort to get something in return that the farmers wanted, the excessive soil loss provision was inserted. The Chair made similar comments at the May 19 meeting and at the May 20 committee meeting he said he hoped the Governor would sign the Agriculture Policy bill and if he did, the Chair would not move forward with the M.S. 14.126 action. The use of this unprecedented maneuver was clearly identified to force the Governor's signature of HF 4133.

CONTRADICTORY MESSAGE: The Chair repeatedly stated on multiple occasions at the hearing of the Agriculture Policy Committee on May 19th and again on May 20th, his goal was to have the Governor sign HF 4133 including the desired soil loss provision. He noted if the Governor signs the bill or he gets some assurance he would not veto it, the committee majority would not proceed with the M.S. 14.126 process. The amended committee resolution included an escape clause to reverse course and the Chair specifically stated he did not intend to transmit the committee’s action to the State Register immediately to give the Governor time to sign HF 4133, establishing a clear connection between the two.

To assert it is necessary to invoke this unprecedented approach to delay progress on clean drinking water and prohibit the MDA from adopting the final Groundwater Protection Rule to allow greater participation and oversight, yet at the same time being willing to discard the provision in order to gain passage of the unrelated soil loss provision is contradictory in nature.
LONG TERM CONSEQUENCES: Taking this action and invoking the M.S. 14.126 process represented an alteration of process, policy-making, and legislating. An extreme minority of the legislature (9/134) used a course of action that impacts the relationships, formally and informally, within the legislative body and between the legislature and the executive branch.

Respectfully,
Rep. Jeanne Poppe, DFL Lead
Rep. David Bly, DFL Lead
Agriculture Finance Committee
Agriculture Policy Committee

Submitted on behalf of Agriculture Policy Committee members:
Rep. Clark Johnson
Rep. Mary Kunesh-Podein
Rep. Tim Mahoney
Rep. Duane Sauke

cc: Paul Marinac, Revisor of Statutes
Tammy L. Pust, Chief Administrative Law Judge, Office of Administrative Hearings
David Frederickson, Commissioner, MN Department of Agriculture

Minnesota Interagency Council on Homelessness
Notice of Meeting

A meeting of the Minnesota Interagency Council on Homelessness has been scheduled for Friday, June 22, 2018, at 1:00 p.m. The meeting will be held in the Lake Superior conference room at Minnesota Housing, 400 Wabasha Street North, Suite 400, Saint Paul, MN, 55102.

If you would like to attend the meeting or would like more information or to be notified of potential changes to the meeting location or time, please send an email to sue.hite-kirk@state.mn.us with your name, organization (if applicable), email address and day time telephone number.

Minnesota State Lottery
REQUEST FOR COMMENTS for Possible Amendment to Rules Governing Compensation of State Lottery Retailers, Minnesota Rules, 7856.4030; Revisor’s ID Number R-04551

Subject of Rules. The Minnesota State Lottery (the “Lottery”) requests comments on possible amendment to rules governing the compensation of lottery retailers. The Lottery is considering rule amendments that change the commission rate paid on certain lottery tickets sold by retailers, bonus commissions paid to certain retailers on certain sales, and other retailer compensation changes. The Lottery may consider other issues related to retailer compensation that arise during the rulemaking process.

Persons Affected. The amendment to the rules would likely affect current and prospective lottery retailers, and beneficiaries of lottery proceeds.

Statutory Authority. Minnesota Statutes, section 349A.16 requires the Lottery to periodically review lottery ticket sales and adjust lottery retailer commission rates to maintain appropriate return the state, and Minnesota Statutes, section 349A.05 authorizes the Lottery to adopt rules regarding the compensation of lottery retailers.

Public Comment. Interested persons or groups may submit comments or information on these possible rules in writing until further notice is published in the State Register that the Lottery intends to adopt or to withdraw the rules. The Lottery will not publish a notice of intent to adopt the rules until more than 60 days have elapsed from the date of this request for comments. The Lottery does not plan to appoint an advisory committee to comment on the possible rules.
**Official Notices**

**Rules Drafts.** The Lottery does not anticipate that a draft of the rules will be available before the publication of the proposed rules.

**Agency Contact Person.** Written comments, questions, requests to receive a draft of the rule amendments, and requests for more information on these possible rules should be directed to:

Ben Freedland  
Minnesota State Lottery  
2645 Long Lake Road  
Roseville, MN 55113  
ben.freedland@mnlottery.com

**Alternative Format.** Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request, please contact the agency contact person at the address listed above.

**NOTE:** Comments received in response to this notice will not necessarily be included in the formal rulemaking record submitted to the administrative law judge if and when a proceeding to adopt rules is started. The agency is required to submit to the judge only those written comments received in response to the rules after they are proposed. If you submitted comments during the development of the rules and you want to ensure that the Administrative Law Judge reviews the comments, you should resubmit the comments after the rules are formally proposed.

Dated: June 6, 2018  
Ben Freedland, General Counsel  
Minnesota State Lottery

**Minnesota Pollution Control Agency (MPCA) Watershed Division**

**Notice of Availability of the Draft Lake Superior North Watershed Restoration and Protection Strategies (WRAPS) Report and Total Maximum Daily Loads (TMDL) Report for the Flute Reed River and Request for Comment**

**Public Comment Period Begins:** June 18, 2018  
**Public Comment Period Ends:** 4:30 on July 18, 2018

The Minnesota Pollution Control Agency (MPCA) is requesting comments on the WRAPS and TMDL Reports for the Lake Superior North Watershed. The draft Reports are available for review at:  
[https://www.pca.state.mn.us/water/watersheds/lake-superior-north](https://www.pca.state.mn.us/water/watersheds/lake-superior-north). The Lake Superior North Watershed WRAPS and FluteReed TMDL projects are located in northeastern Minnesota along the shores of Lake Superior. The FluteReed River is a stream located within the larger Lake Superior North Watershed, which encompasses a land area from near Silver Bay, Minnesota to the Pigeon River border with Canada.

Written comments on the draft reports must be sent to the MPCA contact person listed below by July 18, 2018, by 4:30 p.m. The comments should indicate as to whether they are about the WRAPS Report or the TMDL Report. The MPCA will prepare responses to comments received and make any necessary revisions to the documents.

Subsequent to the revisions, the draft TMDL will be submitted to the U.S. Environmental Protection Agency (EPA) for approval; the WRAPS Report will be forwarded to the MPCA Commissioner for approval.

Required by the state Clean Water Legacy Act, a WRAPS Report is a document summarizing scientific studies of a major watershed no larger than a hydrologic unit code 8. The WRAPS Report includes the physical, chemical, and biological assessment of the water quality in the watershed; identification of impairments and water bodies needing
protection; and identification of biotic stressors and sources of pollution, point and nonpoint. The science, analysis and strategy development described in this Report began before accountability provisions were added to the Clean Water Legacy Act in 2013 (MS114D); thus, this Report does not address all of those provisions. When this watershed is revisited, the information will be updated according to the statutorily required elements of a Watershed Restoration and Protection Strategy Report. The TMDL is explained for the one identified excess sediment impairment, and an implementation table is included with the strategies to achieve and maintain water quality standards and goals. The TMDL Report is a scientific study that calculates the maximum amount of a pollutant that a water body can receive (known as the "loading capacity") without exceeding water quality standards.

Agency Contact Person: Written comments and requests for more information should be directed to:

Karen R. Evens
Minnesota Pollution Control Agency
Northeast Watershed Division
525 Lake Avenue South, Suite 400
Duluth, MN 55802
Phone: 218-302-6644; 800-657-3864
Email: karen.evens@state.mn.us
http://www.pca.state.mn.us/water/tmdl

TTY users may call the MPCA teletypewriter at 651-282-5332 or 800-657-3864.

Preliminary Determination on the Draft Lake Superior North WRAPS and Flute Reed River TMDL Report: The MPCA Commissioner has made a preliminary determination to approve this WRAPS Report and submit this TMDL Report to the EPA for final approval. Draft Reports are available for review at the MPCA office at the address listed above and at the MPCA Website: https://www.pca.state.mn.us/water/watersheds/lake-superior-north. Suggested changes will be considered before the documents are finalized and the TMDL Report is sent to the EPA for approval.

Written Comments: You may submit written comments on the conditions of the draft WRAPS and TMDL Reports or on the Commissioner’s preliminary determination. Written comments must include the following:

1. A statement of your interest in the draft WRAPS and/or TMDL Report;
2. A statement of the action you wish the MPCA to take, including specific references to sections of the draft documents that you believe should be changed; and
3. The reasons supporting your position, stated with sufficient specificity as to allow the Commissioner to investigate the merits of your position.

Petition for Public Informational Meeting: You also may request that the MPCA Commissioner hold a public informational meeting. A public informational meeting is an informal meeting that may be held to solicit public comment and statements on matters before the MPCA, and help clarify parts of the document and resolve issues. A petition requesting a public informational meeting must include the following information:

1. A statement identifying the matter of concern;
2. The information required under items 1 through 3 of “Written Comments,” identified above;
3. A statement of the reasons for holding a public informational meeting; and
4. The issues that you would like addressed at the public informational meeting.

Petition for Contested Case Hearing: You also may submit a petition for a contested case hearing. A contested case hearing is a formal hearing before an administrative law judge that provides evidence on issues requested to be changed. In accordance with Minn. R. 7000.1900, the MPCA will grant a petition to hold a contested case hearing if it finds that: (1) there is a material issue of fact in dispute concerning the draft WRAPS and/or TMDL Report; (2) the MPCA has the jurisdiction to make a determination on the disputed material issue of fact; and (3) there is a reasonable basis underlying the disputed material issue of fact or facts such that the holding of the contested case hearing would allow the introduction of information that would aid the MPCA in resolving the disputed facts in making a final decision.
on the draft WRAPS and/or TMDL Report. A material issue of fact means a fact question, as distinguished from a policy question, whose resolution could have a direct bearing on a final MPCA decision. A petition for a contested case hearing must include the following information:

1. A statement of reasons or proposed findings supporting the MPCA decision to hold a contested case hearing according to the criteria in Minn. R. 7000.1900, as discussed above; and
2. A statement of the issues proposed to be addressed by a contested case hearing and the specific relief requested or resolution of the matter.

In addition, and to the extent known, a petition for a contested case hearing should also include the following information:

1. A proposed list of prospective witnesses to be called, including experts, with a brief description of proposed testimony or summary of evidence to be presented at a contested case hearing;
2. A proposed list of publications, references, or studies to be introduced and relied upon at a contested case hearing; and
3. An estimate of time required for you to present the matter at a contested case hearing.

**MPCA Decision:** The written comments, requests, and petitions submitted on or before the last day of the public comment period will be considered in the final decision on these Reports. If the MPCA does not receive written comments, requests, or petitions during the public comment period, MPCA staff as authorized by the Commissioner, will make the final decision on the draft Reports.

**Minnesota Sentencing Guidelines Commission**

**Notice of Public Hearing to Consider Amendments to the Sentencing Guidelines**

THE MINNESOTA SENTENCING GUIDELINES COMMISSION WILL HOLD A PUBLIC HEARING on Thursday, July 19, 2018, at 1:30 p.m. in Room 1100, of the Minnesota Senate Building, 95 University Ave. W., Saint Paul, MN 55155. The public hearing is being held to consider proposed modifications to the Minnesota Sentencing Guidelines and Commentary §§ 1.A, 5.A, 5.B, and 6, and Comment 2.E.03, resulting from legislative amendments, non-legislative amendments, and technical corrections.

A copy of the proposed modifications is available free of charge on the agency’s website at mn.gov/sentencing-guidelines or by contacting the Minnesota Sentencing Guidelines Commission by mail at 658 Cedar Street, Suite G-58, Saint Paul, MN 55155; or by telephone at (651) 296-0144. Persons with hearing or speech disabilities may contact us via their preferred Telecommunications Relay Service. If you need special accommodations to attend, please contact the Minnesota Sentencing Guidelines Commission as soon as possible. This notice is available in alternative formats upon request. All interested persons are encouraged to attend the hearing and offer comments. Persons wishing to speak may register in advance by contacting the Commission’s office at the above address or telephone number, or by e-mail at sentencing.guidelines@state.mn.us.

The Commission will hold the record open for five calendar days after the public hearing to accept written comment. On Thursday, July 26, 2018, the Commission will meet at 1:30 p.m. in Room 1100, of the Minnesota Senate Building, 95 University Ave. W., Saint Paul, MN 55155, to formally adopt or reject the proposed modifications. If adopted, modifications become effective August 1, 2018.
Official Notices

Minnesota Board of Social Work
Administrative Law Judge Eric Lipman’s Memorandum Related to the Minnesota Government Data Practices Act

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Jane Doe, Petitioner,

v.

Minnesota Board of Social Work, Respondent.

This matter came before Administrative Law Judge Eric L. Lipman for an oral argument on April 9, 2018. During the argument, Petitioner, Jane Doe, requested leave to supplement the record with an affidavit that would be received and held under seal.

Jane Doe is not the Petitioner’s real name. She is participating in this proceeding pseudonymously, although the Minnesota Board of Social Work (Board) is aware of her true identity. It acknowledges that Ms. Doe is a natural person and that she holds a current license to practice clinical social work.¹

Earlier, the Board received a complaint questioning Ms. Doe’s compliance with one or more statutes that the Board is empowered to enforce.² The Board opened an investigation of the claims made in the complaint and that investigation is ongoing.³ Ms. Doe’s actual identity, as the target of an active Board investigation, is confidential nonpublic data under Minn. Stat. § 13.41, subd. 4 (2016).

The Affidavit filed by Ms. Doe under seal states her real identity and includes as an attachment a true and correct copy of her license to practice social work.


Based upon submissions of the parties and the hearing record,

IT IS HEREBY ORDERED THAT:

1. Ms. Doe’s request to file the Affidavit under seal is GRANTED.

2. Pursuant to Minn. Stat. § 14.60, subd. 2 (2016), access and disclosure of the Affidavit of Jane Doe Filed Under Seal, dated April 13, 2018, is limited to counsel in

¹ Digital Recording, OAH Docket No. 8-0910-35091 (April 9, 2018).
² See Petition at ¶¶ 3-4 (March 1, 2018).
³ Id.
this proceeding and those who are authorized under the Minnesota Government Data Practices Act to review such material.

3. If any party seeks to use the information that is subject to this Order in a manner inconsistent with this Order, that party shall bring a motion before the Administrative Law Judge with notice to the other party. The motion shall request authorization to use the protected data for a purpose other than the presentation of claims or defenses in this proceeding.

Dated: May 7, 2018

ERIC L. LIPMAN
Administrative Law Judge
Official Notices

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Jane Doe, Petitioner,                                      ORDER

v.                                                                

Minnesota Board of Social Work, Respondent.

This matter came before Administrative Law Judge Eric L. Lipman for an oral argument on April 9, 2018.

On March 1, 2018, Jane Doe, a licensed social worker, petitioned the Office of Administrative Hearings for an Order under Minn. Stat. § 14.381 (2016). She asks the tribunal to determine that the Minnesota Board of Social Work is enforcing an unwritten policy forbidding the recording of investigative interviews, as though it were a duly adopted rule.

John B. Casserly and Corinne G. Ivanci, Geraghdy, O'Loughlin & Kenney, P.A., appeared on behalf of the Petitioner, Jane Doe.¹ Gregory J. Schaefer and Lucas T. Clayton, Assistant Attorneys General, appeared on behalf of the Minnesota Board of Social Work (Board).

Based upon submissions of the parties and the hearing record, and for the reasons set out in the Memorandum below,

IT IS HEREBY ORDERED THAT:

1. Until such time as the Board is authorized by a statute or a rule to forbid licensee from recording of investigative interviews, the Board shall not prohibit or penalize this practice.

2. The Board shall publish this decision in the State Register.

3. The Board shall bear the costs of this proceeding.

Dated: May 7, 2018

ERIC L. LIPMAN
Administrative Law Judge

¹ Jane Doe is not the Petitioner’s real name. As detailed below, it is a pseudonym used to protect her identity.
NOTICE

This decision is the final administrative decision under Minn. Stat. § 14.381. It may be appealed to the Minnesota Court of Appeals under Minn. Stat. §§ 14.44-.45 (2016).

MEMORANDUM

I. Factual and Regulatory Background

The Board operates under Minnesota Statutes chapters 148E and 214 (2016). As part of its mission, it works to “promote and protect the public health, safety, and welfare through the licensure and regulation of persons who practice social work in this state.” Specifically, the Board is authorized to suspend, condition or revoke the license of a social worker who engages in professional misconduct.

Jane Doe is a licensed Independent Clinical Social Worker in Minnesota. Jane Doe is not her real name. She is participating in this proceeding pseudonymously; although the Board is aware of her true identity. It acknowledges that Ms. Doe is a natural person and that she holds a current license to practice clinical social work.

The Board received a complaint questioning Ms. Doe’s compliance with one or more statutes that the Board is empowered to enforce. The Board opened an investigation of the claims made in the complaint and that investigation is ongoing. Ms. Doe’s actual identity, as the target of an active Board investigation, is confidential nonpublic data under Minn. Stat. § 13.41, subd. 4 (2016).

Ms. Doe received a letter from a Board investigator who sought to interview Ms. Doe regarding the allegations in the complaint. The letter notes that any failure by Ms. Doe to participate in such an investigatory interview would violate her duty to cooperate with Board investigations, under Minn. Stat. § 148E.250. Licensees are obliged to “cooperate fully” with Board investigations of professional misconduct, and the failure of a licensee to cooperate with these inquiries can be a ground for discipline under Minn. Stat. § 148E.190.

It is the Board’s practice to record interviews with licensees and to use, review and maintain such recordings while the investigation is active.

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2 Minn. Stat. § 148E.030, subd. 1.
3 Minn. Stat. § 148E.260, subd. 1.
4 Affidavit (Aff.) of Jane Doe at 1.
5 Digital Recording, OAH Docket No. 8-0910-35091 (April 9, 2018).
6 See Petition at ¶¶ 3-4.
7 Id.
8 Id. at ¶¶ 6-7.
9 Id.
10 Id. at ¶¶ 14, 15, 16, 21; Aff. of Kathleen Zaher-Pate at ¶¶ 4-5.
Through counsel, Ms. Doe requested permission to likewise record the questions that would be asked of her, and her replies, during the investigative interview.\textsuperscript{11} This request was denied.\textsuperscript{12} For at least a decade, and likely longer, the Board has refused requests from licensees to either make, or obtain from the Board, recordings of investigative interviews in which the licensee participates.\textsuperscript{13} The Board maintains that the exchanges during the interview constitute “active investigative data relating to the investigation” that are “collected, created or maintained” by the Board.\textsuperscript{14} It asserts that this data cannot be disclosed to the licensee under Minn. Stat. § 13.41, subd. 4.\textsuperscript{15}

While the Minnesota Legislature has delegated to the Board authority to promulgate administrative rules with respect to its “taking disciplinary, adversarial, corrective, or other action” against licensees,\textsuperscript{16} the Board has not promulgated administrative rules with respect to the conduct of investigatory interviews, in general, or recording such interviews in particular.\textsuperscript{17}

Ms. Doe maintains that prohibiting her from making a recording of an interview in which she participates, is both substantively and procedurally improper.

Her substantive objection is that the prohibition impairs her ability to participate in the disciplinary process. Ms. Doe maintains that Board officials routinely question licensees about the accuracy and completeness of statements that were made to investigators – sometimes weeks after the investigative interview occurred. She argues that obliging a licensee to answer those kind of inquiries, without having access to a recording of the earlier statements, is unfair and prejudicial.\textsuperscript{18}

Under Minn. Stat. § 148E.250, subd. 1(4), Board officials may oblige licensees to appear at “conferences, hearings, or meetings scheduled by the board. . . . ” It is undisputed that the Compliance Panel of the Board often convenes a conference to explore apparent discrepancies between the account that was given by the licensee during the investigative interview and other records that are later obtained by Board investigators.\textsuperscript{19} Because Board staff can, and do, make recordings of investigative interviews, members of the Board’s Compliance Panel have access to the precise wording, and the larger context, of the questions and responses that were made during such interviews. Yet, under the current practice, licensees do not.\textsuperscript{20}

In this context, scrupulous accuracy and cooperation are important: Knowingly withholding relevant information, giving false or misleading information, or doing

\textsuperscript{11} Petition at ¶ 11.
\textsuperscript{12} Id. at ¶ 12.
\textsuperscript{13} See Aff. of K. Zacher-Pate at ¶ 3.
\textsuperscript{14} Id.
\textsuperscript{15} Id.
\textsuperscript{17} See generally Minn. R. ch. 8740 (2017).
\textsuperscript{18} Petition at ¶ 21; Digital Recording, supra.
\textsuperscript{19} Digital Recording, supra.
\textsuperscript{20} Petition at ¶ 21; Aff. of K. Zacher-Pate at ¶ 3.
"anything to obstruct an investigation of the social worker" by the Board, is a separate
ground for discipline under Minn. Stat. §§ 148E.250, 148E.255, subd. 2.

Ms. Doe's procedural objection is that the Board is enforcing its policy of not
permitting licensees to record interviews, in ways that diminish her rights, and as if this
prohibition was a duly promulgated administrative rule. The Board of Social Work is
not permitted to enforce a "policy, guideline, bulletin, criterion, manual, standard, or
similar pronouncement as though it were a duly adopted rule." She requests an order
under Minn. Stat. § 14.381 directing the Board to "cease enforcement" of its prohibition
on licensees recording interviews in which they participate.

Whether the Board's practice of forbidding licensees from recording investigative
interviews is an unpromulgated rule, or covered by an exception to the requirements to
depend rulemaking, is considered below.

II. Legal Analysis

The Minnesota Administrative Procedure Act (MAPA) defines a "rule" as: "every
agency statement of general applicability and future effect, including amendments,
suspensions, and repeals of rules, adopted to implement or make specific the law
enforced or administered by that agency or to govern its organization or procedure."

Interpretations of existing statutes which "make specific the law enforced or
administered by the agency," are deemed to be "interpretative rules." With limited
exceptions, an agency's interpretative rules are valid only if they are promulgated in
accordance with the rulemaking procedures of MAPA.

The state courts do recognize, as exceptions to the requirement to conduct
formal rulemaking, long-standing interpretations of ambiguous statutes and
interpretations that follow from the "plain meaning" of clearly-worded statutes. Also,
under Minn. Stat. § 14.03, subd. 3 (2016), procedures that concern "only the internal

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21 Petition at ¶ 21-24.
23 Petition at ¶ 25.
24 Minn. Stat. § 14.02, subd. 4 (2016).
26 See Minn. Stat. § 14.03, subd. 3(b); In re Application of Q Petroleum, 498 N.W.2d 772, 780 (Minn. Ct. App.), review denied (Minn. 1993) (citing cases).
27 See, e.g., Cable Communications Bd. v. Nor-West Cable Communications P'ship, 356 N.W.2d 658, 667 (Minn. 1984) (an interpretive rule that has not been properly promulgated may nonetheless be valid
in two situations: "if the agency's interpretation of a [statute] corresponds with its plain meaning, or if the 
[statute] is ambiguous and the agency interpretation is a longstanding one."); Ebenezer Soc'y v. Minn. 
Dep't of Human Servs., 433 N.W.2d 436, 439 (Minn. Ct. App.1988) ("an interpretation does not constitute 
a new rule if it is consistent with the plain meaning of the statute, or if the rule is ambiguous and the 
interpretation is a long-standing one").
management of the agency . . . that do not directly affect the rights of or procedures available to the public," are not regarded as rules at all.

The Board makes two alternative arguments in support of forbidding its licensees to record investigative interviews: The ban follows directly from the plain meaning of the Minnesota Government Data Practices Act (MGDPA), and, even if does not, it is the agency’s long-standing interpretation of an Act that is ambiguous. 29

III. The Board’s Plain Meaning Analysis

The Board argues that recording investigative interviews is barred by the MGDPA because the interview involves “confidential data on individuals,” that is “inaccessible to the individual subject of those data.” 30 It maintains that while disclosing the investigators’ questions to Ms. Doe, and her spoken replies to those questions does not violate the MGDPA, permitting her to record those questions and replies would. As it reasons, recording the interview results in a prohibited disclosure of confidential investigative data. 32 This analysis is very problematic.

As a threshold matter, the Board is oblique about the nature of the data that it seeks to protect from improper disclosure. If it is the questions that investigators will ask Ms. Doe about her conduct that must be protected from disclosure, that “data” is given directly to Ms. Doe – who is not a government official – during the interview. Indeed, the questions are designed to be disclosed to her, 33 the “subject of those data.” 34 If the Board’s reading of the MGDPA is correct, it makes for a very curious brand of “confidential data on individuals”: one that violates its own statutory definition from the moment that it comes into existence. 35

A similar dilemma results from any replies that Ms. Doe would make to questions from the Board’s investigators. She, and not the government, “creates” that data; and her replies are “accessible” to her as she renders them aloud during the interview. 36

The unstated premise of the Board’s argument is that a licensee may not lawfully “collect” data on herself, or the questions of government investigators, because this same data will also be “collected and maintained” by the Board of Social Work. But this conclusion does not follow plainly from the text of our law.

28 Board's Response to the Petition at 9 - 10; Minn. Stat. § 13.02, subd. 3 (2016) ("Confidential data on individuals’ are data made not public by statute or federal law applicable to the data and are inaccessible to the individual subject of those data").
29 Id. at 10 - 11.
30 Stat. § 13.02, subd. 3.
31 Digital recording, supra.
32 Aff. of K. Zacher-Pate at ¶ 3.
33 Digital recording, supra.
34 See Minn. Stat. § 13.02, subd. 3.
35 Id.
36 See id.
The MGDPA does not include a prohibition on licensees recording themselves in any context — and there is no bar on recordings in the context of investigative interviews.\(^{37}\) Indeed, to the extent that state law touches upon the topic of Minnesotans recording their own communications, it gives broad protections to that activity. Minn. Stat. § 626A.02, subd. 2(d) (2016) provides:

> It is not unlawful under this chapter for a person not acting under color of law to intercept a wire, electronic, or oral communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the United States or of any state.

During an investigative interview, Ms. Doe, a private citizen, would record her own conversation for a lawful purpose. Thus, the claim that licensees may not record investigative interviews does not follow from a plain reading of our statutes.

The best reading of the MGDPA is that to the extent that the Board of Social Work “collects, creates or maintains” data during an investigative interview,\(^{38}\) that data, including recordings of investigative interviews, are not accessible \textit{by way of a public records request} to the Board.\(^{39}\) The lynchpin, of course, is the connection between the dual phrases “not public” and “not accessible to the subject of the data” (under Minn. Stat. § 13.02, subd. 13) and the more general privilege to inspect and copy government data under Minn. Stat. § 13.03.\(^{40}\) The agency is restricted as to the amount of investigative data that it may disclose in response to a records request; but these statutes do not prohibit Ms. Doe from recording her own conversations.

Significantly, other agencies do not share the Board’s view that the MGDPA prohibits the targets of an investigation from recording or copying their own statements.\(^{41}\)

The Board’s reading of the MGDPA is unpersuasive. The claim that a licensee who hears an investigator’s question does not “access” confidential data, but one who records the same question, does, is nonsense.

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\(^{38}\) Minn. Stat. § 13.41, subd. 4.

\(^{39}\) Minn. Stat. § 13.03, subd. 3 (Request for access to data).

\(^{40}\) Minn. Stat. § 13.03, subd. 1 (“All government data collected, created, received, maintained or disseminated by a government entity shall be public unless classified by statute, or temporary classification pursuant to section 13.06, or federal law, as nonpublic or protected nonpublic, or with respect to data on individuals, as private or confidential”).

\(^{41}\) See Advisory Opinion 97-034 (Minn. Data Practices Office, August 12, 1997) ("Ms. O’Hern noted that the [MnDOT] had provided [the target of the investigation] with an opportunity to receive the tape recording of an interview [that person] had with the investigator. She also stated that the investigator had provided [this person] with . . . the investigator’s notes from the meeting").

(Cite 42 SR 1573)  Minnesota State Register, Monday 18 June 2018  Page 1573
Official Notices

IV. The Long-Standing Policy Analysis

Alternatively, the Board argues that its prohibition on recording investigative interviews is a well-established interpretation of ambiguous provisions of the MGDPA. It asserts:

The alleged rule challenged here is, by Petitioner's own admission, long-standing, well-established, and consistently-applied. Indeed, counsel for Petitioner aver[s] that he has 'represented many licensees ... and [he has] never been permitted to record the interview.' The Board has not approved requests by licensees to obtain or make recordings of confidential interviews for over a decade.\(^{42}\)

As noted above, the Administrative Law Judge does not agree that either Minn. Stat. § 13.02, subd. 13 or Minn. Stat. § 13.41, subd. 4 are ambiguous. Those statutes plainly restrict the types of data that are accessible through a public records request. However, even if one were to assume, for the purposes of argument, that these statutes are capable of being read in different ways, the Board would still not prevail. This is because its particular interpretation of the MGDPA was not formally promulgated and it does not qualify as a "long-standing policy" of the Board.

The case law makes clear that there is a judge-made exception to the requirement that interpretative rules must be formally promulgated. These decisions likewise detail the purpose of this exception. Not invalidating a "long-standing policy" of an agency, because of defects in how the policy was initially formed, is not meant to ratify illegalities that have persisted for many years.\(^{43}\) Instead, the exception is a concession to the practical reality that some sensible and well-understood procedures may not have been appropriately promulgated in the first instance. Our law does not throw out the proverbial baby with the bathwater.\(^{44}\)

By the same token, however, not every practice that is old is entitled to shelter. The exception is meant to protect methods that have been open and notorious for years, have been considered in different factual contexts, and as to which there are very settled expectations in the regulated community.\(^{45}\) The analysis of the Minnesota Court

\(^{42}\) Board's Response to the Petition at 11.

\(^{43}\) Northern Messenger, Inc. v. Airport Couriers, Inc., 359 N.W.2d 302, 304 (Minn. Ct. App. 1984) ("There is no requirement in the rules of the board that any person with standing to intervene must do so or thereby waive his or her right to testify. Although this may be a long-standing, unwritten practice of the agency, such unpromulgated rules are not entitled to deference").

\(^{44}\) See generally The Honorable Antonin G. Scalia, 1994 William O. Douglas Lecture Series Transcript, 51 Gonz. L. Rev. 583, 588 (2016) ("I'm not going to kick over everything that's been done and start anew. You can't do that. There is such a thing as stare decisis. The way I like to put it is: I am a textualist; I am an originalist; I am not a nut. You cannot go back and redo everything.").

\(^{45}\) See generally In re Cities of Annandale & Maple Lake NPDES/SDS Permit Issuance for the Discharge of Treated Wastewater, 731 N.W.2d 502, 528 (Minn. 2007) ("[D]eference may be justified because longstanding and consistent interpretations may have encouraged reliance by the public and because the failure of a delegating authority to correct the interpretation implies either that the interpretation is correct or that the authority has willingly acquiesced to the agency's interpretation") (Page, J. dissenting).
of Appeals in the Matter of PERA Salary Determinations Affecting Retired and Active Employees of the City of Duluth, 820 N.W.2d 563 (Minn. Ct. App. 2012) is instructive on this point. In that case, the appellate panel held that an interpretative rule, which had been quietly and episodically invoked over the years, was not exempt from the state’s rulemaking requirements. As Judge Johnson wrote for the panel:

The principle that a longstanding interpretation of a statute may be valid, even if not properly promulgated, apparently is derived from federal case law. Long ago, our supreme court relied on a United States Supreme Court opinion in asserting that the weight that should be given to an agency’s interpretation of a statute “is dependent upon such construction’s having been long-continued....”

It appears that, under federal law, the duration and the consistency of an agency’s interpretation of a statute are just two of several factors that determine the level of deference to be given to an agency’s interpretation of a statute. As the United States Supreme Court has explained, “The weight [given an administrative] judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.”

... 

If we are to accept an improperly promulgated rule as valid on the ground that it is ‘longstanding,’ we must insist on a greater level of formality and consistency than is evident in the agency interpretation in this case.46

As the panel explained, the state courts do recognize a narrow exception for technically-deficient, but thoroughly tested practices. Those practices are given effect because their wide, consistent and open uses over time resemble the methods of appropriately developing new rules in the first instance — either “deductively” through notice and comment rulemaking or “inductively” through a series of case-by-case adjudications.47

In this case, however, the development and application of the recording ban does not resemble those other familiar processes. Both the creation of this policy, and its later application to interviews, were undertaken outside of public view and without particular formality. Nonpublic processes about nonpublic activities do not lend the Board the “power to persuade” that its policy choices were the right ones.

The fact that the Board has narrowed the recording rights of licensees for as long as anyone can remember does not point to a different conclusion. As the court in PERA

46 In Re PERA Salary Determinations, 820 N.W.2d at 570–73 (emphasis added).
47 See generally Bunge Corp. v. Comm’r of Revenue, 305 N.W.2d 779, 785 (Minn. 1981) (“Administrative policy may be formulated by promulgating rules or on a case-by-case determination. An agency has discretion to decide what method is appropriate in a particular situation.”) (citing cases).
held, a long, quiet history does not persuade that the agency's policy is reasonable. For these reasons, applying the "long-standing policy" exception to the requirement the Board formally promulgate an interpretative rule, is not appropriate on these facts.48

V. The Recording Ban is Not an Internal Agency Procedure

While the Board does not include this particular argument in its papers, it is important to address one possibility for ratifying the Board's recording ban. Potentially, the Board's prohibition could be characterized as a rule "concerning only the internal management of the agency" under the Minn. Stat. § 14.03, subd. 3(a)(1).

Undoubtedly the Board did not proffer this argument because the exception for internal management procedures does not, in fact, apply in this case. This is because the prohibition on recording does "directly affect the rights of, or procedures available to, the public," as those terms are used in section 14.03. Under the Board's prohibition, licensees do not have the same privilege to record themselves during investigative interviews that they enjoy in other settings.49

For all of these reasons, Ms. Doe is entitled to an order directing the Board to cease enforcement of its prohibition on licensees recording of investigative interviews, until such time as a statute or duly promulgated rule authorizes this restriction.

E.L.L.

48 McCloud v. Comm'r of Pub. Safety, 349 N.W.2d 821, 824 (Minn. 1984) ("The fact that the commissioner's interpretation of the law is long-standing might have some significance if the statutes are not clear. But if the statutes do not support the commissioner's interpretation, this argument is weak, particularly where the commissioner's interpretation has not been challenged before.").

49 Benson v. Comm'r of Pub. Safety, 356 N.W.2d 799, 801 (Minn. Ct. App. 1984) ("The 'internal guidelines' directly affect drivers whose revocations are calculated under them. They are not so remote from the rights of the public as to be exempt from rulemaking."); see also In Re Assessment Issued to Leisure Hills Health Care Ctr., 518 N.W.2d 71, 75 (Minn. Ct. App. 1994).
State Grants & Loans

In addition to requests by state agencies for technical/professional services (published in the State Contracts Section), the State Register also publishes notices about grants and loans available through any agency or branch of state government. Although some grant and loan programs specifically require printing in a statewide publication such as the State Register, there is no requirement for publication in the State Register itself. Agencies are encouraged to publish grant and loan notices, and to provide financial estimates as well as sufficient time for interested parties to respond.

SEE ALSO: Office of Grants Management (OGM) at: http://www.grants.state.mn.us/public/

Department of Employment and Economic Development (DEED)
Notice of Grant Opportunity

NOTICE IS HEREBY GIVEN that the Minnesota Department of Employment and Economic Development (DEED) places notice of any available grant opportunities online at https://mn.gov/deed/about/contracts/

Department of Public Safety
Office of Justice Programs
Request for Proposals: Justice Assistance Grants (JAG) Recidivism Reduction Grants

The MN JAG Recidivism Reduction grants seek to improve public safety by strengthening collaborative efforts between criminal justice, probation systems and social services to better serve youth and adults as they return to communities from correctional placements. The intent of this funding is to enhance access to services, supports and resources needed for offenders to succeed in the community.

Applicants are expected to have working relationships between correctional facilities, probation systems, and community agencies so that grant funded reentry programming can begin during incarceration and continue with return to the community. Successful applicants will employ the Risk-Needs-Responsivity Model and will use validated risk assessment and case management tools.

Approximately $3 million in federal Justice Assistance Grant (JAG) funds may be available for two year grants ranging from about $100,000 to $300,000.

All applications must be submitted via e-grants, the Office of Justice Programs (OJP) online grants management system, at e-grants. Applications must be submitted by 4:00 p.m. on Monday, July 23, 2018.

To view the RFP go to: Request for Proposals

For more information contact Claire Cambridge at claire.cambridge@state.mn.us or 651-201-7307.
State Contracts

Informal Solicitations: Informal solicitations for professional/technical (consultant) contracts valued at over $5,000 through $50,000, may either be published in the State Register or posted on the Department of Administration, Materials Management Division’s (MMD) Web site. Interested vendors are encouraged to monitor the P/T Contract Section of the MMD Website at www.mmd.admin.state.mn.us for informal solicitation announcements.

Formal Solicitations: Department of Administration procedures require that formal solicitations (announcements for contracts with an estimated value over $50,000) for professional/technical contracts must be published in the State Register. Certain quasi-state agency and Minnesota State College and University institutions are exempt from these requirements.

Requirements: There are no statutes or rules requiring contracts to be advertised for any specific length of time, but the Materials Management Division strongly recommends meeting the following requirements: $0 - $5000 does not need to be advertised. Contact the Materials Management Division: (651) 296-2600 $5,000 - $25,000 should be advertised in the State Register for a period of at least seven calendar days; $25,000 - $50,000 should be advertised in the State Register for a period of at least 14 calendar days; and anything above $50,000 should be advertised in the State Register for a minimum of at least 21 calendar days.

Department of Administration

Multistate Contracting Alliance for Pharmacy (MMCAP)

Notice of Request for Proposals for Medication Repackaging Services

The Department of Administration, on behalf of the Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP), is requesting proposals for medication repackaging services. MMCAP is a government-run healthcare product and service group purchasing organization serving governmental entities. For more information, go to www.mmcap.org.

To request a copy of the RFP go to MMCAP.RFP@state.mn.us

Or write to:

Medication Repackaging Services RFP Request
MMCAP
State of Minnesota, Department of Administration
50 Sherburne Avenue, Suite 112
St. Paul, MN 55155

Proposals submitted in response to the Request for Proposals in this notice must be received according to the specifications in the Request for Proposals no later than August 6, 2018 2:00p.m. Central Time. Late proposals will not be considered.

The State reserves the right to cancel this solicitation. All expenses incurred in responding to this notice are solely the responsibility of the responder.

Department of Agriculture

Pesticide & Fertilizer Management Division

Request for Information for Pesticide Analysis for Private Well Pesticide Sampling Project

Issued: Monday, June 18, 2018

Questions due: June 25, 2018

Responses Due: Wednesday, July 6, 2018
State Contracts

Project Overview

The Minnesota Department of Agriculture (MDA), acting on behalf of the State of Minnesota, is requesting information for laboratory services capable of analyzing approximately 2,000-3,000 groundwater samples for nitrate-nitrogen (nitrate) and a list of at least 125 pesticides and pesticide degradates as part of the Private Well Pesticide Sampling (PWPS) Project. The State of Minnesota invites all interested parties to submit a written response to this Request for Information (RFI).

Background

This RFI is being sought strictly for the purpose of determining laboratory capabilities, with an estimate of the corresponding costs and should not be construed as intent, commitment, or promise to acquire services, supplies or solutions offered. No contract will result from any response to this RFI.

Information submitted in response to this RFI will become property of the State of Minnesota and will be public information.

The State of Minnesota will not pay for any information herein requested nor is it liable for any cost incurred by the vendor in preparing a response to this RFI.

Instructions

RFI responses are due on or before July 6, 2018 at jeff.paddock@state.mn.us. Late submissions may not be addressed. Questions may be directed to jeff.paddock@state.mn.us by June 25, 2018. Questions submitted after June 25, 2018 may not be addressed.

Please include following eight questions or statements included in the Response Content section of this RFI followed by your response. Responders may provide additional information.

Other State employees are NOT authorized to discuss this request for information with responders before the submission deadline.

Project Description

The primary goal of the PWPS Project is to provide information to homeowners and the general public on the presence of pesticides in private drinking water wells in geologically sensitive areas of Minnesota. The PWPS Project began in 2014 and is a follow-up testing program to the MDA’s Township Testing Program (TTP). Homeowners in selected townships are offered the opportunity to first test their private drinking well for nitrate-nitrogen (nitrate). If nitrate is detected in their first sample, homeowners are offered a follow-up nitrate and pesticide test as part of the PWPS Project.

The MDA has currently analyzed approximately 2,600 groundwater samples for nitrate and 125 pesticide and pesticide degradates. The MDA anticipates that an additional 2,000-3,000 pesticide samples will be analyzed through the projected completion of the PWPS Project at the end of 2021.

Analysis shall be performed using acceptable analytical chromatography methodologies. Approximately 125 pesticides and associated degradates will be targeted, most in the low parts per trillion range (Attachment A). Additional pesticides or pesticide degradates may be added to the list based on need. The contract laboratory must have the ability to report the results in an electronic format within 60 days of collection.

Samples will be collected by MDA staff from private drinking water wells around the state and submitted to the contract laboratory. The laboratory contract work is to include mailing of sample collection bottles and coolers to MDA offices, receiving water samples, chemical analysis of pesticide related chemicals in water samples within designated holding times, electronic reporting of results and invoicing for work completed on a per sample basis. The laboratory must have
State Contracts

a minimum of two years professional experience analyzing low-level pesticides in water samples.

Response Content

We appreciate your response to this request. We are looking for brief responses. Below we ask for general information and then pose some additional questions to help clarify. These additional questions are not meant to limit your response.

1. How many of the compounds listed (Attachment A) are you currently able to analyze at the requested Method Reporting Limits (MRLs).

   a. Briefly describe the analytical method that you currently use to analyze the compounds listed in Appendix A

   b. If there are compounds on the list that are not currently analyzed, will you be able to develop a method to analyze these compounds? Please briefly describe how the method would be developed and the time required for method development.

   c. State how many years of experience you have analyzing low-level pesticides in water

2. Please briefly describe the specific methods used to assure the quality, accuracy and timeliness of the analytical results.

3. Please describe any current accreditation pertinent to the nitrate and pesticide analysis.

4. Will you be able to analyze approximately 100-150 nitrate and pesticide samples per week within the established holding time?

5. What bottles and what volume will be required for nitrate and pesticide analysis?

6. Are you able to ship coolers and sampling supplies on a weekly basis to several different locations?

7. Are you able to report the analytical results within 60 days? Please briefly describe how the analytical data will be reported and in what form.

8. What is the approximate cost per sample for the nitrate samples and the approximate cost per sample for the pesticide samples?

Attachment A: Current PWPS Analyte List

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State Contracts

Minnesota State Academies (Blind School & Deaf School)
Notice of Contract Opportunity for Occupational Therapist

PROJECT NAME: Occupational Therapist

DETAILS: The Minnesota State Academies is requesting proposals for the purpose of Occupational Therapy Services.

Work is anticipated to start after August 27th, 2018

COPY REQUEST: To get a copy of the Request for Proposals, please send a written request, by email, to:

Patty Rux
Accounting Officer
615 Olof Hanson Drive Faribault, MN  55021
Patty.rux@msa.state.mn.us

PROPOSAL DEADLINE: Proposals submitted in response to the Request for Proposals in this advertisement must be received by Email, Fax, US mail or other Mail carriers no later than July 20th, 2018 1:30 Central Daylight time. Late proposals will not be considered.

This request does not obligate the State to complete the work contemplated in this notice. The State reserves the right to cancel this solicitation. All expenses incurred in responding to this notice are solely the responsibility of the responder.

Minnesota Department of Transportation (MnDOT)
Engineering Services Division
Notices Regarding Professional/Technical (P/T) Contracting

P/T Contracting Opportunities: MnDOT is now placing additional public notices for P/T contract opportunities on the MnDOT’s Consultant Services website. New public notices may be added to the website on a daily basis and be available for the time period as indicated within the public notice.

Taxpayers’ Transportation Accountability Act (TTAA) Notices: MnDOT is posting notices as required by the TTAA on the MnDOT Consultant Services website.

MnDOT’s Prequalification Program: MnDOT maintains a Pre-Qualification Program in order to streamline the process of contracting for highway related P/T services. Program information, application requirements, application forms and contact information can be found on MnDOT’s Consultant Services website. Applications may be submitted at any time for this Program.

MnDOT Consultant Services website: www.dot.state.mn.us/consult

If you have any questions regarding this notice, or are having problems viewing the information on the Consultant Services website, please call the Consultant Services Help Line at 651-366-4611, Monday – Friday, 9:00am – 4:00pm.
Non-State Public Bids, Contracts & Grants

The State Register also serves as a central marketplace for contracts let out on bid by the public sector. The State Register meets state and federal guidelines for statewide circulation of public notices. Any tax-supported institution or government jurisdiction may advertise contracts and requests for proposals from the private sector. It is recommended that contracts and RFPs include the following: 1) name of contact person; 2) institution name, address, and telephone number; 3) brief description of commodity, project or tasks; 4) cost estimate; and 5) final submission date of completed contract proposal. Allow at least three weeks from publication date (four weeks from the date article is submitted for publication). Surveys show that subscribers are interested in hearing about contracts for estimates as low as $1,000. Contact editor for further details.

Besides the following listing, readers are advised to check: http://www.mmd.admin.state.mn.us/solicitations.htm as well as the Office of Grants Management (OGM) at: http://www.grants.state.mn.us/public/.

Metropolitan Airports Commission (MAC)
Notice of Call for Bids for CLDF Impacted Soil Mitigation

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<th>Project Location:</th>
<th>Minneapolis-St. Paul International Airport</th>
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<td>Project Name:</td>
<td>CLDF Impacted Soil Mitigation</td>
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<td>MAC Contract No.</td>
<td>106-3-592</td>
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<td>Bids Close At:</td>
<td>2:00 PM on July 9, 2018</td>
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Notice to Contractors: Sealed bid proposals for the project listed above will be received by the MAC, a public corporation, at the office thereof located at 6040-28th Avenue South, Minneapolis, Minnesota 55450, until the date and hour indicated. This project provides for the loading and transportation of CLDF impacted soil from MSP International Airport to an approved disposal site. Work also includes minor traffic control requirements and turf restoration.

Note: You can sign up on our Web site (www.metroairports.org) to receive email notifications of new business opportunities or go directly to https://public.govdelivery.com/accounts/MNORGMAC/subscriber/topics?gsp-CODE_RED and choose this and other topics about which you are interested.

Targeted Group Businesses (TGB): The goal of the MAC for the utilization of Targeted Group Businesses on this project is 9%.

Bid Security: Each bid shall be accompanied by a "Bid Security" in the form of a certified check made payable to the MAC in the amount of not less than five percent (5%) of the total bid, or a surety bond in the same amount, running to the MAC, with the surety company thereon duly authorized to do business in the State of Minnesota.

Availability of Bidding Documents: Bidding documents are on file for inspection at the office of TKDA, the Minnesota Builders Exchange, Dodge Data and Analytics, and NAMC-UM Plan Room. Bidders desiring bidding documents may secure a complete set from: TKDA; 444 Cedar Street, Suite 1500; St. Paul, MN 55101; PH: (651) 292-4400; FX: (651) 292-0083. Make checks payable to: TKDA. Deposit per set (refundable): $100.00. Requests for mailing sets will be invoiced for mailing charges. Deposit will be refunded upon return of bidding documents in good condition within 10 days of opening of bids.

MAC Internet Access of Additional Information: A comprehensive Notice of Call for Bids for this project will be available on June 18, 2018, at MAC’s web address of http://www.metroairports.org/Airport-Authority/Business-Opportunities/Solicitations.aspx (construction bids).
Several convenient ways to order:

- **Retail store** Open 8 a.m. - 3 p.m. Monday - Friday, 660 Olive Street, St. Paul
- **Phone** (credit cards): 8 a.m. - 4 p.m. Monday - Friday, 651.297.3000 (Twin Cities) or 1.800.657.3757 (nationwide toll-free)
- **On-line orders**: www.mnbookstore.com
- **Minnesota Relay Service**: 711
- **Fax** (credit cards): 651.215.5733 (fax line available 24 hours)
- **Mail orders**: Orders can be sent to Minnesota’s Bookstore, 660 Olive Street, St. Paul, MN 55155

Minnesota’s Bookstore accepts VISA, MasterCard, American Express & Discover for all purchases.

**PREPAYMENT REQUIRED. Prices and availability subject to change. Fax and phone orders require credit card.**

Please allow 1-2 weeks for delivery. For **mail orders**, complete order blank and send to address above. Enclose payment - for security reasons, we do not recommend mailing credit card information.

Please allow 2-3 weeks for delivery.

Please make checks payable to "Minnesota's Bookstore."

A $20.00 fee will be charged for returned checks.

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