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HOUSE FILE NO. **7**

***FIRST COMMITTEE ENGROSSMENT***

January 12, 2009

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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

March 19, 2009

Committee Recommendation and Adoption of Report:

To Pass as Amended and re-referred to the Committee on Public Safety Policy and Oversight

*Referred by Chair to State Government Finance Division.*

April 7, 2009

*Returned to the Committee on Finance as Amended.*

1.1 A bill for an act  
1.2 relating to state government; clarifying and strengthening laws prohibiting  
1.3 misuse of state funds; strengthening internal controls and internal audit  
1.4 requirements; amending Minnesota Statutes 2008, sections 3.97, by adding a  
1.5 subdivision; 3.971, subdivision 6; 3.975; 16A.055, subdivision 1; 16A.139;  
1.6 proposing coding for new law in Minnesota Statutes, chapter 16A.

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

1.8 **ARTICLE 1**  
1.9 **MISUSE OF STATE FUNDS**

1.10 Section 1. Minnesota Statutes 2008, section 3.971, subdivision 6, is amended to read:

1.11 Subd. 6. **Financial audits.** The legislative auditor shall audit the financial  
1.12 statements of the state of Minnesota required by section 16A.50 and, as resources permit,  
1.13 shall audit Minnesota State Colleges and Universities, the University of Minnesota, state  
1.14 agencies, departments, boards, commissions, courts, and other state organizations subject  
1.15 to audit by the legislative auditor, including the State Agricultural Society, Agricultural  
1.16 Utilization Research Institute, Enterprise Minnesota, Inc., Minnesota Historical  
1.17 Society, Labor Interpretive Center, Minnesota Partnership for Action Against Tobacco,  
1.18 Metropolitan Sports Facilities Commission, Metropolitan Airports Commission, and  
1.19 Metropolitan Mosquito Control District. Financial audits must be conducted according to  
1.20 generally accepted government auditing standards. The legislative auditor shall see that  
1.21 all provisions of law respecting the appropriate and economic use of public funds are  
1.22 complied with and may, as part of a financial audit or separately, investigate allegations of  
1.23 noncompliance ~~by employees of departments and agencies of the state government and~~  
1.24 ~~the other organizations listed in this subdivision.~~

2.1 Sec. 2. Minnesota Statutes 2008, section 3.975, is amended to read:

2.2 **3.975 DUTIES CONCERNING MISUSE OF PUBLIC MONEY OR OTHER**  
2.3 **RESOURCES.**

2.4 If a legislative auditor's examination discloses that a state official or employee has  
2.5 used money for a purpose other than the purpose for which the money was appropriated  
2.6 or discloses any other misuse of public money or other public resources, the legislative  
2.7 auditor shall file a report with the Legislative Audit Commission, the attorney general, and  
2.8 the appropriate county attorney. The attorney general shall seek recovery of money and  
2.9 other resources as the evidence may warrant. The county attorney shall cause criminal  
2.10 proceedings to be instituted as the evidence may warrant.

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

2.12 Sec. 3. Minnesota Statutes 2008, section 16A.139, is amended to read:

2.13 **16A.139 MISAPPROPRIATION OF MONEY.**

2.14 ~~It is illegal for any~~ (a) No official or head of any state department in the executive,  
2.15 legislative, or judicial branches, or any employee thereof of a state department in those  
2.16 branches, to may intentionally use moneys money appropriated by law, or fees collected  
2.17 knowing that the use is for any other a purpose other than the purpose for which the  
2.18 moneys have been money was appropriated, and any such act by any. Unless a greater  
2.19 penalty is specified elsewhere in law, a person who violates this paragraph is guilty of a  
2.20 gross misdemeanor.

2.21 (b) A violation of paragraph (a) by a head of a department, or any state official, is  
2.22 cause for immediate removal of the official or head of a state department from the position  
2.23 held with the government of this state. A criminal conviction under paragraph (a) is not a  
2.24 prerequisite for removal. This paragraph does not apply to a judge, a constitutional officer,  
2.25 or a legislator, except as potential grounds for expulsion, impeachment, or recall in the  
2.26 manner specified in article IV, section 7, and article VIII of the Minnesota Constitution.

2.27 **EFFECTIVE DATE.** This section is effective August 1, 2009, and applies to crimes  
2.28 committed on or after that date.

2.29 Sec. 4. **[16A.1391] BEST PRACTICES FOR INVESTIGATIONS.**

2.30 The commissioner of finance must develop and make available to appointing  
2.31 authorities in the executive, legislative, and judicial branches a best practices policy for  
2.32 conducting investigations in which the appointing authority compels its employees to  
2.33 answer questions about allegedly inappropriate activity. The best practices policy must

3.1 be designed to facilitate effective investigations, without compromising the ability to  
3.2 prosecute criminal cases when appropriate. Each appointing authority must follow the  
3.3 best practices policy or, in consultation with the attorney general, must develop its own  
3.4 policy for conducting these investigations.

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

## 3.6 **ARTICLE 2**

### 3.7 **INTERNAL CONTROL**

3.8 Section 1. Minnesota Statutes 2008, section 3.97, is amended by adding a subdivision  
3.9 to read:

3.10 Subd. 2a. **Review of financial management and internal controls.** The  
3.11 commission shall monitor internal control systems in state government to the extent  
3.12 necessary to ensure that management has established and implemented effective systems  
3.13 and procedures. The commission shall also review legislative auditor audits and reports  
3.14 and make recommendations, as the commission determines necessary, for improvements  
3.15 in the state's system of financial management. In furtherance of these duties, the  
3.16 commission shall:

3.17 (1) receive reports and recommendations from the legislative auditor, the financial  
3.18 controls council, and internal auditors in state agencies;

3.19 (2) review significant findings and recommendations from the legislative auditor's  
3.20 financial audits of state agencies and from agency internal auditors, together with state  
3.21 agency management's responses and action plans;

3.22 (3) review the scope of annual audit plans for the state's internal audit function;

3.23 (4) review the qualifications, performance, and objectivity of the state's internal audit  
3.24 function, including the activities of the commissioner in section 16A.056;

3.25 (5) review with the legislative auditor any audit problems or difficulties and  
3.26 management's responses, any difficulties the auditor encountered during the course of  
3.27 the audit work, including any restrictions on the scope of the auditor's activities or on  
3.28 access to requested information, and any significant disagreements between the auditor  
3.29 and management;

3.30 (6) make recommendations to the governor and the legislature for changes in laws or  
3.31 policies necessary to deal with agencies that have not satisfactorily addressed repeated  
3.32 problems with financial controls;

3.33 (7) make recommendations to the governor and the legislature for changes needed in  
3.34 state laws, policies, procedures, or personnel, to ensure an effective system of internal

4.1 controls that safeguards public funds and assets and minimizes incidences of fraud, waste,  
 4.2 and abuse;

4.3 (8) conduct hearings as necessary regarding the effectiveness of internal control or  
 4.4 internal audit functions of any state agency; and

4.5 (9) contract with outside auditors as the commission determines is beneficial for the  
 4.6 state's internal audit function and internal controls.

4.7 Sec. 2. Minnesota Statutes 2008, section 16A.055, subdivision 1, is amended to read:

4.8 Subdivision 1. **List.** (a) The commissioner shall:

4.9 (1) receive and record all money paid into the state treasury and safely keep it until  
 4.10 lawfully paid out;

4.11 (2) manage the state's financial affairs;

4.12 (3) keep the state's general account books according to generally accepted  
 4.13 government accounting principles;

4.14 (4) keep expenditure and revenue accounts according to generally accepted  
 4.15 government accounting principles;

4.16 (5) develop, provide instructions for, prescribe, and manage a state uniform  
 4.17 accounting system; and

4.18 (6) provide to the state the expertise to ensure that all state funds are accounted for  
 4.19 under generally accepted government accounting principles; ~~and.~~

4.20 ~~(7) coordinate the development of, and maintain standards for, internal auditing in~~  
 4.21 ~~state agencies and, in cooperation with the commissioner of administration, report to the~~  
 4.22 ~~legislature and the governor by January 31 of odd-numbered years, on progress made.~~

4.23 (b) In addition to the duties in paragraph (a), the commissioner has the powers and  
 4.24 duties given to the commissioner in chapter 43A.

4.25 Sec. 3. **[16A.056] INTERNAL CONTROLS AND INTERNAL AUDITING.**

4.26 Subdivision 1. **Establishment of system.** The commissioner is responsible for  
 4.27 the system of internal controls across the executive branch. The commissioner must  
 4.28 coordinate the design, implementation, and maintenance of an effective system of internal  
 4.29 controls and internal auditing for all executive agencies. The system must:

4.30 (1) safeguard public funds and assets and minimize incidences of fraud, waste,  
 4.31 and abuse;

4.32 (2) ensure that programs are administered in compliance with federal and state  
 4.33 laws and rules;

5.1 (3) require documentation of internal control procedures over financial management  
5.2 activities, provide for analysis of risks, and provide for periodic evaluation of control  
5.3 procedures to satisfy the commissioner that these procedures are adequately designed,  
5.4 properly implemented, and functioning effectively; and

5.5 (4) provide for periodic internal audit of major systems and controls, including  
5.6 accounting systems and controls; administrative systems and controls; and, in conjunction  
5.7 with the office enterprise technology, information and telecommunications technology  
5.8 systems and controls.

5.9 Subd. 2. **Standards.** The commissioner must adopt internal control standards  
5.10 and policies that agencies must follow to meet the requirements of subdivision 1. These  
5.11 standards and policies may include separation of duties, safeguarding receipts, time entry,  
5.12 approval of travel, and other topics the commissioner determines are necessary to comply  
5.13 with subdivision 1.

5.14 Subd. 3. **Training and assistance.** The commissioner shall coordinate training  
5.15 for accounting personnel and financial managers in state agencies on internal controls  
5.16 as necessary to ensure financial integrity in the state's financial transactions. The  
5.17 commissioner shall provide internal control support to agencies that the commissioner  
5.18 determines need this assistance.

5.19 Subd. 4. **Sharing internal audit resources.** The commissioner must administer a  
5.20 program for sharing internal auditors among executive agencies that do not have their own  
5.21 internal auditors and for assembling interagency teams of internal auditors as necessary.

5.22 Subd. 5. **Monitoring Office of the Legislative Auditor audits.** The commissioner  
5.23 must review audit reports from the Office of the Legislative Auditor and take appropriate  
5.24 steps to address internal control problems found in executive agencies.

5.25 Subd. 6. **Budget for internal controls.** The commissioner of finance may require  
5.26 that each executive agency spend a specified percentage of its operating budget on internal  
5.27 control systems. The commissioner of finance may require that an agency transfer a  
5.28 portion of its operating budget to the commissioner to pay for internal control functions  
5.29 performed by the commissioner.

5.30 Subd. 7. **Annual report.** The commissioner must report to the legislature and the  
5.31 governor by January 31 of each odd-numbered year on the system of internal controls  
5.32 and internal auditing in executive agencies.

5.33 Subd. 8. **Agency head responsibilities.** The head of each executive agency is  
5.34 responsible for designing, implementing, and maintaining an effective internal control  
5.35 system within the agency that complies with the requirements of subdivision 1, clauses (1)  
5.36 to (4). The head of each executive agency must annually certify that the agency head has

6.1 reviewed the agency's internal control systems, and that these systems are in compliance  
6.2 with standards and policies established by the commissioner. The agency head must  
6.3 submit the signed certification form to the commissioner of finance in a form specified by  
6.4 the commissioner.

6.5 Subd. 9. **State colleges and universities.** This section does not apply to the  
6.6 Minnesota state colleges and universities system.

6.7 Sec. 4. **[16A.057] FINANCIAL CONTROLS COUNCIL.**

6.8 Subdivision 1. **Membership.** The executive council shall appoint a five-member  
6.9 financial controls council. Members must have public or private sector experience in  
6.10 internal control issues. The council shall annually elect a chair and vice-chair from  
6.11 among its members.

6.12 Subd. 2. **Duties.** (a) The council shall advise the commissioner of finance, the  
6.13 governor, the legislative audit commission, and the legislature on the system of internal  
6.14 controls for executive agencies. In performing this duty, the council shall:

6.15 (1) review audits and other reports of the Office of the Legislative Auditor and  
6.16 from internal auditors in executive agencies;

6.17 (2) review the state's system of internal controls and make recommendations for  
6.18 changes in practices of specific executive agencies or on general changes needed in state  
6.19 laws, procedures, or policies;

6.20 (3) recommend guidelines and best practices to produce an effective system of  
6.21 internal controls;

6.22 (4) recommend the number of internal audit employees required for executive  
6.23 agencies, individually and in total; and

6.24 (5) review and comment on the performance of the commissioner of finance in  
6.25 carrying out duties under section 16A.056.

6.26 (b) The council may:

6.27 (1) require reports from any executive agency relative to an internal control or  
6.28 an internal audit matter;

6.29 (2) receive and review reports from internal auditors in executive agencies;

6.30 (3) conduct hearings relative to attempts to interfere with, compromise, or intimidate  
6.31 an internal auditor; and

6.32 (4) conduct hearings on the effectiveness of internal control or internal audit  
6.33 functions within an executive agency.

6.34 Subd. 3. **Terms; compensation; removal; vacancies; expiration.** The membership  
6.35 terms, compensation, removal of members, and filling of vacancies shall be as provided in

7.1 section 15.059, except that council members shall not receive a per diem. The council is  
7.2 not subject to the expiration date provisions of section 15.059.

7.3 Subd. 4. **Administrative support.** The commissioner of finance shall provide  
7.4 administrative support to the council upon request of its chair.