

1.1 A bill for an act

1.2 relating to state government; changing data practices provisions; amending
1.3 Minnesota Statutes 2008, sections 13.06, subdivisions 1, 3, 4, 5, 7, by adding
1.4 subdivisions; 13.43, subdivisions 1, 2, by adding subdivisions; 13.64; 16B.97,
1.5 by adding a subdivision; repealing Minnesota Statutes 2008, section 13.06,
1.6 subdivision 2; Minnesota Rules, part 1205.1800.

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

1.8 **ARTICLE 1**

1.9 **TEMPORARY CLASSIFICATIONS**

1.10 Section 1. Minnesota Statutes 2008, section 13.06, subdivision 1, is amended to read:

1.11 Subdivision 1. **Application to commissioner.** (a) Notwithstanding the provisions
1.12 of section 13.03, the responsible authority of a government entity may apply to the
1.13 commissioner for permission to classify data or types of data on individuals as private
1.14 or confidential, or data not on individuals as nonpublic or protected nonpublic, for its
1.15 own use and for the use of other similar government entities on a temporary basis until
1.16 a proposed statute can be acted upon by the legislature. The application for temporary
1.17 classification is public.

1.18 (b) Upon ~~the filing~~ receipt by the commissioner of an application for temporary
1.19 classification, the data which is the subject of the application shall be deemed to be
1.20 classified as set forth in the application for a period of 45 days, or until the application is
1.21 disapproved, rejected, or granted by the commissioner, whichever is earlier.

1.22 (c) If the commissioner determines that an application has been submitted for
1.23 purposes not consistent with this section, the commissioner may immediately reject the
1.24 application, give notice of that rejection to the applicant, and return the application. When
1.25 the applicant receives the notice of rejection from the commissioner, the data which was

2.1 the subject of the application shall have the classification it had before the application was
2.2 submitted to the commissioner.

2.3 Sec. 2. Minnesota Statutes 2008, section 13.06, subdivision 3, is amended to read:

2.4 Subd. 3. **Contents of application for ~~nonpublic or nonpublic protected data.~~**

2.5 An application for temporary classification of government data ~~not on individuals~~ shall
2.6 include and the applicant shall have the burden of clearly establishing that no statute
2.7 currently exists which either allows or forbids classification as ~~nonpublic or protected~~
2.8 ~~nonpublic not public~~; and ~~either one or more of the following:~~

2.9 (1) that data similar to that for which the temporary classification is sought ~~has~~ have
2.10 ~~been treated~~ classified as ~~nonpublic or protected nonpublic not public~~ by other government
2.11 entities, ~~and by the public~~; or

2.12 (2) public access to the data would render unworkable a program authorized by
2.13 law; ~~or~~

2.14 ~~(3)~~ The applicant must also clearly establish that a compelling need exists for
2.15 immediate temporary classification, which if not granted could adversely affect the public
2.16 interest, health, safety or welfare of the public, or data subject's well-being or reputation.

2.17 Sec. 3. Minnesota Statutes 2008, section 13.06, subdivision 4, is amended to read:

2.18 Subd. 4. **Procedure when classification affects others.** If the commissioner
2.19 determines that an application for temporary classification involves data which would
2.20 reasonably be classified in the same manner by all government entities similar to the
2.21 one which made the application, the commissioner may approve or disapprove the
2.22 classification for data of the kind which is the subject of the application for the use
2.23 of all government entities similar to the applicant. If requested in the application, the
2.24 commissioner may also determine that the data classification affects similar government
2.25 entities. On deeming this approach advisable, the commissioner shall provide notice of
2.26 the proposed action by publication ~~in the State Register~~ of the application on the Web site
2.27 of the Department of Administration's Information Policy Analysis Division within ten
2.28 business days of receiving the application. Within 30 days after publication ~~in the State~~
2.29 ~~Register~~ on the division's Web site, an affected government entity or the public may
2.30 submit comments on the ~~commissioner's proposal~~ application. The commissioner shall
2.31 consider any comments received when granting or denying a classification for data of the
2.32 kind which is the subject of the application, for the use of all government entities similar
2.33 to the applicant. Within 45 days after the close of the period for submitting comment, the
2.34 commissioner shall grant or disapprove the application. Applications processed under

S.F. No. 1207, as introduced - 86th Legislative Session (2009-2010) [09-0342]

3.1 this subdivision shall be either approved or disapproved by the commissioner within 90
3.2 days of the receipt of the application. For purposes of subdivision 1, the data which
3.3 is the subject of the classification shall be deemed to be classified as set forth in the
3.4 application for a period of 90 days, or until the application is disapproved or granted by
3.5 the commissioner, whichever is earlier. ~~If requested in the application, or determined to be~~
3.6 ~~necessary by the commissioner, the data in the application shall be so classified for all~~
3.7 ~~government entities similar to the applicant until the application is disapproved or granted~~
3.8 ~~by the commissioner, whichever is earlier.~~ Proceedings after the grant or disapproval shall
3.9 be governed by the provisions of subdivision 5.

3.10 Sec. 4. Minnesota Statutes 2008, section 13.06, is amended by adding a subdivision to
3.11 read:

3.12 Subd. 4a. **Withdrawal of application.** Except when an application is processed
3.13 under subdivision 4, an application may be withdrawn by the responsible authority prior to
3.14 the commissioner granting or disapproving the temporary classification. The responsible
3.15 authority shall notify the commissioner in writing of the entity's intent to withdraw the
3.16 application. The written withdrawal must state the reason the temporary classification is
3.17 no longer necessary and must be signed by the responsible authority.

3.18 Sec. 5. Minnesota Statutes 2008, section 13.06, subdivision 5, is amended to read:

3.19 Subd. 5. **Determination.** (a) The commissioner shall either grant or disapprove
3.20 the application for temporary classification within 45 days after it is ~~filed~~ received by
3.21 the commissioner. On disapproving an application, the commissioner shall set forth
3.22 in detail reasons for the disapproval, and shall include a statement of belief as to what
3.23 classification is appropriate for the data which is the subject of the application. Twenty
3.24 days after the date ~~of~~ of the responsible authority receives the commissioner's disapproval
3.25 of an application, the data which is the subject of the application shall become public
3.26 data, unless the responsible authority submits an amended application for temporary
3.27 classification which requests the classification deemed appropriate by the commissioner
3.28 in the statement of disapproval or which sets forth additional information relating to the
3.29 original proposed classification. Upon the filing of an amended application, the data
3.30 which is the subject of the amended application shall be deemed to be classified as set
3.31 forth in the amended application for a period of 20 days or until the amended application
3.32 is granted or disapproved by the commissioner, whichever is earlier. The commissioner
3.33 shall either grant or disapprove the amended application within 20 days after it is filed.
3.34 Five working days after the date ~~of~~ of the responsible authority receives the commissioner's

4.1 disapproval of the amended application, the data which is the subject of the application
4.2 shall become public data. No more than one amended application may be submitted for
4.3 any single file or system.

4.4 (b) If the commissioner grants an application for temporary classification under this
4.5 section, it shall become effective immediately, and the complete record relating to the
4.6 application shall be submitted to the attorney general, who shall review the classification
4.7 as to form and legality. Within 25 days after receipt of the record, the attorney general
4.8 shall approve the classification, disapprove a classification as confidential or protected
4.9 nonpublic but approve a classification as private or nonpublic, or disapprove the
4.10 classification. If the attorney general disapproves a classification, the data which is the
4.11 subject of the classification shall become public data five working days after the date of
4.12 the attorney general's disapproval.

4.13 Sec. 6. Minnesota Statutes 2008, section 13.06, is amended by adding a subdivision to
4.14 read:

4.15 Subd. 6a. **Data use and dissemination.** A responsible authority may request
4.16 approval from the commissioner for a new or different use or dissemination of the data
4.17 as provided in section 13.05, subdivision 4, for any data temporarily classified under
4.18 this section.

4.19 Sec. 7. Minnesota Statutes 2008, section 13.06, subdivision 7, is amended to read:

4.20 Subd. 7. **Legislative consideration of temporary classifications; expiration.**
4.21 On or before January 15 of each year, the commissioner shall submit all temporary
4.22 classifications in effect on January 1 in bill form to the legislature. The temporary
4.23 classification expires ~~June~~ August 1 of the year ~~following its submission~~ it is submitted to
4.24 the legislature.

4.25 ARTICLE 2

4.26 PERSONNEL DATA

4.27 Section 1. Minnesota Statutes 2008, section 13.43, subdivision 1, is amended to read:

4.28 Subdivision 1. **Definition.** As used in this section, "personnel data" means data on
4.29 individuals ~~collected~~ maintained because the individual is or was an employee of or an
4.30 applicant for employment by, performs services on a voluntary basis for, or acts as an
4.31 independent contractor with a government entity. Personnel data includes data submitted
4.32 by an employee to a government entity as part of an organized self-evaluation effort by the
4.33 government entity to request suggestions from all employees on ways to cut costs, make

S.F. No. 1207, as introduced - 86th Legislative Session (2009-2010) [09-0342]

5.1 government more efficient, or improve the operation of government. An employee who is
5.2 identified in a suggestion shall have access to all data in the suggestion except the identity
5.3 of the employee making the suggestion.

5.4 Sec. 2. Minnesota Statutes 2008, section 13.43, subdivision 2, is amended to read:

5.5 Subd. 2. **Public data.** (a) Except for employees described in subdivision 5 and
5.6 subject to the limitations described in subdivision 5a, the following personnel data on
5.7 current and former employees, volunteers, and independent contractors of a government
5.8 entity is public:

5.9 (1) name; employee identification number, which must not be the employee's Social
5.10 Security number; actual gross salary; salary range; terms and conditions of employment;
5.11 contract fees; actual gross pension; the value and nature of employer paid fringe benefits;
5.12 and the basis for and the amount of any employer-paid added remuneration, including
5.13 expense reimbursement, in addition to salary;

5.14 (2) job title and bargaining unit; job description; education and training background;
5.15 and previous work experience;

5.16 (3) date of first and last employment;

5.17 (4) the existence and status of any complaints or charges against the employee,
5.18 regardless of whether the complaint or charge resulted in a disciplinary action;

5.19 (5) the final disposition of any disciplinary action together with the specific reasons
5.20 for the action and data documenting the basis of the action, excluding data that would
5.21 identify confidential sources who are employees of the public body;

5.22 (6) the terms of any agreement settling any dispute arising out of an employment
5.23 relationship, including a buyout agreement as defined in section 123B.143, subdivision 2,
5.24 paragraph (a); except that the agreement must include specific reasons for the agreement if
5.25 it involves the payment of more than \$10,000 of public money;

5.26 (7) work location; a work telephone number; employer-provided e-mail address;
5.27 badge number; continuing education; and honors and awards received; and

5.28 (8) payroll time sheets or other comparable data that are only used to account for
5.29 employee's work time for payroll purposes, except to the extent that release of time sheet
5.30 data would reveal the employee's reasons for the use of sick or other medical leave
5.31 or other not public data.

5.32 (b) For purposes of this subdivision, a final disposition occurs when the government
5.33 entity makes its final decision about the disciplinary action, regardless of the possibility of
5.34 any later proceedings or court proceedings. In the case of arbitration proceedings arising
5.35 under collective bargaining agreements, a final disposition occurs at the conclusion of the

6.1 arbitration proceedings, or upon the failure of the employee to elect arbitration within
6.2 the time provided by the collective bargaining agreement. Final disposition includes a
6.3 resignation by an individual when the resignation occurs after the final decision of the
6.4 government entity, or arbitrator. For purposes of this subdivision, discipline includes an
6.5 oral reprimand, written reprimand, suspension, demotion, termination, or any form of
6.6 discipline provided in the collective bargaining agreement. A disciplinary proceeding does
6.7 not become public data if a final arbitrator's order rejects imposing any disciplinary action.

6.8 (c) The government entity may display a photograph of a current or former employee
6.9 to a prospective witness as part of the government entity's investigation of any complaint
6.10 or charge against the employee.

6.11 (d) A complainant has access to a statement provided by the complainant to a
6.12 government entity in connection with a complaint or charge against an employee.

6.13 (e) Notwithstanding paragraph (a), clause (5), upon completion of an investigation
6.14 of a complaint or charge against a public official, or if a public official resigns or is
6.15 terminated from employment while the complaint or charge is pending, all data relating to
6.16 the complaint or charge are public, unless access to the data would jeopardize an active
6.17 investigation or reveal confidential sources. For purposes of this paragraph, "public
6.18 official" means:

- 6.19 (1) the head of a state agency and deputy and assistant state agency heads;
6.20 (2) members of boards or commissions required by law to be appointed by the
6.21 governor or other elective officers; and
6.22 (3) executive or administrative heads of departments, bureaus, divisions, or
6.23 institutions within state government.

6.24 Sec. 3. Minnesota Statutes 2008, section 13.43, is amended by adding a subdivision to
6.25 read:

6.26 Subd. 17. **Continuity of operations.** Personal home contact information may be
6.27 used to ensure that an employee can be reached in the event of an emergency or other
6.28 disturbance affecting continuity of operation of a government entity. An employee's
6.29 personal home contact information may be shared with another government entity in the
6.30 event of an emergency or other disturbance to ensure continuity of operation of either
6.31 government entity.

6.32 Sec. 4. Minnesota Statutes 2008, section 13.43, is amended by adding a subdivision to
6.33 read:

7.1 Subd. 18. **Private personnel data.** Private personnel data of state employees must
7.2 be disclosed to the Department of Administration for the purpose of administration of the
7.3 workers' compensation program.

7.4 Sec. 5. Minnesota Statutes 2008, section 13.64, is amended to read:

7.5 **13.64 DEPARTMENT OF ADMINISTRATION DATA.**

7.6 (a) Notes and preliminary drafts of reports created, collected, or maintained by the
7.7 Management Analysis Division, Department of Administration, and prepared during
7.8 management studies, audits, reviews, consultations, or investigations are classified as
7.9 confidential or protected nonpublic data until the final report has been published or
7.10 preparation of the report is no longer being actively pursued.

7.11 (b) Data that support the conclusions of the report and that the commissioner of
7.12 administration reasonably believes will result in litigation are confidential or protected
7.13 nonpublic until the litigation has been completed or until the litigation is no longer
7.14 being actively pursued.

7.15 (c) Data on individuals that could reasonably be used to determine the identity of an
7.16 individual supplying data for a report are private if:

7.17 (1) the data supplied by the individual were needed for a report; and

7.18 (2) the data would not have been provided to the Management Analysis Division
7.19 without an assurance to the individual that the individual's identity would remain private,
7.20 or the Management Analysis Division reasonably believes that the individual would not
7.21 have provided the data.

7.22 (d) Building plans, building specifications, and building drawings of state-owned
7.23 facilities and nonstate-owned facilities leased by the state are classified as nonpublic data
7.24 when maintained by the Department of Administration and may be shared with anyone as
7.25 needed to perform duties of the commissioner.

7.26 Sec. 6. Minnesota Statutes 2008, section 16B.97, is amended by adding a subdivision
7.27 to read:

7.28 Subd. 5. **Data classification.** Data maintained by the commissioner that identify
7.29 a person providing comments to the commissioner under subdivision 4, paragraph (a),
7.30 clauses (6) and (7), are private and nonpublic data but may be shared with the executive
7.31 agency that is the subject of the comments.

7.32 Sec. 7. **REPEALER.**

7.33 (a) Minnesota Statutes 2008, section 13.06, subdivision 2, is repealed.

8.1 (b) Minnesota Rules, part 1205.1800, is repealed.

APPENDIX
Article locations in 09-0342

ARTICLE 1	TEMPORARY CLASSIFICATIONS	Page.Ln 1.8
ARTICLE 2	PERSONNEL DATA	Page.Ln 4.25

13.06 TEMPORARY CLASSIFICATION.

Subd. 2. **Contents of application for private or confidential data.** An application for temporary classification of data on individuals shall include and the applicant shall have the burden of clearly establishing that no statute currently exists which either allows or forbids classification as private or confidential; and either

(1) that data similar to that for which the temporary classification is sought has been treated as either private or confidential by other government entities, and by the public; or

(2) that a compelling need exists for immediate temporary classification, which if not granted could adversely affect the public interest or the health, safety, well being or reputation of the data subject.