

SENATE
STATE OF MINNESOTA
EIGHTY-SEVENTH LEGISLATURE **S.F. No. 1701**

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DATE	D-PG	OFFICIAL STATUS
02/02/2012	3710	Introduction and first reading Referred to Health and Human Services
02/23/2012	3887a	Comm report: To pass as amended and re-refer to Jobs and Economic Growth
03/19/2012		Comm report: To pass as amended Second reading

A bill for an act

1.1 relating to restaurants; expanding the sales tax exemption for certain meals
1.2 and drinks; expanding the capital equipment exemption; providing for the
1.3 application of gratuities in calculating the minimum wage; modifying the
1.4 calculation of unemployment taxes; modifying license fees; authorizing the
1.5 delegation agreement between the commissioner of health and local governments
1.6 to specify fees to be charged; amending Minnesota Statutes 2010, sections
1.7 145A.07, subdivision 3; 157.16, subdivision 3; 177.24, subdivisions 1, 2;
1.8 268.035, subdivision 24; 297A.68, subdivision 5, by adding subdivisions;
1.9 327.15, subdivision 3.
1.10

1.11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.12 Section 1. Minnesota Statutes 2010, section 145A.07, subdivision 3, is amended to
1.13 read:

1.14 Subd. 3. **Terms of agreements.** (a) Agreements authorized under this section must
1.15 be in writing and signed by the delegating authority and the designated agent.

1.16 (b) The agreement must list criteria the delegating authority will use to determine if
1.17 the designated agent's performance meets appropriate standards and is sufficient to replace
1.18 performance by the delegating authority.

1.19 (c) The agreement may specify minimum staff requirements and qualifications, set
1.20 procedures for the assessment of costs, and provide for termination procedures if the
1.21 delegating authority finds that the designated agent fails to comply with the agreement.

1.22 The agreement may specify fees to be charged by the designated agent for the provision
1.23 of licensing, inspection, or enforcement duties under chapter 157 and sections 327.14 to
1.24 327.28. The fees must not exceed the costs, including overhead costs, to the designated
1.25 agent for the performance of these duties. The fees collected must not be used for any
1.26 other purpose than the purpose for which the fee is collected.

2.1 (d) A designated agent must not perform licensing, inspection, or enforcement duties
2.2 under the agreement in territory outside its jurisdiction unless approved by the governing
2.3 body for that territory through a separate agreement.

2.4 (e) The scope of agreements established under this section is limited to duties and
2.5 responsibilities agreed upon by the parties. The agreement may provide for automatic
2.6 renewal and for notice of intent to terminate by either party.

2.7 (f) During the life of the agreement, the delegating authority shall not perform duties
2.8 that the designated agent is required to perform under the agreement, except inspections
2.9 necessary to determine compliance with the agreement and this section or as agreed to
2.10 by the parties.

2.11 (g) The delegating authority shall consult with, advise, and assist a designated agent
2.12 in the performance of its duties under the agreement.

2.13 (h) This section does not alter the responsibility of the delegating authority for
2.14 the performance of duties specified in law.

2.15 Sec. 2. Minnesota Statutes 2010, section 157.16, subdivision 3, is amended to read:

2.16 Subd. 3. **Establishment fees; definitions.** (a) The following fees are required
2.17 for food and beverage service establishments, youth camps, hotels, motels, lodging
2.18 establishments, public pools, and resorts licensed under this chapter. Food and beverage
2.19 service establishments must pay the highest applicable fee under paragraph (d), clause
2.20 (1), (2), (3), or (4), and establishments serving alcohol must pay the highest applicable
2.21 fee under paragraph (d), clause (6) or (7). The license fee for new operators previously
2.22 licensed under this chapter for the same calendar year is one-half of the appropriate annual
2.23 license fee, plus any penalty that may be required. The license fee for operators opening
2.24 on or after October 1 is one-half of the appropriate annual license fee, plus any penalty
2.25 that may be required.

2.26 (b) All food and beverage service establishments, except special event food stands,
2.27 and all hotels, motels, lodging establishments, public pools, and resorts shall pay an
2.28 annual base fee of \$150.

2.29 (c) A special event food stand shall pay a flat fee of \$50 annually. "Special event
2.30 food stand" means a fee category where food is prepared or served in conjunction with
2.31 celebrations, county fairs, or special events from a special event food stand as defined
2.32 in section 157.15.

2.33 (d) In addition to the base fee in paragraph (b), each food and beverage service
2.34 establishment, other than a special event food stand and a school concession stand, and
2.35 each hotel, motel, lodging establishment, public pool, and resort shall pay an additional

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3.1 annual fee for each fee category, additional food service, or required additional inspection
3.2 specified in this paragraph:

3.3 (1) Limited food menu selection, \$60. "Limited food menu selection" means a fee
3.4 category that provides one or more of the following:

3.5 (i) prepackaged food that receives heat treatment and is served in the package;

3.6 (ii) frozen pizza that is heated and served;

3.7 (iii) a continental breakfast such as rolls, coffee, juice, milk, and cold cereal;

3.8 (iv) soft drinks, coffee, or nonalcoholic beverages; or

3.9 (v) cleaning for eating, drinking, or cooking utensils, when the only food served
3.10 is prepared off site.

3.11 (2) Small establishment, including boarding establishments, \$120. "Small
3.12 establishment" means a fee category that has no salad bar and meets one or more of
3.13 the following:

3.14 (i) possesses food service equipment that consists of no more than a deep fat fryer, a
3.15 grill, two hot holding containers, and one or more microwave ovens;

3.16 (ii) serves dipped ice cream or soft serve frozen desserts;

3.17 (iii) serves breakfast in an owner-occupied bed and breakfast establishment;

3.18 (iv) is a boarding establishment; or

3.19 (v) meets the equipment criteria in clause (3), item (i) or (ii), and has a maximum
3.20 patron seating capacity of not more than 50.

3.21 (3) Medium establishment, \$310. "Medium establishment" means a fee category
3.22 that meets one or more of the following:

3.23 (i) possesses food service equipment that includes a range, oven, steam table, salad
3.24 bar, or salad preparation area;

3.25 (ii) possesses food service equipment that includes more than one deep fat fryer,
3.26 one grill, or two hot holding containers; or

3.27 (iii) is an establishment where food is prepared at one location and served at one or
3.28 more separate locations.

3.29 Establishments meeting criteria in clause (2), item (v), are not included in this fee
3.30 category.

3.31 (4) Large establishment, \$540. "Large establishment" means either:

3.32 (i) a fee category that (A) meets the criteria in clause (3), items (i) or (ii), for a
3.33 medium establishment, (B) seats more than 175 people, and (C) offers the full menu
3.34 selection an average of five or more days a week during the weeks of operation; or

3.35 (ii) a fee category that (A) meets the criteria in clause (3), item (iii), for a medium
3.36 establishment, and (B) prepares and serves 500 or more meals per day.

4.1 (5) Other food and beverage service, including food carts, mobile food units,
4.2 seasonal temporary food stands, and seasonal permanent food stands, \$60.

4.3 (6) Beer or wine table service, \$60. "Beer or wine table service" means a fee
4.4 category where the only alcoholic beverage service is beer or wine, served to customers
4.5 seated at tables.

4.6 (7) Alcoholic beverage service, other than beer or wine table service, \$165.

4.7 "Alcohol beverage service, other than beer or wine table service" means a fee
4.8 category where alcoholic mixed drinks are served or where beer or wine are served from
4.9 a bar.

4.10 (8) Lodging per sleeping accommodation unit, \$10, including hotels, motels,
4.11 lodging establishments, and resorts, up to a maximum of \$1,000. "Lodging per sleeping
4.12 accommodation unit" means a fee category including the number of guest rooms, cottages,
4.13 or other rental units of a hotel, motel, lodging establishment, or resort; or the number of
4.14 beds in a dormitory.

4.15 (9) First public pool, \$325; each additional public pool, \$175. "Public pool" means a
4.16 fee category that has the meaning given in section 144.1222, subdivision 4.

4.17 (10) First spa, \$175; each additional spa, \$100. "Spa pool" means a fee category that
4.18 has the meaning given in Minnesota Rules, part 4717.0250, subpart 9.

4.19 (11) ~~Private sewer or water, \$60~~ Individual private sewer, \$30; individual private
4.20 water, \$30. "Individual private water" means a fee category with a water supply other
4.21 than a ~~community~~ public water supply as defined in ~~Minnesota Rules, chapter 4720~~
4.22 section 144.382, subdivision 4. "Individual private sewer" means a fee category with an
4.23 individual sewage treatment system which uses subsurface treatment and disposal.

4.24 (12) Additional food service, \$150. "Additional food service" means a location at
4.25 a food service establishment, other than the primary food preparation and service area,
4.26 used to prepare or serve food to the public. Additional food service does not apply to
4.27 school concession stands.

4.28 (13) Additional inspection fee, \$360. "Additional inspection fee" means a fee to
4.29 conduct the second inspection each year for elementary and secondary education facility
4.30 school lunch programs when required by the Richard B. Russell National School Lunch
4.31 Act.

4.32 (e) A fee for review of construction plans must accompany the initial license
4.33 application for restaurants, hotels, motels, lodging establishments, resorts, seasonal food
4.34 stands, and mobile food units. The fee for this construction plan review is as follows:

4.35 Service Area	4.35 Type	4.35 Fee
4.36 Food	limited food menu	\$275

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5.1		small establishment	\$400
5.2		medium establishment	\$450
5.3		large food establishment	\$500
5.4		additional food service	\$150
5.5	Transient food service	food cart	\$250
5.6		seasonal permanent food stand	\$250
5.7		seasonal temporary food stand	\$250
5.8		mobile food unit	\$350
5.9	Alcohol	beer or wine table service	\$150
5.10		alcohol service from bar	\$250
5.11	Lodging	less than 25 rooms	\$375
5.12		25 to less than 100 rooms	\$400
5.13		100 rooms or more	\$500
5.14		less than five cabins	\$350
5.15		five to less than ten cabins	\$400
5.16		ten cabins or more	\$450

5.17 (f) When existing food and beverage service establishments, hotels, motels, lodging
 5.18 establishments, resorts, seasonal food stands, and mobile food units are extensively
 5.19 remodeled, a fee must be submitted with the remodeling plans. The fee for this
 5.20 construction plan review is as follows:

5.21	Service Area	Type	Fee
5.22	Food	limited food menu	\$250
5.23		small establishment	\$300
5.24		medium establishment	\$350
5.25		large food establishment	\$400
5.26		additional food service	\$150
5.27	Transient food service	food cart	\$250
5.28		seasonal permanent food stand	\$250
5.29		seasonal temporary food stand	\$250
5.30		mobile food unit	\$250
5.31	Alcohol	beer or wine table service	\$150
5.32		alcohol service from bar	\$250
5.33	Lodging	less than 25 rooms	\$250
5.34		25 to less than 100 rooms	\$300
5.35		100 rooms or more	\$450
5.36		less than five cabins	\$250
5.37		five to less than ten cabins	\$350
5.38		ten cabins or more	\$400

5.39 (g) Special event food stands are not required to submit construction or remodeling
 5.40 plans for review.

5.41 (h) Youth camps shall pay an annual single fee for food and lodging as follows:

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- 6.1 (1) camps with up to 99 campers, \$325;
- 6.2 (2) camps with 100 to 199 campers, \$550; and
- 6.3 (3) camps with 200 or more campers, \$750.

6.4 (i) A youth camp which pays fees under paragraph (d) is not required to pay fees
6.5 under paragraph (h).

6.6 Sec. 3. Minnesota Statutes 2010, section 177.24, subdivision 1, is amended to read:

6.7 Subdivision 1. **Amount.** (a) For purposes of this subdivision, the terms defined in
6.8 this paragraph have the meanings given them.

6.9 (1) "Large employer" means an enterprise whose annual gross volume of sales
6.10 made or business done is not less than \$625,000 (exclusive of excise taxes at the retail
6.11 level that are separately stated) and covered by the Minnesota Fair Labor Standards Act,
6.12 sections 177.21 to 177.35.

6.13 (2) "Small employer" means an enterprise whose annual gross volume of sales made
6.14 or business done is less than \$625,000 (exclusive of excise taxes at the retail level that
6.15 are separately stated) and covered by the Minnesota Fair Labor Standards Act, sections
6.16 177.21 to 177.35.

6.17 (b) Except as otherwise provided in sections 177.21 to 177.35, every large employer
6.18 must pay each employee wages at a rate of at least \$5.15 an hour beginning September
6.19 1, 1997, and at a rate of at least \$6.15 an hour beginning August 1, 2005. Every small
6.20 employer must pay each employee at a rate of at least \$4.90 an hour beginning January 1,
6.21 1998, and at a rate of at least \$5.25 an hour beginning August 1, 2005.

6.22 (c) Notwithstanding paragraph (b), during the first 90 consecutive days of
6.23 employment, an employer may pay an employee under the age of 20 years a wage of \$4.90
6.24 an hour. No employer may take any action to displace any employee, including a partial
6.25 displacement through a reduction in hours, wages, or employment benefits, in order to
6.26 hire an employee at the wage authorized in this paragraph.

6.27 (d) Notwithstanding paragraph (b) and subdivision 2, every large employer must
6.28 pay an employee receiving gratuities at a rate that is the greater of: (i) at least \$6.55 per
6.29 hour; or (ii) at least \$7.25 per hour if the employee does not earn sufficient gratuities
6.30 during the pay period so that the sum of \$6.55 per hour and gratuities received is at least
6.31 \$12 per hour for the pay period.

6.32 Sec. 4. Minnesota Statutes 2010, section 177.24, subdivision 2, is amended to read:

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7.1 Subd. 2. **Gratuities not applied.** Except as provided in section 177.24, subdivision
7.2 1, paragraph (d), no employer may directly or indirectly credit, apply, or utilize gratuities
7.3 towards payment of the minimum wage set by this section or federal law.

7.4 Sec. 5. Minnesota Statutes 2010, section 268.035, subdivision 24, is amended to read:

7.5 Subd. 24. **Taxable wages.** (a) "Taxable wages" means those wages paid to an
7.6 employee in covered employment each calendar year up to an amount equal to 60 percent
7.7 of the state's average annual wage, rounded to the nearest \$1,000. For the purpose of
7.8 this subdivision, taxable wages does not include income from tips or gratuities paid to
7.9 an employee by a customer of an employer that is greater than or equal to two times the
7.10 applicable minimum wage rate.

7.11 (b) Taxable wages includes the amount of wages paid for covered employment by
7.12 the employer's predecessor when there has been an experience rating history transfer
7.13 under section 268.051, subdivision 4.

7.14 Sec. 6. Minnesota Statutes 2010, section 297A.68, is amended by adding a subdivision
7.15 to read:

7.16 Subd. 42. **Complimentary meals and beverages.** Meals, nonalcoholic beverages,
7.17 and alcoholic beverages provided by a restaurant as defined under section 157.15,
7.18 subdivision 12, to a customer at no cost to the customer are exempt.

7.19 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
7.20 June 30, 2011.

7.21 Sec. 7. Minnesota Statutes 2010, section 297A.68, is amended by adding a subdivision
7.22 to read:

7.23 Subd. 43. **Employee food and drink.** Prepared food and drinks purchased for
7.24 and served to employees of restaurants defined under section 157.15, subdivision 12,
7.25 are exempt.

7.26 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
7.27 June 30, 2011.

7.28 Sec. 8. Minnesota Statutes 2010, section 297A.68, subdivision 5, is amended to read:

7.29 Subd. 5. **Capital equipment.** (a) Capital equipment is exempt. The tax must be
7.30 imposed and collected as if the rate under section 297A.62, subdivision 1, applied, and
7.31 then refunded in the manner provided in section 297A.75.

8.1 "Capital equipment" means machinery and equipment purchased or leased, and used
8.2 in this state by the purchaser or lessee primarily for manufacturing, fabricating, mining,
8.3 or refining tangible personal property to be sold ultimately at retail if the machinery and
8.4 equipment are essential to the integrated production process of manufacturing, fabricating,
8.5 mining, or refining. Capital equipment also includes machinery and equipment
8.6 used primarily to electronically transmit results retrieved by a customer of an online
8.7 computerized data retrieval system and machinery and equipment used by restaurants in
8.8 the furnishing, preparing, or serving of prepared foods as defined in section 297A.61,
8.9 subdivision 31.

8.10 (b) Capital equipment includes, but is not limited to:

8.11 (1) machinery and equipment used to operate, control, or regulate the production
8.12 equipment;

8.13 (2) machinery and equipment used for research and development, design, quality
8.14 control, and testing activities;

8.15 (3) environmental control devices that are used to maintain conditions such as
8.16 temperature, humidity, light, or air pressure when those conditions are essential to and are
8.17 part of the production process;

8.18 (4) materials and supplies used to construct and install machinery or equipment;

8.19 (5) repair and replacement parts, including accessories, whether purchased as spare
8.20 parts, repair parts, or as upgrades or modifications to machinery or equipment;

8.21 (6) materials used for foundations that support machinery or equipment;

8.22 (7) materials used to construct and install special purpose buildings used in the
8.23 production process;

8.24 (8) ready-mixed concrete equipment in which the ready-mixed concrete is mixed
8.25 as part of the delivery process regardless if mounted on a chassis, repair parts for
8.26 ready-mixed concrete trucks, and leases of ready-mixed concrete trucks; and

8.27 (9) machinery or equipment used for research, development, design, or production
8.28 of computer software.

8.29 (c) Capital equipment does not include the following:

8.30 (1) motor vehicles taxed under chapter 297B;

8.31 (2) machinery or equipment used to receive or store raw materials;

8.32 (3) building materials, except for materials included in paragraph (b), clauses (6)
8.33 and (7);

8.34 (4) machinery or equipment used for nonproduction purposes, including, but not
8.35 limited to, the following: plant security, fire prevention, first aid, and hospital stations;

9.1 support operations or administration; pollution control; and plant cleaning, disposal of
9.2 scrap and waste, plant communications, space heating, cooling, lighting, or safety;

9.3 (5) farm machinery and aquaculture production equipment as defined by section
9.4 297A.61, subdivisions 12 and 13;

9.5 (6) machinery or equipment purchased and installed by a contractor as part of an
9.6 improvement to real property;

9.7 ~~(7) machinery and equipment used by restaurants in the furnishing, preparing, or~~
9.8 ~~servicing of prepared foods as defined in section 297A.61, subdivision 31;~~

9.9 ~~(8)~~ machinery and equipment used to furnish the services listed in section 297A.61,
9.10 subdivision 3, paragraph (g), clause (6), items (i) to (vi) and (viii);

9.11 ~~(9)~~ (8) machinery or equipment used in the transportation, transmission, or
9.12 distribution of petroleum, liquefied gas, natural gas, water, or steam, in, by, or through
9.13 pipes, lines, tanks, mains, or other means of transporting those products. This clause
9.14 does not apply to machinery or equipment used to blend petroleum or biodiesel fuel
9.15 as defined in section 239.77; or

9.16 ~~(10)~~ (9) any other item that is not essential to the integrated process of manufacturing,
9.17 fabricating, mining, or refining.

9.18 (d) For purposes of this subdivision:

9.19 (1) "Equipment" means independent devices or tools separate from machinery but
9.20 essential to an integrated production process, including computers and computer software,
9.21 used in operating, controlling, or regulating machinery and equipment; and any subunit or
9.22 assembly comprising a component of any machinery or accessory or attachment parts of
9.23 machinery, such as tools, dies, jigs, patterns, and molds.

9.24 (2) "Fabricating" means to make, build, create, produce, or assemble components or
9.25 property to work in a new or different manner.

9.26 (3) "Integrated production process" means a process or series of operations through
9.27 which tangible personal property is manufactured, fabricated, mined, or refined. For
9.28 purposes of this clause, (i) manufacturing begins with the removal of raw materials
9.29 from inventory and ends when the last process prior to loading for shipment has been
9.30 completed; (ii) fabricating begins with the removal from storage or inventory of the
9.31 property to be assembled, processed, altered, or modified and ends with the creation
9.32 or production of the new or changed product; (iii) mining begins with the removal of
9.33 overburden from the site of the ores, minerals, stone, peat deposit, or surface materials and
9.34 ends when the last process before stockpiling is completed; and (iv) refining begins with
9.35 the removal from inventory or storage of a natural resource and ends with the conversion
9.36 of the item to its completed form.

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10.1 (4) "Machinery" means mechanical, electronic, or electrical devices, including
10.2 computers and computer software, that are purchased or constructed to be used for the
10.3 activities set forth in paragraph (a), beginning with the removal of raw materials from
10.4 inventory through completion of the product, including packaging of the product.

10.5 (5) "Machinery and equipment used for pollution control" means machinery and
10.6 equipment used solely to eliminate, prevent, or reduce pollution resulting from an activity
10.7 described in paragraph (a).

10.8 (6) "Manufacturing" means an operation or series of operations where raw materials
10.9 are changed in form, composition, or condition by machinery and equipment and which
10.10 results in the production of a new article of tangible personal property. For purposes of
10.11 this subdivision, "manufacturing" includes the generation of electricity or steam to be
10.12 sold at retail.

10.13 (7) "Mining" means the extraction of minerals, ores, stone, or peat.

10.14 (8) "Online data retrieval system" means a system whose cumulation of information
10.15 is equally available and accessible to all its customers.

10.16 (9) "Primarily" means machinery and equipment used 50 percent or more of the time
10.17 in an activity described in paragraph (a).

10.18 (10) "Refining" means the process of converting a natural resource to an intermediate
10.19 or finished product, including the treatment of water to be sold at retail.

10.20 (11) This subdivision does not apply to telecommunications equipment as
10.21 provided in subdivision 35, and does not apply to wire, cable, fiber, poles, or conduit
10.22 for telecommunications services.

10.23 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
10.24 **June 30, 2011.**

10.25 Sec. 9. Minnesota Statutes 2010, section 327.15, subdivision 3, is amended to read:

10.26 Subd. 3. **Fees, manufactured home parks and recreational camping areas.** (a)
10.27 The following fees are required for manufactured home parks and recreational camping
10.28 areas licensed under this chapter. Recreational camping areas and manufactured home
10.29 parks shall pay the highest applicable base fee under paragraph (b). The license fee for
10.30 new operators of a manufactured home park or recreational camping area previously
10.31 licensed under this chapter for the same calendar year is one-half of the appropriate annual
10.32 license fee, plus any penalty that may be required. The license fee for operators opening
10.33 on or after October 1 is one-half of the appropriate annual license fee, plus any penalty
10.34 that may be required.

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11.1 (b) All manufactured home parks and recreational camping areas shall pay the
11.2 following annual base fee:

11.3 (1) a manufactured home park, \$150; and

11.4 (2) a recreational camping area with:

11.5 (i) 24 or less sites, \$50;

11.6 (ii) 25 to 99 sites, \$212; and

11.7 (iii) 100 or more sites, \$300.

11.8 In addition to the base fee, manufactured home parks and recreational camping areas shall
11.9 pay \$4 for each licensed site. This paragraph does not apply to special event recreational
11.10 camping areas. Operators of a manufactured home park or a recreational camping area
11.11 also licensed under section 157.16 for the same location shall pay only one base fee,
11.12 whichever is the highest of the base fees found in this section or section 157.16.

11.13 (c) In addition to the fee in paragraph (b), each manufactured home park or
11.14 recreational camping area shall pay an additional annual fee for each fee category
11.15 specified in this paragraph:

11.16 (1) Manufactured home parks and recreational camping areas with public swimming
11.17 pools and spas shall pay the appropriate fees specified in section 157.16.

11.18 (2) Individual private sewer ~~or water, \$60,~~ \$30; individual private water, \$30.

11.19 "Individual private water" means a fee category with a water supply other than a
11.20 ~~community public water supply as defined in Minnesota Rules, chapter 4720, section~~

11.21 144.382, subdivision 4. "Individual private sewer" means a fee category with a subsurface
11.22 sewage treatment system which uses subsurface treatment and disposal.

11.23 (d) The following fees must accompany a plan review application for initial
11.24 construction of a manufactured home park or recreational camping area:

11.25 (1) for initial construction of less than 25 sites, \$375;

11.26 (2) for initial construction of 25 to 99 sites, \$400; and

11.27 (3) for initial construction of 100 or more sites, \$500.

11.28 (e) The following fees must accompany a plan review application when an existing
11.29 manufactured home park or recreational camping area is expanded:

11.30 (1) for expansion of less than 25 sites, \$250;

11.31 (2) for expansion of 25 to 99 sites, \$300; and

11.32 (3) for expansion of 100 or more sites, \$450.