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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH SESSION

HOUSE FILE NO. 3294

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

A bill for an act

relating to state government; creating the Sunset Advisory Commission; providing for sunset and review of state agencies; proposing coding for new law as Minnesota Statutes, chapter 3D.

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

Section 1. **[3D.01] SHORT TITLE.**

This chapter may be cited as the Minnesota Sunset Act.

Sec. 2. **[3D.02] DEFINITIONS.**

Subdivision 1. **Scope.** The definitions in this section apply to this chapter.

Subd. 2. **Advisory committee.** "Advisory committee" means a committee, council, commission, or other entity created under state law whose primary function is to advise a state agency.

Subd. 3. **Commission.** "Commission" means the Sunset Advisory Commission.

Subd. 4. **State agency.** "State agency" means an agency expressly made subject to this chapter.

Sec. 3. **[3D.03] SUNSET ADVISORY COMMISSION.**

Subdivision 1. **Membership.** The Sunset Advisory Commission consists of 12 members appointed by the governor, as follows:

(1) three senators and three members of the house of representatives, with no more than three of the six legislators being from the same political party; and

(2) six public members, including members with executive-level experience in business management, mergers and consolidation, finance, law, and accounting.

Subd. 2. **Public member restrictions.** An individual is not eligible for appointment as a public member if the individual or the individual's spouse is:

(1) regulated by a state agency that the commission will review during the term for which the individual would serve;

(2) employed by, participates in the management of, or directly or indirectly has more than a ten percent interest in a business entity or other organization regulated by a state agency the commission will review during the term for which the individual would serve; or

(3) required to register as a lobbyist under chapter 10A because of the person's activities for compensation on behalf of a profession or entity related to the operation of an agency under review.

Subd. 3. **Removal.** It is a ground for removal of a public member from the commission if the member does not have the qualifications required by subdivision 2 for appointment to the commission at the time of appointment or does not maintain the qualifications while serving on the commission. The validity of the commission's action is not affected by the fact that it was taken when a ground for removal of a public member from the commission existed.

Subd. 4. **Terms.** Legislative members serve two-year terms expiring September 1 of each odd-numbered year. Public members serve two-year terms expiring September 1 of each odd-numbered year.

Subd. 5. **Limits.** Members are subject to the following restrictions:

(1) after an individual serves four years on the commission, the individual is not eligible for appointment to another term or part of a term;

(2) a legislative member who serves a full term may not be appointed to an immediately succeeding term; and

(3) a public member may not serve consecutive terms, and, for purposes of this prohibition, a member is considered to have served a term only if the member has served more than one-half of the term.

Subd. 6. **Appointments.** The governor shall make appointments before September 1 of each odd-numbered year.

Subd. 7. **Legislative members.** If a legislative member ceases to be a member of the legislative body from which the member was appointed, the member vacates membership on the commission.

Subd. 8. **Vacancies.** If a vacancy occurs, the governor shall appoint a person to serve for the remainder of the unexpired term in the same manner as the original appointment.

Subd. 9. **Officers.** The commission shall have a chair and vice-chair as presiding officers. The chair and vice-chair must alternate every two years between the two membership groups: legislators and public members. The chair and vice-chair may not be from the same membership group.

Subd. 10. **Quorum; voting.** Seven members of the commission constitute a quorum. A final action or recommendation may not be made unless approved by a recorded vote of at least seven members. All other actions by the commission shall be decided by a majority of the members present and voting.

Subd. 11. **Compensation.** Each member of the commission is entitled to reimbursement for actual and necessary expenses incurred in performing commission duties. Each legislative member is entitled to reimbursement from the appropriate fund of the member's respective legislative body. Each public member is entitled to reimbursement from funds appropriated to the commission.

Sec. 4. **[3D.04] STAFF.**

The commission shall employ an executive director to act as the executive head of the commission. The executive director shall employ persons necessary to carry out this chapter.

Sec. 5. **[3D.05] RULES.**

The commission shall adopt rules necessary to carry out this chapter.

Sec. 6. **[3D.06] AGENCY REPORT TO COMMISSION.**

Before September 1 of the odd-numbered year before the year in which a state agency is subject to sunset review, the agency commissioner shall report to the commission:

(1) information regarding the application to the agency of the criteria in section 3D.10;

(2) a priority-based budget for the agency;

(3) an inventory of all boards, commissions, committees, and other entities related to the agency; and

(4) any other information that the agency commissioner considers appropriate or that is requested by the commission.

Sec. 7. **[3D.07] COMMISSION DUTIES.**

Before January 1 of the year in which a state agency subject to this chapter and its advisory committees are subject to sunset review, the commission shall:

(1) review and take action necessary to verify the reports submitted by the agency;

(2) conduct a review of the agency based on the criteria provided in section 3D.10 and prepare a written report; and

(3) review the implementation of commission recommendations contained in the reports presented to the legislature during the preceding legislative session and the resulting legislation.

Sec. 8. **[3D.08] PUBLIC HEARINGS.**

Before February 1 of the year a state agency subject to this chapter and its advisory committees are subject to sunset review, the commission shall conduct public hearings concerning but not limited to the application to the agency of the criteria provided in section 3D.10.

Sec. 9. **[3D.09] COMMISSION REPORT.**

At each regular legislative session, the commission shall present to the legislature and the governor a report on the agencies and advisory committees reviewed. In the report the commission shall include:

(1) its findings regarding the criteria prescribed by section 3D.10;

(2) its recommendations based on the matters prescribed by section 3D.11; and

(3) other information the commission considers necessary for a complete review of the agency.

Sec. 10. **[3D.10] CRITERIA FOR REVIEW.**

The commission and its staff shall consider the following criteria in determining whether a public need exists for the continuation of a state agency or its advisory committees or for the performance of the functions of the agency or its advisory committees:

(1) the efficiency and effectiveness with which the agency or the advisory committee operates;

(2) an identification of the mission, goals, and objectives intended for the agency or advisory committee and of the problem or need that the agency or advisory committee was intended to address and the extent to which the mission, goals, and objectives have been achieved and the problem or need has been addressed;

(3) an identification of any activities of the agency in addition to those granted by statute and of the authority for those activities and the extent to which those activities are needed;

(4) an assessment of authority of the agency relating to fees, inspections, enforcement, and penalties;

(5) whether less restrictive or alternative methods of performing any function that the agency performs could adequately protect or provide service to the public;

(6) the extent to which the jurisdiction of the agency and the programs administered by the agency overlap or duplicate those of other agencies, the extent to which the agency coordinates with those agencies, and the extent to which the programs administered by the agency can be consolidated with the programs of other state agencies;

(7) the promptness and effectiveness with which the agency addresses complaints concerning entities or other persons affected by the agency, including an assessment of the agency's administrative hearings process;

(8) an assessment of the agency's rulemaking process and the extent to which the agency has encouraged participation by the public in making its rules and decisions and the extent to which the public participation has resulted in rules that benefit the public;

(9) the extent to which the agency has complied with federal and state laws and applicable rules regarding equality of employment opportunity and the rights and privacy of individuals; and state law and applicable rules of any state agency regarding purchasing guidelines and programs for historically underutilized businesses;

(10) the extent to which the agency issues and enforces rules relating to potential conflicts of interest of its employees;

(11) the extent to which the agency complies with chapter 13 and follows records management practices that enable the agency to respond efficiently to requests for public information; and

(12) the effect of federal intervention or loss of federal funds if the agency is abolished.

Sec. 11. **[3D.11] RECOMMENDATIONS.**

(a) In its report on a state agency, the commission shall:

(1) make recommendations on the abolition, continuation, or reorganization of each affected state agency and its advisory committees and on the need for the performance of the functions of the agency and its advisory committees;

(2) make recommendations on the consolidation, transfer, or reorganization of programs within state agencies not under review when the programs duplicate functions performed in agencies under review; and

(3) make recommendations to improve the operations of the agency, its policy body, and its advisory committees, including management recommendations that do not require a change in the agency's enabling statute.

(b) The commission shall include the estimated fiscal impact of its recommendations and may recommend appropriation levels for certain programs to improve the operations of the state agency.

(c) The commission shall have drafts of legislation prepared to carry out the commission's recommendations under this section.

(d) After the legislature acts on the report under section 3D.09, the commission shall present to the legislative auditor the commission's recommendations that do not require a statutory change to be put into effect. Subject to the legislative audit commission's approval, the legislative auditor may examine the recommendations and include as part of the next audit of the agency a report on whether the agency has implemented the recommendations and, if so, in what manner.

Sec. 12. **[3D.12] MONITORING OF RECOMMENDATIONS.**

During each legislative session, the staff of the commission shall monitor legislation affecting agencies that have undergone sunset review and shall periodically report to the members of the commission on proposed changes which would modify prior recommendations of the commission.

Sec. 13. **[3D.13] REVIEW OF ADVISORY COMMITTEES.**

An advisory committee, the primary function of which is to advise a particular state agency, is subject to sunset review on the date set for sunset review of the agency unless the advisory committee is expressly continued by law.

Sec. 14. **[3D.14] CONTINUATION BY LAW.**

During the regular session immediately before the sunset review of a state agency or an advisory committee that is subject to this chapter, the legislature may enact legislation to continue the agency or advisory committee for a period not to exceed 12 years. This chapter does not prohibit the legislature from:

(1) terminating a state agency or advisory committee subject to this chapter at a date earlier than that provided in this chapter; or

(2) considering any other legislation relative to a state agency or advisory committee subject to this chapter.

Sec. 15. **[3D.15] PROCEDURE AFTER TERMINATION.**

(a) Unless otherwise provided by law:

(1) if after sunset review a state agency is abolished, the agency may continue in existence until September 1 of the following year to conclude its business;

(2) abolishment does not reduce or otherwise limit the powers and authority of the state agency during the concluding year;

(3) a state agency is terminated and shall cease all activities at the expiration of the one-year period; and

(4) all rules that have been adopted by the state agency expire at the expiration of the one-year period.

(b) Any unobligated and unexpended appropriations of an abolished agency or advisory committee lapse on September 1 of the even-numbered year after abolishment.

(c) Except as provided by paragraph (e) or as otherwise provided by law, all money in a dedicated fund of an abolished state agency or advisory committee on September 1 of the even-numbered year after abolishment is transferred to the general fund. The part of the law dedicating the money to a specific fund of an abolished agency becomes void on September 1 of the even-numbered year after abolishment.

(d) Unless the governor designates an appropriate state agency as prescribed by paragraph (e), property and records in the custody of an abolished state agency or advisory committee on September 1 of the even-numbered year after abolishment must be transferred to the commissioner of administration. If the governor designates an appropriate state agency, the property and records must be transferred to the designated state agency.

(e) The legislature recognizes the state's continuing obligation to pay bonded indebtedness and all other obligations, including lease, contract, and other written obligations, incurred by a state agency abolished under this chapter, and this chapter does not impair or impede the payment of bonded indebtedness and all other obligations, including lease, contract, and other written obligations, in accordance with their terms. If an abolished state agency has outstanding bonded indebtedness or other outstanding obligations, including lease, contract, and other written obligations, the bonds and all other obligations, including lease, contract, and other written obligations, remain valid and enforceable in accordance with their terms and subject to all applicable terms and conditions of the laws and proceedings authorizing the bonds and all other obligations, including lease, contract, and other written obligations. The governor shall designate an appropriate state agency that shall continue to carry out all covenants contained in the bonds and in all other obligations, including lease, contract, and other

written obligations, and the proceedings authorizing them, including the issuance of bonds, and the performance of all other obligations, including lease, contract, and other written obligations, to complete the construction of projects or the performance of other obligations, including lease, contract, and other written obligations. The designated state agency shall provide payment from the sources of payment of the bonds in accordance with the terms of the bonds and shall provide payment from the sources of payment of all other obligations, including lease, contract, and other written obligations, in accordance with their terms, whether from taxes, revenues, or otherwise, until the bonds and interest on the bonds are paid in full and all other obligations, including lease, contract, and other written obligations, are performed and paid in full. If the proceedings so provide, all funds established by laws or proceedings authorizing the bonds or authorizing other obligations, including lease, contract, and other written obligations, must remain with the comptroller or the previously designated trustees. If the proceedings do not provide that the funds remain with the comptroller or the previously designated trustees, the funds must be transferred to the designated state agency.

Sec. 16. **[3D.16] ASSISTANCE OF AND ACCESS TO STATE AGENCIES.**

The commission may request the assistance of state agencies and officers. When assistance is requested, a state agency or officer shall assist the commission. In carrying out its functions under this chapter, the commission or its designated staff member may inspect the records, documents, and files of any state agency.

Sec. 17. **[3D.17] RELOCATION OF EMPLOYEES.**

If an employee is displaced because a state agency or its advisory committee is abolished or reorganized, the state agency shall make a reasonable effort to relocate the displaced employee.

Sec. 18. **[3D.18] SAVING PROVISION.**

Except as otherwise expressly provided, abolition of a state agency does not affect rights and duties that matured, penalties that were incurred, civil or criminal liabilities that arose, or proceedings that were begun before the effective date of the abolition.

Sec. 19. **[3D.19] REVIEW OF PROPOSED LEGISLATION CREATING AN AGENCY.**

Each bill filed in a house of the legislature that would create a new state agency or a new advisory committee to a state agency shall be reviewed by the commission. The commission shall review the bill to determine if:

(1) the proposed functions of the agency or committee could be administered by one or more existing state agencies or advisory committees;

(2) the form of regulation, if any, proposed by the bill is the least restrictive form of regulation that will adequately protect the public;

(3) the bill provides for adequate public input regarding any regulatory function proposed by the bill; and

(4) the bill provides for adequate protection against conflicts of interest within the agency or committee.

Sec. 20. **[3D.20] GIFTS AND GRANTS.**

The commission may accept gifts, grants, and donations from any organization described in section 501(c)(3) of the Internal Revenue Code for the purpose of funding any activity under this chapter. All gifts, grants, and donations must be accepted in an open meeting by a majority of the voting members of the commission and reported in the public record of the commission with the name of the donor and purpose of the gift, grant, or donation. Money received under this section is appropriated to the commission.

Sec. 21. **[3D.21] EXPIRATION.**

Subdivision 1. **Group 1.** The following agencies are subject to sunset review before June 30, 2011: Department of Health, Department of Human Rights, Department of Human Services, all health-related licensing boards listed in section 214.01, Council on Affairs of Chicano/Latino People, Council on Black Minnesotans, Council on Asian-Pacific Minnesotans, Indian Affairs Council, Council on Disabilities, and all advisory groups associated with these agencies.

Subd. 2. **Group 2.** The following agencies are subject to sunset review before June 30, 2013: Department of Education, Board of Teaching, Minnesota Office of Higher Education, and all advisory groups associated with these agencies.

Subd. 3. **Group 3.** The following agencies are subject to sunset review before June 30, 2015: Department of Commerce, Department of Employment and Economic Development, Department of Labor and Industry, all non-health-related licensing boards listed in section 214.01 except as otherwise provided in this section, Explore Minnesota Tourism, Public Utilities Commission, Iron Range Resources and Rehabilitation

Board, Bureau of Mediation Services, Combative Sports Commission, Amateur Sports Commission, and all advisory groups associated with these agencies.

Subd. 4. **Group 4.** The following agencies are subject to sunset review before June 30, 2017: Department of Corrections, Department of Public Safety, Department of Transportation, Peace Officer Standards and Training Board, Corrections Ombudsman, and all advisory groups associated with these agencies.

Subd. 5. **Group 5.** The following agencies are subject to sunset review before June 30, 2019: Department of Agriculture, Department of Natural Resources, Pollution Control Agency, Board of Animal Health, Board of Water and Soil Resources, and all advisory groups associated with these agencies.

Subd. 6. **Group 6.** The following agencies are subject to sunset review before June 30, 2021: Department of Administration, Department of Finance, Department of Military Affairs, Department of Revenue, Department of Veterans Affairs, Arts Board, Minnesota Zoo, Office of Administrative Hearings, Board of Campaign Finance and Public Disclosure, Capitol Area Architectural and Planning Board, Office of Enterprise Technology, Minnesota Racing Commission, and all advisory groups associated with these agencies.

Subd. 7. **Continuation.** Following sunset review of an agency, the legislature shall act within the same legislative session in which the sunset report was received on Sunset Advisory Commission recommendations to abolish, continue, or reorganize the agency.

Subd. 8. **Other groups.** The commission may review, under the criteria in section 3D.10, and propose to the legislature an expiration date for, any agency, board, commission, or program not listed in this section.