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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH
SESSION

HOUSE FILE No. **192**

January 24, 2011

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The bill was read for the first time and referred to the Committee on Government Operations and Elections

February 14, 2011

Committee Recommendation and Adoption of Report:

To Pass as Amended and re-referred to the Committee on State Government Finance

1.1 A bill for an act
1.2 relating to state government; proposing the Reinventing Government
1.3 Employment Act; providing a public employee compensation freeze and a
1.4 method for determining future compensation; establishing a state employee
1.5 gainsharing system; removing restrictions on state contracts with private vendors;
1.6 amending Minnesota Statutes 2010, sections 16C.08, subdivision 2; 16C.09;
1.7 43A.20; proposing coding for new law in Minnesota Statutes, chapters 15; 15A;
1.8 16A; repealing Minnesota Statutes 2010, sections 16C.085; 43A.047; 179A.23.

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

1.10 **ARTICLE 1**

1.11 **REINVENTING GOVERNMENT EMPLOYMENT**

1.12 Section 1. **CITATION.**

1.13 This act may be known as the Reinventing Government Employment Act.

1.14 **ARTICLE 2**

1.15 **EQUAL PAY AND BENEFITS**

1.16 Section 1. **[15A.25] STATE EMPLOYEE COMPENSATION.**

1.17 Subdivision 1. **Compensation freeze.** (a) From the effective date of this section
1.18 until implementation of compensation required under subdivision 2, a legislative or
1.19 executive branch employer must not increase the compensation of any employee.

1.20 This subdivision prohibits any increase including, but not limited to, across-the-board
1.21 increases; cost-of-living adjustments; increases based on longevity; increases as a result of
1.22 step and lane changes; increases in the form of lump-sum payments; increases in employer
1.23 contributions to deferred compensation plans; and any increase in employer contributions
1.24 toward the cost of medical, dental, life, or other insurance.

2.1 (b) This subdivision does not prohibit:

2.2 (1) an increase in the rate of salary and wages for an employee who is promoted or
2.3 transferred to a position with greater job responsibilities; or

2.4 (2) an increase in the employer contribution to a public pension plan, if required
2.5 by other law.

2.6 Subd. 2. **Future compensation.** (a) The commissioner of management and budget
2.7 must contract for a compensation study for legislative and executive branch position
2.8 descriptions. The study must compare the total compensation, including salary and
2.9 benefits, of each position description with positions in the private sector in which the skill,
2.10 effort, responsibilities, and working conditions are similar. The commissioner must report
2.11 the results of the study by March 1, 2012.

2.12 (b) By July 1, 2012, each legislative and executive branch employer must implement
2.13 compensation for each position for its employees that, as nearly as practicable, is
2.14 comparable to the compensation of private sector positions with similar skill, effort,
2.15 responsibilities, and working conditions, as determined by the commissioner under
2.16 paragraph (a).

2.17 Subd. 3. **Contracts in effect.** This section does not prohibit a change in
2.18 compensation required by a contract or collective bargaining agreement in effect before
2.19 the effective date of this section. However, an employer may not:

2.20 (1) enter into a new contract or collective bargaining agreement that changes
2.21 compensation in a manner that conflicts with this section; or

2.22 (2) extend an expired contract or collective bargaining agreement or any other
2.23 arrangement that conflicts with this section.

2.24 Subd. 4. **Relation to other law.** This section supersedes chapter 179A and any
2.25 other law to the contrary. It is not an unfair labor practice under chapter 179A for a public
2.26 employer to take any action required to comply with this section. Executive branch
2.27 employees may not legally strike due to an employer's action that is required to comply
2.28 with this section. Neither an employer nor an exclusive representative may request interest
2.29 arbitration regarding any element of compensation prescribed by this section, and an
2.30 arbitrator may not issue an award that would conflict with this section.

2.31 Subd. 5. **Executive branch.** For purposes of this section, "executive branch" has
2.32 the meaning given in section 43A.02, but does not include the Minnesota State Colleges
2.33 and Universities.

2.34 **EFFECTIVE DATE.** This section is effective the day following final enactment.

3.1 **ARTICLE 3**

3.2 **GAINSHARING**

3.3 Section 1. **[16A.90] EMPLOYEE GAINSHARING SYSTEM.**

3.4 The commissioner shall establish a program to provide onetime bonus compensation
3.5 to state employees for efforts made to reduce the costs of operating state government or for
3.6 ways of providing better or more efficient state services. The commissioner may make a
3.7 onetime award to an employee or group of employees whose suggestion or involvement in
3.8 a project is determined by the commissioner to have resulted in documented cost-savings
3.9 to the state. The maximum award is ten percent of the documented savings in the
3.10 first fiscal year in which the savings are realized. The award must be paid from the
3.11 appropriation to which the savings accrued.

3.12 **ARTICLE 4**

3.13 **VALUE-ADDED SERVICE**

3.14 Section 1. **[15.062] COST-EFFECTIVE PROVISION OF SERVICES.**

3.15 (a) The head or governing board of each state department or agency, including the
3.16 Minnesota state colleges and universities, must carry out the agency's powers and duties
3.17 in the most cost-effective manner possible. The agency head or governing board must
3.18 determine if the most cost-effective manner of carrying out each of the agency's powers
3.19 and duties is to hire state employees or to contract with outside sources.

3.20 (b) If an agency decides to seek an outside vendor to perform work currently done
3.21 by state employees, the agency must permit groups of state employees to compete for the
3.22 business by submitting responses to the agency's solicitation documents. Notwithstanding
3.23 section 16A.127 or any other law to the contrary, no statewide or agency indirect costs
3.24 may be assessed to a group of agency employees with respect to work performed under
3.25 a contract awarded to a group of employees under this section. This section supersedes
3.26 any provision of law preventing a state agency from entering into a contract with a state
3.27 employee.

3.28 Sec. 2. Minnesota Statutes 2010, section 16C.08, subdivision 2, is amended to read:

3.29 Subd. 2. **Duties of contracting agency.** (a) Before an agency may seek approval of
3.30 a professional or technical services contract valued in excess of \$5,000, it must provide
3.31 the following:

4.1 (1) a description of how the proposed contract or amendment is necessary and
4.2 reasonable to advance the statutory mission of the agency;

4.3 (2) a description of the agency's plan to notify firms or individuals who may be
4.4 available to perform the services called for in the solicitation;

4.5 (3) a description of the performance measures or other tools, including accessibility
4.6 measures if applicable, that will be used to monitor and evaluate contract performance; and

4.7 (4) an explanation detailing, if applicable, why this procurement is being pursued
4.8 unilaterally by the agency and not as an enterprise procurement.

4.9 (b) In addition to paragraph (a), the agency must certify that:

4.10 ~~(1) no current state employee is able and available to perform the services called~~
4.11 ~~for by the contract;~~

4.12 ~~(2)~~ (1) the normal competitive bidding mechanisms will not provide for adequate
4.13 performance of the services;

4.14 ~~(3)~~ (2) reasonable efforts will be made to publicize the availability of the contract
4.15 to the public;

4.16 ~~(4)~~ (3) the agency will develop and implement a written plan providing for the
4.17 assignment of specific agency personnel to manage the contract, including a monitoring
4.18 and liaison function, the periodic review of interim reports or other indications of past
4.19 performance, and the ultimate utilization of the final product of the services;

4.20 ~~(5)~~ (4) the agency will not allow the contractor to begin work before the contract is
4.21 fully executed unless an exception under section 16C.05, subdivision 2a, has been granted
4.22 by the commissioner and funds are fully encumbered;

4.23 ~~(6)~~ (5) the contract will not establish an employment relationship between the state
4.24 or the agency and any persons performing under the contract; and

4.25 ~~(7)~~ (6) in the event the results of the contract work will be carried out or continued
4.26 by state employees upon completion of the contract, the contractor is required to include
4.27 state employees in development and training, to the extent necessary to ensure that after
4.28 completion of the contract, state employees can perform any ongoing work related to the
4.29 same function; ~~and~~

4.30 ~~(8) the agency will not contract out its previously eliminated jobs for four years~~
4.31 ~~without first considering the same former employees who are on the seniority unit layoff~~
4.32 ~~list who meet the minimum qualifications determined by the agency.~~

4.33 (c) A contract establishes an employment relationship for purposes of paragraph (b),
4.34 clause ~~(6)~~ (5), if, under federal laws governing the distinction between an employee and
4.35 an independent contractor, a person would be considered an employee.

5.1 Sec. 3. Minnesota Statutes 2010, section 16C.09, is amended to read:

5.2 **16C.09 PROCEDURE FOR SERVICE CONTRACTS.**

5.3 (a) Before entering into or approving a service contract, the commissioner must
5.4 determine, at least, that:

5.5 ~~(1) no current state employee is able and available to perform the services called~~
5.6 ~~for by the contract;~~

5.7 ~~(2)~~ (1) the work to be performed under the contract is necessary to the agency's
5.8 achievement of its statutory responsibilities and there is statutory authority to enter into
5.9 the contract;

5.10 ~~(3)~~ (2) the contract will not establish an employment relationship between the state
5.11 or the agency and any persons performing under the contract;

5.12 ~~(4)~~ (3) the contractor and agents are not employees of the state, except as authorized
5.13 in section 15.062;

5.14 ~~(5)~~ (4) the contracting agency has specified a satisfactory method of evaluating and
5.15 using the results of the work to be performed; and

5.16 ~~(6)~~ (5) the combined contract and amendments will not exceed five years without
5.17 specific, written approval by the commissioner according to established policy, procedures,
5.18 and standards, or unless otherwise provided for by law. The term of the original contract
5.19 must not exceed two years, unless the commissioner determines that a longer duration is
5.20 in the best interest of the state.

5.21 ~~(b) For purposes of paragraph (a), clause (1), employees are available if qualified~~
5.22 ~~and:~~

5.23 ~~(1) are already doing the work in question; or~~

5.24 ~~(2) are on layoff status in classes that can do the work in question.~~

5.25 ~~An employee is not available if the employee is doing other work, is retired, or has decided~~
5.26 ~~not to do the work in question.~~

5.27 ~~(c)~~ (b) This section does not apply to an agency's use of inmates pursuant to sections
5.28 241.20 to 241.23 or to an agency's use of persons required by a court to provide:

5.29 (1) community service; or

5.30 (2) conservation or maintenance services on lands under the jurisdiction and control
5.31 of the state.

5.32 Sec. 4. **REPEALER.**

5.33 Minnesota Statutes 2010, sections 16C.085; 43A.047; and 179A.23, are repealed.

6.1 **ARTICLE 5**6.2 **PERFORMANCE APPRAISAL AND PAY**

6.3 Section 1. Minnesota Statutes 2010, section 43A.20, is amended to read:

6.4 **43A.20 PERFORMANCE APPRAISAL AND PAY.**

6.5 (a) The commissioner shall design and maintain a performance appraisal and bonus
6.6 pay system under which each employee in the civil service in the executive branch shall
6.7 be evaluated and counseled on work performance at least once a year. The performance
6.8 appraisal and bonus pay system must include three components:

6.9 (1) evaluation of the individual employee's performance relative to goals for that
6.10 individual;

6.11 (2) evaluation of the performance of the individual employee's program, defined by
6.12 the agency head, toward meeting targeted outcomes for the program; and

6.13 (3) evaluation of the performance of the entire agency toward meeting targeted
6.14 outcomes for the agency.

6.15 (b) Individual pay increases for all employees ~~not represented by an exclusive~~
6.16 ~~representative certified pursuant to chapter 179A~~ shall be based on the evaluation
6.17 evaluations required by paragraph (a) and other factors consistent with paragraph (a) that
6.18 the commissioner negotiates in collective bargaining agreements or includes in the plans
6.19 developed pursuant to section 43A.18. ~~Collective bargaining agreements entered into~~
6.20 ~~pursuant to chapter 179A may, and are encouraged to, provide for pay increases based~~
6.21 ~~on employee work performance.~~ An employee in the executive branch may not receive
6.22 an increase in salary or wages based on cost of living or progression to another step or
6.23 lane unless the employee's supervisor certifies that the employee's individual performance
6.24 has been satisfactory and justifies spending additional public funds on the employee's
6.25 compensation.

6.26 (c) This section supersedes any conflicting provision of other law.

6.27 **EFFECTIVE DATE.** This section is effective July 1, 2011. For employees covered
6.28 by a collective bargaining agreement, this section applies to collective bargaining
6.29 agreements entered into on or after that date.

6.30 **Sec. 2. SALARY FOR UPCOMING BIENNIUM.**

6.31 During the biennium ending June 30, 2013, each executive branch appointing
6.32 authority shall construct a performance bonus component as part of overall compensation
6.33 earned during that biennium. Under the performance bonus component, at least five

7.1 percent of the total base salary and wages otherwise payable to an employee may be
7.2 paid only after completion of the performance appraisal conducted under Minnesota
7.3 Statutes, section 43A.20, paragraph (a), and upon the appointing authority's determination
7.4 that the employee's performance has been satisfactory and justifies spending additional
7.5 public funds on the employee's compensation.

7.6 This section supersedes any conflicting provision of other law.

7.7 **EFFECTIVE DATE.** This section is effective July 1, 2011. For employees covered
7.8 by a collective bargaining agreement, this section applies to collective bargaining
7.9 agreements entered into on or after that date.

16C.085 WAIVER.

Notwithstanding sections 16C.08, 16C.09, 43A.047, or other law to the contrary, the commissioner of administration may enter into or approve a service contract for printing services or services provided by the DocuComm Division without determining that no current state employee is able and available to perform the services called for by the contract.

43A.047 CONTRACTED SERVICES.

(a) Executive agencies, including the Minnesota State Colleges and Universities system, must demonstrate that they cannot use available staff before hiring outside consultants or services. If use of consultants is necessary, agencies are encouraged to negotiate contracts that will involve permanent staff, so as to upgrade and maximize training of state employees.

(b) If agencies reduce operating budgets, agencies must give priority to reducing spending on professional and technical service contracts before laying off permanent employees.

(c) This section does not apply to an agency's use of inmates pursuant to sections 241.20 to 241.23 or to an agency's use of persons required by a court to provide:

- (1) community service; or
- (2) conservation or maintenance services on lands under the jurisdiction and control of the state.

179A.23 LIMITATION ON CONTRACTING-OUT OF SERVICES PROVIDED BY MEMBERS OF A STATE OF MINNESOTA OR UNIVERSITY OF MINNESOTA BARGAINING UNIT.

Any contract entered into after March 23, 1982, by the state of Minnesota or the University of Minnesota involving services, any part of which, in the absence of the contract, would be performed by members of a unit provided in sections 179A.10 and 179A.11, shall be subject to section 16C.06 and shall provide for the preferential employment by a party of members of that unit whose employment with the state of Minnesota or the University of Minnesota is terminated as a result of that contract.

Contracts entered into by the state of Minnesota for the purpose of providing court reporter services or transcription of the record of a hearing which was recorded by means of an audio magnetic recording device shall be subject to section 16C.08 and the preferential employment provisions enumerated in this section. Any court reporter seeking a contract pursuant to the preferential employment provisions of this section shall be given preference when the services are needed only if that court reporter's charges for the services requested are no greater than the average of the charges made for the identical services by other court reporters in the same locality who are also under contract with the state for those services.

APPENDIX
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