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State of Minnesota

HOUSE OF REPRESENTATIVES

SPECIAL SESSION

H. F. No. 90

06/15/2020 Authored by Noor, Winkler, Gomez, Hassan, Her and others
The bill was read for the first time and referred to the Judiciary Finance and Civil Law Division

1.1 A bill for an act
1.2 relating to state government; establishing a special master panel to make awards
1.3 to compensate for damages suffered by certain persons resulting from the civil
1.4 unrest during May and June of 2020; appropriating money.

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

1.6 Section 1. PURPOSE; EMERGENCY ASSISTANCE FOR DAMAGE DUE TO
1.7 CIVIL UNREST.

1.8 Subdivision 1. Legislative findings. (a) The legislature recognizes the civil unrest that
1.9 occurred in Minnesota in May and June of 2020. While the immediate cause of the unrest
1.10 was the apparent murder of George Floyd by an officer of the Minneapolis Police
1.11 Department, it was compounded by other long-standing structural systems of inequality
1.12 and racism within the city, state, and nation. The legislature finds that the resulting protests
1.13 and acts of civil disobedience were largely a peaceful exercise of first amendment rights:
1.14 a genuine expression of grief at the death of Mr. Floyd and frustration and anger at the lack
1.15 of an adequate mechanism for communities long unheard or ignored by public institutions
1.16 to have their voices heard and meaningful action be taken as a result.

1.17 (b) The legislature further recognizes that some acts of protest and civil disobedience,
1.18 occurring among a small minority of participants, led to severe destruction or damage to
1.19 small businesses and other private property in Minneapolis, St. Paul, and other areas of the
1.20 state. In many cases, the damage and destruction impacted businesses and locations owned,
1.21 managed, or frequented by those communities that the acts of protest and civil disobedience
1.22 were intended to uplift. The physical and psychological toll from this devastation is immense
1.23 and touches all Minnesotans.

2.1 Subd. 2. **Intent of award process.** The award process established by this act is intended
 2.2 to provide a onetime disaster assistance payment so that persons economically impacted by
 2.3 the civil unrest are able to cover losses that are not eligible for compensation through
 2.4 insurance policies. It furthers the public interest by ensuring affected communities have
 2.5 access to immediate resources that allow them to regroup and rebuild, while minimizing
 2.6 the uncertainty and expense of navigating complex and protracted administrative procedures
 2.7 to seek relief.

2.8 Sec. 2. **DEFINITIONS.**

2.9 Subdivision 1. **Application.** The definitions in this section apply to this act.

2.10 Subd. 2. **Damage.** "Damage" means the following types of damage which are reasonably
 2.11 the result of the civil unrest that occurred during the period of May 25, 2020, to June 8,
 2.12 2020:

2.13 (1) physical damage to structures or personal property located within an eligible zone;
 2.14 and

2.15 (2) economic damage impacting business operations within an eligible zone including
 2.16 but not limited to a business' lost inventory, and a business employee's lost wages or benefits.

2.17 Damage does not include the loss of future expected earnings, attorney fees, or other fees
 2.18 incurred by an eligible person in applying for an award under this act.

2.19 Subd. 3. **Eligible person.** (a) "Eligible person" means:

2.20 (1) a nonprofit organization or a for-profit business located in an eligible zone, including
 2.21 any employee of that organization or business;

2.22 (2) an individual who owns real property within an eligible zone; or

2.23 (3) an individual who resides in an eligible zone.

2.24 (b) A for-profit business is not an eligible person if it employs more than the equivalent
 2.25 of 50 full-time employees.

2.26 Subd. 4. **Eligible zone.** "Eligible zone" means:

2.27 (1) in Minneapolis:

2.28 (i) Lake Street between Hennepin Avenue and West River Parkway, and any area within
 2.29 two city blocks of that portion of Lake Street in any direction; and

2.30 (ii) West Broadway Avenue, and any area within two city blocks of West Broadway
 2.31 Avenue in any direction;

3.1 (2) in Saint Paul, University Avenue between Rice Street and Highway 280, and any
 3.2 area within two city blocks of that portion of University Avenue in any direction; and

3.3 (3) any additional locations or zones designated by the governor as experiencing
 3.4 significant, widespread damage or destruction of private property due to the civil unrest
 3.5 described in section 1.

3.6 Subd. 5. **Award.** "Award" means a onetime payment of money to an eligible person in
 3.7 response to a properly submitted claim for disaster assistance under this act. An award is
 3.8 not a grant for purposes of Minnesota Statutes, sections 16B.97 to 16B.991, or other
 3.9 applicable law or rules governing grant administration, and does not constitute a payment
 3.10 from a public benefit program for purposes of any applicable federal or state law.

3.11 Subd. 6. **Panel.** "Panel" means the special master panel established in this act.

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

3.13 Sec. 3. **CONSIDERATION AND PAYMENT OF DAMAGE AWARDS.**

3.14 Subdivision 1. **Special master panel; appointment.** (a) The governor shall establish a
 3.15 special master panel to consider claims and determine awards for disaster assistance to
 3.16 eligible persons on behalf of the state. The panel must be established by July 1, 2020. The
 3.17 panel must consist of at least three and not more than nine attorneys appointed by the
 3.18 governor. In making appointments, the governor must consult with members of the legislature
 3.19 whose districts include an eligible zone and ensure that the appointees are knowledgeable
 3.20 and representative of the impacted communities. Members of the panel must have experience
 3.21 in legal and business issues involving the calculation and determination of damages in a
 3.22 judicial setting. The governor shall designate one member of the panel to serve as chair.

3.23 (b) Within available appropriations, the commissioner of management and budget shall
 3.24 determine the pay and expenses to be received by the panel, not to exceed \$..... per member.
 3.25 The chair of the panel shall forward documentation of salaries, expenses, and administrative
 3.26 costs incurred to the commissioner of management and budget for payment of those amounts.

3.27 Subd. 2. **Staff; community outreach.** (a) The commissioner of management and budget,
 3.28 in consultation with the panel, may hire employees or retain consultants necessary to assist
 3.29 the panel in performing its duties under this section. Employees are in the unclassified state
 3.30 civil service. The panel may also use consultants who are under a contract with the state or
 3.31 current state employees to assist the panel in processing claims under this section.

3.32 (b) The panel must engage one or more nonprofit organizations with a primary mission
 3.33 to serve communities located within each eligible zone to assist the panel in publicizing the

4.1 award opportunity provided by this act, and to provide technical assistance to applicants in
4.2 submitting a claim.

4.3 Subd. 3. **General duties; procedure.** The panel shall consider claims for damages and
4.4 determine award amounts as authorized by this section. The panel may adopt and modify
4.5 procedures, rules, and forms for receiving and considering claims, provided that the panel
4.6 must allow each eligible person who submits a claim to appear electronically or in person
4.7 before the panel or one of its members to describe the claim and respond to questions.
4.8 Procedures and rules of the panel are not rules for purposes of Minnesota Statutes, chapter
4.9 14.

4.10 Subd. 4. **Deadlines.** To be eligible to receive an award, an eligible person must file a
4.11 claim with the panel by September 1, 2020. On a case-by-case basis, the panel may accept
4.12 claims that are received after this deadline. The panel must make an award determination
4.13 for each claim no later than March 1, 2021.

4.14 Subd. 5. **Calculation of award amount.** (a) The panel shall determine a base award for
4.15 each eligible person that reflects the total damages incurred as described in the claim.
4.16 Damage that qualifies for compensation through an applicable insurance policy must be
4.17 excluded from the base award. After a base award is established, the panel may provide an
4.18 equity adjustment to increase or decrease the award, based on a review of the totality of the
4.19 eligible person's circumstances. The total amount of an award to any single eligible person
4.20 must not exceed \$.....

4.21 (b) The panel may not make an award determination for any eligible person until all
4.22 claims filed prior to the deadline established in subdivision 4 have been considered. Claims
4.23 arriving after the deadline may only be considered for an award after all awards for timely
4.24 claim filings have been determined.

4.25 (c) If the total amount of awards determined for all eligible persons exceeds the available
4.26 appropriation, the panel must make awards on a pro rata basis.

4.27 (d) The panel must not consider negligence or any other theory of liability on the part
4.28 of the eligible person or any other party in making an award determination.

4.29 Subd. 6. **Payment.** The panel shall promptly forward to the commissioner of management
4.30 and budget documentation of each award amount determined under this section. The
4.31 commissioner of management and budget shall pay that amount to the eligible person within
4.32 30 days after receiving the documentation and in the order in which the documentation from
4.33 the panel was received.

5.1 Subd. 7. **Immunity; indemnification.** Members of the panel, employees, and consultants
5.2 acting under the direction of the panel are employees of the state for purposes of Minnesota
5.3 Statutes, section 3.736.

5.4 Subd. 8. **Data practices; meetings.** (a) Data collected, created, or maintained by the
5.5 panel related to a claim filed by an eligible person are private data on individuals, as defined
5.6 in Minnesota Statutes, section 13.02, subdivision 12, or nonpublic data, as defined in
5.7 Minnesota Statutes, section 13.02, subdivision 9, except for:

5.8 (1) the name of an eligible person to whom an award is paid; and

5.9 (2) the amount awarded to that person.

5.10 (b) Data created by a member of the panel related to the member's service as a member
5.11 of the panel are not discoverable in any civil or administrative proceeding except a record
5.12 relating to any statement or conduct that may constitute a crime.

5.13 (c) Meetings of the panel are not subject to Minnesota Statutes, chapter 13D.

5.14 Subd. 9. **Effect of awards process.** (a) A determination by the panel regarding an award
5.15 is final and not subject to judicial review.

5.16 (b) The amount of damages incurred by an eligible person as calculated by the panel,
5.17 or the eligible person's award determination, may not be used in a subsequent court
5.18 proceeding in evidence or otherwise to determine any rights, duties, or responsibilities of
5.19 the state, the eligible person, or any other party.

5.20 (c) A member of the panel must not testify in any civil or administrative proceeding
5.21 regarding any matter involving or arising out of the member's service as a member of the
5.22 panel, except as to a statement or conduct that may constitute a crime.

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

5.24 Sec. 4. **RELATIONSHIP TO OTHER LAW.**

5.25 Subdivision 1. **No state liability or duty created.** The establishment of the award process
5.26 in this act is not an admission of liability by the state or a municipality or their employees
5.27 and does not establish a duty of the state, a municipality, or their employees to compensate
5.28 eligible persons for damage. The creation and funding of the compensation process under
5.29 this act is not admissible in a judicial or administrative proceeding to establish liability or
5.30 a legal duty.

6.1 Subd. 2. **Payments as additional compensation.** Payments made under this section are
6.2 intended to supplement and be in addition to any payments required to be made by a third
6.3 party under law or contract.

6.4 Subd. 3. **Payments from other sources.** (a) Notwithstanding any statutory or common
6.5 law or agreement to the contrary, a person who is not a third-party tortfeasor and who is
6.6 required to make payments to an eligible person may not eliminate or reduce those payments
6.7 as a result of compensation paid under this act. The obligation of any person other than the
6.8 state to make payments to an eligible person is primary as compared to any payment made
6.9 or to be made under this act. The persons referenced in and covered by this subdivision
6.10 include, without limitation:

6.11 (1) reparation obligors, as defined in Minnesota Statutes, section 65B.43, subdivision
6.12 9, whether they are insurers or self-insurers;

6.13 (2) health plan companies, as defined in Minnesota Statutes, section 62Q.01, subdivision
6.14 4;

6.15 (3) insurance companies, as defined in Minnesota Statutes, section 60A.02, subdivision
6.16 4;

6.17 (4) self-insured pools of political subdivisions organized under Minnesota Statutes,
6.18 section 471.617 or 471.981, including service cooperatives pools organized under Minnesota
6.19 Statutes, section 123A.21;

6.20 (5) risk retention groups, as defined in Minnesota Statutes, section 60E.02, subdivision
6.21 12;

6.22 (6) joint self-insurance plans governed by Minnesota Statutes, chapter 60F;

6.23 (7) joint self-insurance plans and multiple-employer welfare arrangements, governed
6.24 by Minnesota Statutes, chapter 62H, including agricultural cooperative health plans under
6.25 Minnesota Statutes, section 62H.18;

6.26 (8) workers' compensation insurers and private self-insurers, as defined in Minnesota
6.27 Statutes, section 79.01;

6.28 (9) the Minnesota Life and Health Insurance Guaranty Association governed by
6.29 Minnesota Statutes, chapter 61B;

6.30 (10) the Minnesota Insurance Guaranty Association governed by Minnesota Statutes,
6.31 chapter 60C;

7.1 (11) the Minnesota Joint Underwriting Association governed by Minnesota Statutes,
 7.2 chapter 62I;

7.3 (12) all insurers providing credit life, credit accident and health, and credit involuntary
 7.4 unemployment insurance under Minnesota Statutes, chapter 62B, but also including those
 7.5 coverages written in connection with real estate mortgage loans and those provided to
 7.6 borrowers at no additional cost;

7.7 (13) the Minnesota unemployment insurance program provided under Minnesota Statutes,
 7.8 chapter 268;

7.9 (14) coverage offered by the state under medical assistance and MinnesotaCare; and

7.10 (15) any other plan providing health, life, disability income, or long-term care coverage.

7.11 (b) A third-party tortfeasor who is required to make payments, including future payments,
 7.12 to an eligible person may not eliminate or reduce those payments as a result of compensation
 7.13 paid to an eligible person under this act.

7.14 Subd. 4. **Qualification for public assistance programs.** Payments made to eligible
 7.15 persons under this act shall not be counted as income, assets, or resources for purposes of
 7.16 determining eligibility for health care, income maintenance, and assistance programs under
 7.17 Minnesota Statutes, chapters 119B, 256B, 256D, 256I, 256J, 256L, and 256S, for eligible
 7.18 persons and their households. The commissioner of human services shall seek any federal
 7.19 approvals necessary to exclude payments made to eligible persons when determining
 7.20 eligibility for a program that receives federal funding or a federal match, in order to continue
 7.21 to receive that federal funding or federal match for services provided to eligible persons
 7.22 and their households. Until and unless federal approval to exclude payments to eligible
 7.23 persons when determining eligibility for a specific federal program is obtained, the
 7.24 commissioner shall provide health coverage or income or other assistance under that program
 7.25 using state-only dollars, to eligible persons and their households who otherwise meet program
 7.26 eligibility requirements.

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

7.28 Sec. 5. **APPROPRIATIONS.**

7.29 Subdivision 1. **Compensation to eligible persons.** \$..... in fiscal year 2021 is
 7.30 appropriated from the general fund to the commissioner of management and budget for the
 7.31 purpose of making awards to eligible persons as authorized by this act. This is a onetime
 7.32 appropriation.

8.1 Subd. 2. **Administrative expenses.** \$..... in fiscal year 2021 is appropriated from the
8.2 general fund to the commissioner of management and budget to pay salaries, expenses, and
8.3 administrative costs of the special master panel, including any costs associated with
8.4 consultants or other staff, necessary to make award determinations under this act. This is a
8.5 onetime appropriation.

8.6 Subd. 3. **Report.** No later than April 15, 2021, the commissioner of management and
8.7 budget must submit a report to the chairs and ranking minority members of the legislative
8.8 committees with jurisdiction over finance and ways and means on the expenditure of funds
8.9 appropriated under this section. The report must list the amount of compensation paid to
8.10 each eligible person and must detail any administrative expenses incurred by the special
8.11 master in conducting its work.

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