

177.27; ~~or (f) consistently and repeatedly fails to post a summary of sections 177.21 to 177.35 or a copy or summary of any the applicable rule rules as required by section 177.31; or (g) pays or agrees to pay wages at a rate less than the rate applicable required under or pursuant to sections 177.21 to 177.35; or (h) otherwise violates any provision of sections 177.21 to 177.35 or of any rule issued adopted pursuant thereto; is guilty of a misdemeanor to those sections.~~

Approved May 20, 1983

## CHAPTER 210 — H.F.No. 745

*An act relating to the Administrative Procedure Act; requiring certain notices to be sent to the legislative commission to review administrative rules; clarifying the duties of the revisor of statutes with respect to approving the form of administrative rules; increasing the time period for adopting a rule when reviews by other agencies are necessary; establishing a deadline for agency action with respect to rules adopted without public hearing; clarifying other provisions of the act; amending Minnesota Statutes 1982, sections 14.07; 14.08; 14.12; 14.14, subdivision 1; 14.15, subdivisions 1, 3 and 4; 14.17; 14.18; 14.19; 14.21; 14.22; 14.26; 14.32; 14.47, subdivisions 1, 5, and 8; and 14.52.*

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

Section 1. Minnesota Statutes 1982, section 14.07, is amended to read:

### 14.07 FORM OF RULE.

Subdivision 1. **RULE DRAFTING ASSISTANCE PROVIDED.** The revisor of statutes shall:

(1) maintain an agency rules drafting department to draft or aid in the drafting of rules or amendments to rules for any agency in accordance with subdivision 3 and the objective or other instructions which the agency shall give the revisor; and,

(2) prepare and publish an agency rules drafting guide which shall set out the form and method for drafting rules and amendments to rules, and to which all rules shall comply.

Subd. 2. **APPROVAL OF FORM.** No procedure agency decision to adopt a rule, or temporary rule, or emergency rule, shall be initiated by any agency until effective unless the agency presents it has presented the rule to the revisor of statutes and the revisor certifies has certified that its form is approved. The revisor may assist in drafting rules as provided by subdivision 3.

Subd. 3. **STANDARDS FOR FORM.** In determining the drafting form of rules the revisor shall:

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(1) minimize duplication of statutory language;

(2) not permit incorporations into the rules by reference of publications or other documents which are not conveniently available to the public;

(3) to the extent practicable, use plain language in rules and avoid technical language; and

(4) amend rules by showing the text portion of the rule, ~~paragraph, clause, or other part~~ of a rule being amended as necessary to provide adequate notice of the nature of the proposed amendment, as it is shown in the latest compilation or supplement, or, if not yet published in a compilation or supplement, then as the text is shown in the state register files of the secretary of state, with changes shown by striking and underlining words.

Subd. 4. **INCORPORATIONS BY REFERENCE.** (a) An agency may incorporate by reference into its rules the text from Minnesota Statutes, Minnesota Rules, United States Statutes at Large, United States Code, Laws of Minnesota, Code of Federal Regulations, the Federal Register, and other publications and documents which are determined by the revisor of statutes, after consultation with the chief hearing examiner, to be conveniently available to the public. The agency must provide information necessary for the revisor's determination of availability. When presented with a rule for certification pursuant to subdivision 2 and this subdivision, the revisor of statutes should indicate in the certification that the rule incorporates by reference text from other publications or documents. If the revisor certifies that the form of a rule is approved, that approval constitutes the revisor's finding that the text of a publication or other document other than ~~these~~ one listed by name in this subdivision, and which are is incorporated by reference into the rules, ~~are is~~ conveniently available to the public.

(b) For the purposes of paragraph (a), "conveniently available to the public" means available for loan or inspection and copying to a person living anywhere in Minnesota through a statewide interlibrary loan system or in a public library without charge except for reasonable copying fees and mailing costs.

Subd. 5. **DUPLICATION OF STATUTORY LANGUAGE.** No agency shall adopt a rule which duplicates language contained in Minnesota Statutes unless either the hearing examiner, for rules adopted pursuant to sections 14.13 to 14.20, or the attorney general, for rules adopted pursuant to sections 14.21 to 14.36, determines that duplication of the language is crucial to the ability of a person affected by a rule to comprehend its meaning and effect. When presented with a rule for certification pursuant to subdivisions 2 and 4, the revisor of statutes should indicate in the certification that the rule duplicates statutory language.

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Subd. 6. **STYLE AND FORM REVISIONS.** The revisor of statutes shall may periodically prepare style and form revisions of rules to clarify, modernize, or simplify the text without material change to the rules' substance or effect. Before beginning any revision, the revisor shall consult the agency whose rules will be subject to the revision. After the revision is prepared, the revisor shall present it to the agency and receive its consent to proceed to seek adoption of the revision. Upon receiving consent, the revisor shall seek adoption of the rules in accordance with sections 14.05 to 14.36. However, the need and reasonableness statement and any hearing shall be restricted to the issue of whether any material change in the substance and effect of the rule is proposed by the revisor. The revisor shall mail notice of any hearing to the persons registered with the agency whose rules are the subject of the revision. The revisor shall pay all costs to publish notices in the State Register and to replenish the agency's stock of rules which exist at the time the revisor adopts the revised rules.

Subd. 7. **TECHNICAL CHANGES.** The revisor may approve the form of a rule amendment which does not meet the requirements of subdivision 3, clause (4), if, in the revisor's judgment, the amendment does not change the substance of the rule and the amendment is:

- (a) a relettering or renumbering instruction;
- (b) the substitution of one name for another when an organization or position is renamed;
- (c) the substitution of a reference to Minnesota Statutes for a corresponding reference to Laws of Minnesota;
- (d) the correction of a citation to rules or laws which has become inaccurate since the rule was adopted because of repealing or renumbering of the rule or law cited; or
- (e) the correction of a similar formal defect.

This subdivision does not limit the revisor's authority to make the changes described in clauses (a) to (e) during the publication process under section 14.47.

Sec. 2. Minnesota Statutes 1982, section 14.08, is amended to read:

**14.08 REVISOR OF STATUTE'S APPROVAL OF RULE FORM.**

(a) For the purpose of obtaining the revisor's certificate of approval of the form of a rule prior to filing the rule with the secretary of state, a copy two copies of the rule shall be submitted by the agency to the attorney general. The attorney general shall send one copy of the rule to the revisor on the same day as it is submitted by the agency to the attorney general as required by sections 14.16, 14.26, and 14.32. Within five days after receipt of the rule, excluding weekends and holidays, the revisor shall either ~~deliver the certificate and return~~ the rule

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with a certificate of approval to the attorney general or notify the attorney general and the agency that the form of the rule will not be approved. The revisor's certificate shall be attached to the rules filed with the secretary of state.

(b) If the attorney general disapproves the rule, the revisor's certificate shall be returned to the revisor by the attorney general. If, after the attorney general disapproves the rule, the agency modifies may modify it. After the chief hearing examiner's review, if any, the agency shall submit two copies of the modified rule to the attorney general who shall send a copy to the revisor for approval as to form as described in paragraph (a).

(c) If the revisor refuses to approve the form of any rules, the revisor's notice to the agency and the attorney general shall indicate the reason for the refusal and specify the modifications necessary so the form of the rules will be approved.

Sec. 3. Minnesota Statutes 1982, section 14.12, is amended to read:

#### 14.12 DEADLINE TO PUBLISH NOTICE.

The agency shall, within ~~six months~~ 180 days after the effective date of a law requiring rules to be promulgated, unless otherwise specified by law, publish an appropriate notice of intent to adopt a rule in accordance with sections 14.04 to 14.36. If an agency has not given this notice, it shall report to the legislative commission to review administrative rules, other appropriate committees of the legislature, and the governor its failure to do so, and the reasons for that failure.

Sec. 4. Minnesota Statutes 1982, section 14.14, subdivision 1, is amended to read:

Subdivision 1. **REQUIRED HEARING.** Except as otherwise provided in chapter 14, no rule, other than a rule setting a fee covered by section 16A.128 or 214.06, shall be adopted by any agency unless the agency first holds a public hearing affording all affected interests an opportunity to participate. Fee adjustments authorized under section 16A.128 or 214.06 may be made by rule without a public hearing when the total fees received during the fiscal biennium will not exceed 110 percent of the sum of all direct appropriations, transfers in, and salary supplements for that purpose for the biennium.

Subd. 1a. **NOTICE OF RULE HEARING.** Each agency shall maintain a list of all persons who have registered with the agency for the purpose of receiving notice of rule hearings. The agency may inquire as to whether those persons on the list wish to maintain their names thereon and may remove names for which there is a negative reply or no reply within 60 days. The agency shall, at least 30 days prior to the date set for the hearing, give notice of its intention to adopt rules by United States mail to all persons on its list, and by publication in the State Register. The mailed notice shall include either a copy of the proposed rule or a description of the nature and effect of the proposed rule and an

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announcement that a free copy of the proposed rule is available on request from the agency. Each agency may, at its own discretion, also contact persons not on its list and may give notice of its intention in newsletters, newspapers or other publications or through other means of communication. The notice in the State Register shall include the proposed rule or an amended rule in the form ~~provided in~~ required by the revisor under section 14.07, subdivision 3, together with a citation to the most specific statutory authority for the proposed rule, a statement of the place, date, and time of the public hearing, and other information as required by law or rule. When an entire rule is proposed to be repealed, the agency need only publish that fact, giving the citation to the rule to be repealed in the notice.

Sec. 5. Minnesota Statutes 1982, section 14.15, subdivision 1, is amended to read:

Subdivision 1. **TIME OF PREPARATION.** After allowing written material to be submitted and recorded in the hearing record for five working days after the public hearing ends, or for a longer period not to exceed 20 days if ordered by the hearing examiner, the hearing examiner assigned to the hearing shall write a report as provided for in section 14.50. The hearing examiner shall allow the agency three business days after the closing of the hearing record to indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. The agency may not submit additional information during this three-day period. The written acceptance of other amendments shall be added to the hearing record.

Sec. 6. Minnesota Statutes 1982, section 14.15, subdivision 3, is amended to read:

Subd. 3. **FINDING OF SUBSTANTIAL CHANGE.** If the report contains a finding that a rule has been modified in a way which makes it substantially different from that which was originally proposed, or that the agency has not met the requirements of sections 14.13 to 14.18, it shall be submitted to the chief hearing examiner for approval. If the chief hearing examiner approves the finding of the hearing examiner, the chief hearing examiner shall advise the agency and the revisor of statutes of actions which will correct the defects, and. The agency shall not adopt the rule until the chief hearing examiner determines that the defects have been corrected.

Sec. 7. Minnesota Statutes 1982, section 14.15, subdivision 4, is amended to read:

Subd. 4. **NEED OR REASONABLENESS NOT ESTABLISHED.** If the chief hearing examiner determines that the need for or reasonableness of the rule has not been established pursuant to section 14.14, subdivision 2, and if the agency does not elect to follow the suggested actions of the chief hearing examiner to correct that defect, then the agency shall submit the proposed rule to

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the legislative commission to review administrative rules for the commission's advice and comment. The agency shall not adopt the rule until it has received and considered the advice of the commission. However, the agency is not required to delay adoption longer than 30 days after the commission has received the agency's submission. Advice of the commission shall not be binding on the agency.

Sec. 8. Minnesota Statutes 1982, section 14.17, is amended to read:

**14.17 ATTORNEY GENERAL'S APPROVAL.**

The attorney general shall, within 20 days, either approve or disapprove the rule.

If the rule is approved, the attorney general shall promptly file two copies of it in the office of the secretary of state with the revisor's certificate approving the form of the rule. The secretary of state shall forward one copy of each rule filed to the revisor of statutes.

If the rule is disapproved, the attorney general shall state in writing the reasons and return the rule to the agency. The attorney general shall also send a statement of reasons for disapproving the rule to the agency, the revisor of statutes, the chief hearing examiner, and the legislative commission to review administrative rules. The rule shall neither be filed in the office of the secretary nor published. Upon receiving a rule disapproved as illegal, the agency shall either withdraw the rule under section 14.05, subdivision 3 or modify the rule to cure the illegality. If the rule is modified, it shall be submitted to the chief hearing examiner who shall determine if the modified rule is substantially different from the rule as originally proposed. The agency shall not resubmit the rule to the attorney general until the chief hearing examiner determines that the rule is not substantially different from the rule as originally proposed.

Sec. 9. Minnesota Statutes 1982, section 14.18, is amended to read:

**14.18 PUBLICATION OF ADOPTED RULE; EFFECTIVE DATE.**

A rule is effective after it has been subjected to all requirements described in sections 14.13 to 14.20 and five working days after the notice of adoption is published in the State Register unless a later date is required by law or specified in the rule. If the rule adopted is the same as the proposed rule, publication may be made by publishing notice in the State Register that the rule has been adopted as proposed and by citing the prior publication. If the rule adopted differs from the proposed rule, ~~the text of that portion~~ portions of the adopted rule which ~~differs~~ differ from the proposed rule shall be included in the notice of adoption together with a citation to the prior State Register publication of the remainder of the proposed rule. The nature of the modifications must be clear to a reasonable person when the notice of adoption is considered together with the State Register

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publication of the proposed rule, except that modifications may also be made which comply with the form requirements of section 14.07, subdivision 7.

Sec. 10. Minnesota Statutes 1982, section 14.19, is amended to read:

**14.19 DEADLINE TO COMPLETE RULEMAKING.**

The agency shall, within ~~six months~~ 180 days after issuance of the hearing examiner's report ~~publish, submit~~ its notice of adoption, amendment, suspension, or repeal ~~in to~~ the State Register for publication. If the agency has not ~~filed submitted the rules with the secretary of state and published its notice in to~~ the State Register within ~~six months~~ 180 days, the rule is automatically withdrawn. The agency shall not adopt the withdrawn rules without again following the procedures of sections 14.05 to 14.36. It shall report to the legislative commission to review administrative rules, other appropriate committees of the legislature, and ~~to~~ the governor its failure to adopt rules and the reasons for that failure. The 180-day time limit of this section does not include any days used for review by the chief hearing examiner, the attorney general, or the legislative commission to review administrative rules if the review is required by law.

Sec. 11. Minnesota Statutes 1982, section 14.21, is amended to read:

**14.21 AUTHORITY FOR USE OF NONCONTROVERSIAL RULES PROCEDURE.**

When an agency determines that its proposed adoption, amendment, suspension or repeal of a rule will be noncontroversial in nature, it may utilize the provisions of sections 14.21 to 14.28 rather than the provisions of sections ~~14.11 14.13~~ 14.13 to 14.20.

Sec. 12. Minnesota Statutes 1982, section 14.22, is amended to read:

**14.22 NOTICE OF PROPOSED ADOPTION OF RULES.**

The agency shall give notice of its intention to adopt a rule without public hearing. The notice shall be given by publication in the State Register and by United States mail to persons who have registered their names with the agency pursuant to section 14.14, subdivision 1. The mailed notice shall include either a copy of the proposed rule or a description of the nature and effect of the proposed rule and an announcement that a free copy of the proposed rule is available on request from the agency. The notice in the State Register shall include the proposed rule or the amended rule in the form ~~provided in~~ required by the revisor under section 14.07, subdivision 3 and a citation to the most specific statutory authority for the proposed rule. When an entire rule is proposed to be repealed, the notice need only state that fact, giving the citation to the rule to be repealed in the notice. The notice shall include a statement advising the public:

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(1) that they have 30 days in which to submit comment on the proposed rule;

(2) that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30 day comment period;

(3) of the manner in which persons shall request a hearing on rules proposed pursuant to sections 14.21 to 14.28; and

(4) that the rule may be modified if modifications are supported by the data and views submitted.

Sec. 13. Minnesota Statutes 1982, section 14.26, is amended to read:

**14.26 ADOPTION OF PROPOSED RULE; SUBMISSION TO ATTORNEY GENERAL.**

If no hearing is required, the agency shall submit to the attorney general the proposed rule and notice as published, the rule as proposed for adoption, any written comments received by the agency, and a statement of need and reasonableness for the rule. The agency shall give notice to all persons who requested to be informed that these materials have been submitted to the attorney general. This notice shall be given on the same day that the record is submitted. The rule and these materials shall be submitted to the attorney general within 180 days of the day that the comment period for the rule is over or the rule is automatically withdrawn. The agency shall report its failure to adopt the rules and the reasons for that failure to the legislative commission to review administrative rules, other appropriate legislative committees, and the governor.

Even if the 180-day period expires while the attorney general reviews the rule, if the attorney general rejects the rule, the agency may resubmit it after taking corrective action. The resubmission must occur within 30 days of when the agency receives written notice of the disapproval. If the rule is again disapproved, the rule is withdrawn. An agency may resubmit at any time before the expiration of the 180-day period. If the agency withholds some of the proposed rule, it may not adopt the withheld portion without again following the procedures of sections 14.13 to 14.20, 14.21 to 14.28, or 14.29 to 14.36.

The attorney general shall approve or disapprove the rule as to its legality and its form to the extent the form relates to legality, including the issue of substantial change, within 14 days. If the rule is approved, the attorney general shall promptly file two copies of it in the office of the secretary of state. The secretary of state shall forward one copy of each rule to the revisor of statutes. If the rule is disapproved, the attorney general shall state in writing the reasons, and the rule shall not be filed in the office of the secretary of state, nor published. The attorney general shall send a statement of reasons for disapproval of the rule

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to the agency, the chief hearing examiner, the legislative commission to review administrative rules, and to the revisor of statutes.

Sec. 14. Minnesota Statutes 1982, section 14.32, is amended to read:

**14.32 SUBMISSION TO ATTORNEY GENERAL.**

The agency shall submit to the attorney general the proposed temporary rule as published, with any modifications. The attorney general shall review the proposed temporary rule as to its legality, review its form to the extent the form relates to legality, and shall approve or disapprove the proposed temporary rule and any modifications within five working days. The attorney general shall send a statement of reasons for disapproval of the rule to the agency, the chief hearing examiner, the legislative commission to review administrative rules, and to the revisor of statutes.

Sec. 15. Minnesota Statutes 1982, section 14.47, subdivision 1, is amended to read:

Subdivision 1. **PLAN OF PUBLICATION AND SUPPLEMENTATION.** The revisor of statutes shall:

(1) formulate a plan for the compilation of all permanent agency rules and, to the extent practicable, temporary agency rules, adopted pursuant to the administrative procedure act or filed pursuant to the provisions of section 14.38, subdivisions 5 to 9 which were in effect at the time the rules were filed or subdivision 11, including their order, classification, arrangement, form, and indexing, and any appropriate tables, annotations, cross references, citations to applicable statutes, explanatory notes, and other appropriate material to facilitate use of the rules by the public, and for the compilation's composition, printing, binding and distribution;

(2) publish the compilation of permanent agency rules and, if practicable, temporary rules, adopted pursuant to the administrative procedure act or filed pursuant to the provisions of section 14.38, subdivisions 5 to 9 which were in effect at the time the rules were filed or subdivision 11, which shall be called "Minnesota Rules";

(3) periodically either publish a supplement or a new compilation, which includes all rules adopted since the last supplement or compilation was published and removes rules incorporated in prior compilations or supplements which are no longer effective;

(4) include in Minnesota Rules a consolidated list of publications and other documents incorporated by reference into the rules after June 30, 1981, and found conveniently available by the revisor under section 14.07, subdivision 4, indicating where the publications or documents are conveniently available for use or purchase by to the public; and,

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(5) copyright any compilations and or supplements in the name of the state of Minnesota.

Sec. 16. Minnesota Statutes 1982, section 14.47, subdivision 5, is amended to read:

Subd. 5. **POWERS OF REVISOR.** (a) In preparing a compilation or supplement, the revisor may renumber rules, paragraphs, clauses or other parts of a rule; combine or divide rules, paragraphs, clauses or other parts of a rule; rearrange the order of rules, paragraphs, clauses, or other parts of a rule; move paragraphs, clauses, or other parts of a rule to another rule; remove redundant language; make minor punctuation and grammatical changes to facilitate the renumbering, combining, dividing, and rearranging of rules or parts of rules; change reference numbers to agree with renumbered rules, paragraphs, clauses or other parts of a rule; change reference numbers to agree with renumbered statutes or parts of statutes; substitute the proper rule, paragraph, clause, or other part of a rule for the term "this rule," "the preceding rule" and the like; substitute numbers for written words and written words for numbers; substitute the term "rule" for the term "regulation" when "regulation" refers to a Minnesota rule; substitute the date on which the rule becomes effective for the words "the effective date of this rule," and the like; change capitalization, punctuation, and forms of citation for the purpose of uniformity; convert citations of Laws of Minnesota to citations of Minnesota Statutes; correct manifest clerical or typographical errors; correct all misspelled words; and correct manifest grammatical and punctuation errors; and make other editorial changes to ensure the accuracy and utility of the compilation or supplement.

(b) The revisor shall provide headnotes as catch words to rules and, if appropriate, to paragraphs, clauses, or other parts of a rule. The headnotes are not part of the rule even if included with the rule when adopted. The revisor shall change headnotes to clearly indicate the subject matter of the rules. "Headnote" means any text functioning as catch words to the substance of text and not itself communicating the substantive content of the rule.

Sec. 17. Minnesota Statutes 1982, section 14.47, subdivision 8, is amended to read:

Subd. 8. **SALES AND DISTRIBUTION OF COMPILATION.** Any compilation, reissue, or supplement published by the revisor shall be sold by the revisor for a reasonable fee and its proceeds deposited in the general fund. An agency shall purchase from the revisor the number of copies of the compilation or supplement needed by the agency. The revisor shall provide one copy of any compilation or supplement to all Minnesota county libraries and to any public library upon its request each county library maintained pursuant to section 134.12 or 375.33 upon its request, except in counties containing cities of the first class. If a county has not established a county library pursuant to section 134.12

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or 375.33, the copy will be provided to any public library in the county upon its request.

Sec. 18. Minnesota Statutes 1982, section 14.52, is amended to read:

**14.52 COURT REPORTERS; AUDIO RECORDINGS.**

The office of administrative hearings may maintain a court reporter system and in addition to or in lieu thereof may contract with nongovernmental sources for court reporter services. The court reporters may additionally be utilized as the chief hearing examiner directs. Unless the chief hearing examiner determines that the use of a court reporter is more appropriate, an audio magnetic recording device shall be used to keep a record at any hearing which takes place under this chapter. In all cases arising under chapter 176, the chief hearing examiner shall use audio magnetic recording devices to keep the record of hearings except when there are more than two primary parties in a case and the chief hearing examiner determines that the use of a court reporter is more appropriate. If the chief hearing examiner determines that the use of a court reporter is more appropriate, the cost of the court reporter shall be paid by the state. If the chief hearing examiner determines that the use of an audio magnetic recording device is more appropriate in a hearing under chapter 176, any party to that hearing may provide a court reporter at the party's expense. Court reporters provided by a party shall be selected from the chief hearing examiner's list of nongovernmental sources.

The fee charged by a court reporter to a party shall not exceed the fee which would be charged to the state pursuant to the court reporter's contract with the state.

Court reporters serving in the court reporter system of the office of administrative hearings shall be in the classified service. Notwithstanding the provisions of section 15.17, subdivision 4, copies of transcriptions of hearings conducted pursuant to sections 14.48 to 14.56 may be obtained only through the office of administrative hearings.

The departmental and classification seniority of an individual who was employed as a court reporter in state service prior to his appointment as a court reporter in the office of administrative hearings pursuant to Laws 1975, chapter 380, section 16, shall carry forward and be credited to his employment with the office of administrative hearings.

Approved May 20, 1983

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**CHAPTER 211 — H.F.No. 1108**

*An act relating to drainage; permitting a county board to cancel ditch assessments related to vacated town roads; proposing new law coded in Minnesota Statutes, chapter 106.*

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