

State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSIONHOUSE FILE No. **2553**

February 12, 2008

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The bill was read for the first time and referred to the Committee on Governmental Operations, Reform, Technology and Elections

February 18, 2008

Committee Recommendation and Adoption of Report:

To Pass as Amended and re-referred to the Committee on Public Safety and Civil Justice

February 19, 2008

Committee Recommendation and Adoption of Report: To Pass and re-referred to the Committee on Commerce and Labor

February 20, 2008

Committee Recommendation and Adoption of Report: To Pass as Amended and re-referred to the Committee on Finance

February 21, 2008

Committee Recommendation and Adoption of Report: To Pass as Amended and re-referred to the Committee on Ways and Means

February 25, 2008

Committee Recommendation and Adoption of Report:

To Pass

Read Second Time

February 28, 2008

Fiscal Calendar, Amended

Read Third Time as Amended

Passed by the House as Amended and transmitted to the Senate to include Floor Amendments

1.1 A bill for an act
 1.2 relating to state government; creating a catastrophe survivor compensation
 1.3 fund; appropriating money; amending Minnesota Statutes 2006, section 13.635,
 1.4 by adding a subdivision; proposing coding for new law as Minnesota Statutes,
 1.5 chapter 8A.

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

1.7 **ARTICLE 1**
 1.8 **CATASTROPHE SURVIVOR COMPENSATION**

1.9 Section 1. **[8A.01] PURPOSE.**

1.10 The purpose of this chapter is to create a structure to provide compensation to
 1.11 survivors of catastrophes. The legislature enacts this chapter to deal with extraordinary
 1.12 events that cause widespread damage, injury, or death, in response to which the legislature
 1.13 determines that compensation is desirable to serve the object of government stated in
 1.14 article 1, section 1, of the Minnesota Constitution, to provide for the security, benefit,
 1.15 and protection of the people. This chapter applies when the legislature enacts a law
 1.16 appropriating money for purposes of this chapter.

1.17 Sec. 2. **[8A.02] DEFINITIONS.**

1.18 Subdivision 1. **Application.** The definitions in this section apply to this chapter
 1.19 unless the context indicates that a different meaning is intended.

1.20 Subd. 2. **Catastrophe.** "Catastrophe" means an extraordinary event that occurs in
 1.21 Minnesota that causes widespread damage, injury, or death, in response to which the
 1.22 legislature appropriates money to be administered under this chapter.

2.1 Subd. 3. **Economic loss.** "Economic loss" means pecuniary harm resulting from a
2.2 catastrophe, and includes loss of earnings, medical expenses, burial costs, property loss,
2.3 and loss of business or employment opportunity.

2.4 Subd. 4. **Fund.** "Fund" means the catastrophe survivor compensation fund created
2.5 in section 8A.06.

2.6 Subd. 5. **Loss.** "Loss" means economic and noneconomic loss resulting from a
2.7 catastrophe, less compensation for that catastrophe already provided or to be provided by
2.8 another source, as provided in section 8A.03, subdivision 5, paragraph (a). "Loss" does
2.9 not include punitive damages. "Loss" does not include fees or costs, including but not
2.10 limited to attorney fees and accounting fees, incurred for purposes of making a claim
2.11 under this chapter.

2.12 Subd. 6. **Noneconomic loss.** "Noneconomic loss" means nonpecuniary harm
2.13 resulting from a catastrophe, and includes loss for physical and emotional pain and
2.14 suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of
2.15 enjoyment of life, and loss of society and companionship.

2.16 Subd. 7. **State and its political subdivisions.** "State and its political subdivisions"
2.17 means: (1) the state of Minnesota, an agency of the state of Minnesota, a statutory or home
2.18 rule charter city, a county, a town, a school district, a metropolitan agency, a regional
2.19 agency, or any other political subdivision of the state of Minnesota; and (2) any current or
2.20 former officer or employee of an entity listed in clause (1) acting in official capacity.

2.21 Subd. 8. **Survivor.** "Survivor" means a natural person who suffers economic loss or
2.22 noneconomic loss resulting from a catastrophe, and includes the personal representative
2.23 of a natural person who suffers the loss.

2.24 **Sec. 3. [8A.03] COMPENSATION.**

2.25 Subdivision 1. **Administration; special master.** (a) If the legislature appropriates
2.26 money for purposes of compensating survivors of a catastrophe, the executive council
2.27 must appoint a special master to administer the fund for the survivors. The executive
2.28 council may appoint the special master as an employee in the unclassified state civil
2.29 service or may enter into a contract with the special master as an independent contractor.

2.30 (b) Except as provided otherwise, the special master is subject to laws governing
2.31 executive branch agencies. The special master may hire employees, enter into contracts,
2.32 adopt rules, and perform other acts necessary to administer the fund. If the special master
2.33 hires employees, the employees are in the unclassified state civil service. Rules adopted
2.34 by the special master are exempt from chapter 14, but section 14.386 applies to the rules.
2.35 The special master and employees and contractors acting under direction of the special

3.1 master are absolutely immune from liability for any act or omission within the scope of
3.2 employment or contractual duties.

3.3 (c) The special master must report all administrative expenses incurred to the
3.4 attorney general and to the chairs of the house and senate Finance Committees and the
3.5 house Committee on Ways and Means at a time and in a manner specified by the attorney
3.6 general. Total expenses incurred by the special master, other than payments made to
3.7 survivors, must not exceed one percent of the amount the legislature appropriates for
3.8 purposes of a specific catastrophe.

3.9 Subd. 2. **Filing of claims.** (a) A survivor may file a claim with the special master
3.10 seeking compensation for loss suffered by the survivor. A survivor may not file more than
3.11 one claim for a single catastrophe. In appropriating money to the fund, the legislature may
3.12 establish an end date for filing a claim under this chapter.

3.13 (b) The special master must prescribe a claim form. The form must require a
3.14 survivor to provide information sufficient for the special master to determine the amount
3.15 of loss resulting from the catastrophe and the amount of compensation for the loss the
3.16 survivor has received or may receive from another source.

3.17 Subd. 3. **Determination of compensation.** (a) Within 120 days of the filing of a
3.18 claim, the special master shall determine the loss suffered by the survivor filing a claim. In
3.19 determining the amount of loss, the special master must not consider negligence or any
3.20 other theory of liability for the catastrophe.

3.21 (b) The special master may propose to compensate a survivor from the fund in an
3.22 amount that does not exceed the loss suffered by the survivor. For each catastrophe,
3.23 the special master may propose to compensate all survivors of that catastrophe for a
3.24 uniform percentage of the loss suffered that is less than the full loss, or may take other
3.25 steps the special master considers necessary to ensure that available funds can be equitably
3.26 distributed among all survivors who have filed a claim.

3.27 (c) A determination of the special master under this subdivision is final and is not
3.28 subject to judicial review.

3.29 Subd. 4. **Payments.** (a) Within 20 days of making a determination under subdivision
3.30 3, paragraph (b), with respect to a survivor, the special master shall notify the survivor
3.31 of the amount the fund proposes to pay to the survivor. If a survivor decides to accept
3.32 compensation from the fund, the survivor must do so within 30 days of receiving notice
3.33 from the special master under this subdivision. Acceptance must be in writing, in a
3.34 manner determined by the special master. A survivor who does not accept compensation
3.35 from the fund within 30 days is considered to have rejected compensation from the fund.
3.36 The decision to accept or reject compensation from the fund is irrevocable.

4.1 (b) A survivor who decides to accept compensation from the fund must execute a
4.2 written release of all claims against the state and its political subdivisions for any legal
4.3 claim or demand of any kind arising out of or relating to the catastrophe. The release must
4.4 be in a form prescribed by the special master and shall provide that the survivor releases
4.5 the state and its political subdivisions from any liability, including claims for damages
4.6 arising from the catastrophe, and cooperate with the state and its political subdivisions
4.7 in pursuing claims the state and political subdivisions may have against any other party.
4.8 The release shall also provide that the survivor will indemnify the state and its political
4.9 subdivisions from any claims of contribution or indemnity or both made by others against
4.10 the state and its political subdivisions, and satisfy any judgment obtained by others
4.11 against the state and its political subdivisions, if such claims or judgment relate in any
4.12 way to the claim of the survivor rising from the catastrophe. The release does not apply
4.13 to any claim for damages or other relief from a person or entity other than the state or a
4.14 political subdivision of the state. In addition, the release shall provide for the state's
4.15 subrogation interest referenced in subdivision 6. A survivor who previously has filed an
4.16 administrative, court, or other action against the state or a political subdivision of the state
4.17 seeking recovery from loss resulting from a catastrophe must agree to withdraw the action
4.18 before receiving compensation from the fund.

4.19 Subd. 5. **Payments from other sources.** (a) In determining the loss suffered by a
4.20 survivor under this chapter, the special master must offset payments made or to be made
4.21 in the future from sources as defined in section 548.36, subdivision 1, that compensate a
4.22 survivor for loss or losses as a result of the catastrophe. In determining the loss suffered
4.23 by a survivor under this chapter, the special master must also offset any payments made or
4.24 to be made by a third-party tortfeasor pursuant to a settlement or other agreement with the
4.25 survivor, or a judgment in favor of the survivor, concerning any claim or claims of the
4.26 survivor which relate to, involve, or arise out of the catastrophe.

4.27 (b) Notwithstanding any statutory or common law or agreement to the contrary, a
4.28 person or entity required to make payments to a survivor may not eliminate or reduce
4.29 those payments as a result of compensation paid to the survivor under this chapter or as
4.30 a result of the survivor's release of claims against the state and its political subdivisions
4.31 under this chapter. No person or entity, having paid benefits or compensation to or on
4.32 behalf of a survivor, shall have any right of recovery, through subrogation or otherwise,
4.33 against the fund or with respect to any compensation paid by the fund. The obligation
4.34 of any person or entity other than the fund to make payments to a survivor is primary as
4.35 compared to any payment made or to be made by the fund. The persons and entities
4.36 referenced in and covered by this paragraph include, without limitation:

- 5.1 (1) reparation obligors, as defined in section 65B.43, subdivision 9, whether they are
5.2 insurers or self-insurers;
- 5.3 (2) health plan companies, as defined in section 62Q.01, subdivision 4, including the
5.4 Comprehensive Health Association created under section 62E.10;
- 5.5 (3) insurance companies, as defined in section 60A.02, subdivision 4;
- 5.6 (4) self-insured pools of political subdivisions organized under section 471.617 or
5.7 471.981, including service cooperatives pools organized under section 123A.21;
- 5.8 (5) risk retention groups, as defined in section 60E.02, subdivision 12;
- 5.9 (6) joint self-insurance plans governed by chapter 60F;
- 5.10 (7) workers' compensation insurers and private self-insurers, as defined in section
5.11 79.01;
- 5.12 (8) the Minnesota Life and Health Insurance Guaranty Association governed by
5.13 chapter 61B;
- 5.14 (9) the Minnesota Insurance Guaranty Association governed by chapter 60C;
- 5.15 (10) the Minnesota Joint Underwriting Association governed by chapter 62I;
- 5.16 (11) all insurers providing credit life, credit accident and health, and credit
5.17 involuntary unemployment insurance under chapter 62B, but also including those
5.18 coverages written in connection with real estate mortgage loans and those provided to
5.19 borrowers at no additional cost;
- 5.20 (12) the Minnesota unemployment insurance program provided under chapter 268;
- 5.21 (13) coverage offered by the state under medical assistance, general assistance
5.22 medical care, and MinnesotaCare; and
- 5.23 (14) any other plan providing health, life, disability income, or long-term care
5.24 coverage.
- 5.25 (c) Following an award to a survivor by the special master, any entity claiming a
5.26 subrogation interest against the award shall have 60 days in which to provide notice to the
5.27 state and the survivor of its intent to assert its interest, during which time the award shall
5.28 remain in the possession of the state. Failure to provide notice shall result in a waiver of
5.29 the subrogation claim. If no notice is received, the funds shall be released.
- 5.30 Subd. 6. **State right of subrogation.** Notwithstanding any statutory or common law
5.31 to the contrary, the state is subrogated to all potential claims against third party tortfeasors
5.32 of any survivor receiving compensation from the fund to the extent the claims relate to,
5.33 involve, or arise out of the catastrophe. The state's subrogation right shall be limited to the
5.34 amount paid to the survivor from the fund. The state shall be entitled to be reimbursed
5.35 regardless of whether the survivor is fully compensated. This provision and subdivision 7

6.1 shall be in addition to all other remedies, claims, and rights that the state may have against
6.2 others for recovering money related to the catastrophe.

6.3 Subd. 7. **Third party reimbursement of the state.** Notwithstanding any statutory
6.4 or common law to the contrary, the state shall be entitled to recover from any third party,
6.5 including an agent, contractor, or vendor retained by the state, for payments made from
6.6 the fund to the extent such third party caused or contributed to the catastrophe.

6.7 Subd. 8. **Attorney fee limit.** An attorney representing a survivor with respect to a
6.8 claim filed with the special master must not charge the survivor a fee.

6.9 **Sec. 4. [8A.04] DATA PRACTICES.**

6.10 The following data on individuals collected because a person files a claim or
6.11 accepts or rejects an offer for compensation under this chapter is public: name, amount
6.12 of compensation paid under this chapter, and a release signed under section 8A.03,
6.13 subdivision 4. All other data on individuals collected because a person files a claim under
6.14 this section is confidential data on individuals as defined in section 13.02, subdivision 3.

6.15 **Sec. 5. [8A.05] EFFECT ON STATE TORT LIABILITY.**

6.16 (a) An offer to make a payment or any payment made under this chapter is not an
6.17 admission in any way of liability of the state or a political subdivision of the state, does
6.18 not establish a duty of the state or a political subdivision to compensate survivors, and is
6.19 not admissible in any administrative or judicial action to establish liability or a legal duty.

6.20 (b) The special master shall determine a survivor's loss and make payments to
6.21 survivors under this chapter without reference to state tort liability limits in section 3.736,
6.22 subdivision 4.

6.23 **Sec. 6. [8A.06] FUND.**

6.24 (a) The catastrophe survivor compensation fund is created as a fund in the state
6.25 treasury. The fund consists of money appropriated to the fund by law, gift, and other
6.26 revenue deposited in the fund.

6.27 (b) The special master may accept gifts, grants, and other donations for purposes
6.28 of this chapter. These gifts, grants, and donations are accepted on behalf of the state and
6.29 constitute donations to the state of Minnesota.

6.30 (c) Money in the fund is appropriated to the special master for the purposes of
6.31 this chapter, including payments made to survivors and costs and expenses incurred in
6.32 the administration of this chapter.

7.1 Sec. 7. Minnesota Statutes 2006, section 13.635, is amended by adding a subdivision
7.2 to read:

7.3 Subd. 5. Catastrophe survivor compensation fund. Data collected for the
7.4 purposes of administering the catastrophe survivor compensation fund are classified
7.5 pursuant to section 8A.04.

7.6 Sec. 8. **EFFECTIVE DATE.**

7.7 This article is effective the day following final enactment.

7.8 ARTICLE 2

7.9 I-35W BRIDGE COLLAPSE SURVIVOR COMPENSATION

7.10 Section 1. **PURPOSE.**

7.11 The legislature finds and declares that the collapse of the I-35W bridge on August 1,
7.12 2007, constitutes a catastrophe under Minnesota Statutes, chapter 8A, and that the state
7.13 should provide compensation to the survivors of the catastrophe.

7.14 Sec. 2. **PROCEDURES FOR I-35W CATASTROPHE.**

7.15 (a) The executive council must appoint a special master no later than 30 days after
7.16 the effective date of this article to administer this article.

7.17 (b) Minnesota Statutes, chapter 8A, governs payments made with money
7.18 appropriated in this article.

7.19 (c) For purposes of this appropriation, "survivor" has the meaning given in
7.20 Minnesota Statutes, chapter 8A, but means only a survivor who was on the I-35W bridge
7.21 when it collapsed or a survivor who is the personal representative of a person who was on
7.22 the I-35W bridge when it collapsed.

7.23 (d) A survivor seeking compensation under this article must file a claim with the
7.24 special master by September 1, 2009.

7.25 (e) Minnesota Statutes, section 8A.03, subdivision 5, does not prevent a survivor
7.26 who has received emergency relief funding based on lost wages due to physical injury
7.27 or death from filing a claim for additional compensation from the catastrophe victim
7.28 compensation fund. However, the amount of emergency relief payment received must be
7.29 offset from the amount the survivor otherwise would receive from the fund.

7.30 Sec. 3. **APPROPRIATIONS.**

7.31 Subdivision 1. Compensation to survivors. \$39,320,000 is appropriated from
7.32 the general fund for deposit in the catastrophe survivor compensation fund to provide

8.1 compensation to survivors of the I-35W bridge collapse, and to pay administrative costs
8.2 associated with determining and providing this compensation. No more than one percent
8.3 of this appropriation may be spent for a purpose other than making payments to survivors.
8.4 The special master must report to the legislature by January 15, 2009, 2010, and 2011 on
8.5 expenditure of this appropriation. The report must list the amount of compensation paid to
8.6 each survivor and must list administrative expenses incurred by the special master. This
8.7 appropriation is available until June 30, 2011.

8.8 Subd. 2. **Grant.** \$680,000 is appropriated from the general fund for the fiscal year
8.9 ending June 30, 2008, to the commissioner of administration for a grant to Pillsbury
8.10 United Communities in Minneapolis, to allow Waite House in Minneapolis to provide
8.11 comprehensive services to youth and families of youth who were on a school bus on the
8.12 I-35W bridge when the bridge collapsed. This appropriation is available until June 30,
8.13 2011. The commissioner must make \$235,000 of this appropriation available immediately,
8.14 must make \$215,000 available on August 1, 2008, and must make the remainder of the
8.15 appropriation available on August 1, 2009. Pillsbury United Communities must report to
8.16 the chairs of the senate Finance and house Ways and Means Committees by July 1, 2008,
8.17 2009, and 2010, on expenditure of money under this subdivision.

8.18 **Sec. 4. PAYMENTS PROHIBITED.**

8.19 After the effective date of this article, the commissioner of administration may
8.20 not accept new applications for payments to be made to provide emergency relief to
8.21 survivors of the I-35W bridge catastrophe based on lost wages due to physical injury or
8.22 death. The commissioner may process an application for payment if the application was
8.23 received before the effective date of this article.

8.24 **Sec. 5. EFFECTIVE DATE.**

8.25 This article is effective the day following final enactment.

APPENDIX
Article/Section location for H2553-4

ARTICLE 1

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CATASTROPHE SURVIVOR COMPENSATION

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ARTICLE 2

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I-35W BRIDGE COLLAPSE SURVIVOR COMPENSATION

Section 1. 7.10 Sec. 2. 7.14 Sec. 3. 7.30 Sec. 4. 8.18 Sec. 5. 8.24