

MINNESOTA NEWSPAPER ASSOCIATION 2010 LEGISLATIVE REPORT

Sandy Neren
Messerli and Kramer
Legislative Counsel

The Minnesota legislature convened the second year of their 86th biennial regular session on February 4th, and adjourned almost 15 weeks later as required by our state constitution. Their main focus was balancing the state's budget for the biennium, which was projected in February to be almost \$1B. That deficit rose to almost \$3B after the Minnesota Supreme Court, 11 days before the end of session, found the Governor's unallotments from last year to be unlawful. The Governor was committed to solving the budget deficit without tax increases, and his position prevailed. The Legislature finally reached agreement with the Governor to shift about \$2B in education funding into the future, and went along with \$1B in one time cuts for the remainder of this biennium. Because they ran out of time to pass the budget agreement reached late on the last day of the regular session, the Governor called them back immediately for a short one day special session to complete their work, and they then adjourned for the year on Monday, May 17th.

None of the budget cuts made this year were permanent cuts. It is projected that the state will face an almost \$6B deficit in the next biennium.

Other noteworthy accomplishments of the session were passage of a bonding bill, and a comprehensive jobs creation proposal containing tax exemptions and credits for angel investment, historic rehab, incentives to expand the Mall of America, tax subsidies to renovate St. Paul's Ford plant, and tax preferences for energy saving improvements.

Primary elections were moved from September to August, a new state park on Lake Vermilion was purchased, DWI law was changed to permit use of ignition interlocks for certain offenders, and TCF Stadium at the University is now permitted to sell alcohol in their premium seats if they also sell it in a third of the stadium---the University gets to decide how to implement that provision!

The Legislature set very short timelines for policy committees to meet this year---about 5 weeks. As a result, the session is most noteworthy for what DIDN'T pass into law than for what did pass.

The session was a very successful one for the Association. Following is a summary of the major issues that we were involved in this year.

OPEN MEETINGS/OPEN RECORDS ISSUES

MNA'S DATA PRACTICES ADMINISTRATIVE PROCESS REMEDY **(CHAPTER 297)**

The Association has been approached regularly by legislators over the last few years, voicing their constituents' frustration with the difficulty of obtaining access to public records and enforcing

compliance with the law. Because the only avenue open to citizens who wanted to challenge a government body's refusal to disclose public records was to assume the cost of hiring a lawyer and going to court--a costly endeavor which frequently took months if not years to resolve---we were asked for help in finding a faster and cheaper mechanism for enforcement of the Act.

We came up with the suggestion of using the administrative process under the auspices of the Office of Administrative Hearings. They were more than willing to take on the additional task and assisted us in drafting the legislation necessary to implement this process. We held many meetings with the various local government groups and other interested parties, and amended the proposal several times to address some of their concerns. In all, the bill was heard in nine legislative committees before it was considered on the House and Senate floor. It passed every committee unanimously and passed both floors with little discussion or dissent. The Governor signed the bill into law on May 10th.

Here's how it would work:

If a citizen believed that a governmental body violated the statute, he could pay a fee and file a complaint with the Office of Administrative Hearings on a form they will be promulgating. The government body would be given time to respond to the complaint, and a hearing on the complaint could even be conducted by video conferencing or phone, if appropriate. The total timeline for resolution of a complaint will generally be no more than about 60 days. If the citizen prevails on their complaint, they will be returned the entire filing fee, minus \$50 for the OAH's expenses, and the government body would be billed for any OAH hearing costs. The OAH has produced a video showing individuals how to navigate their process without an attorney. But if an individual does retain an attorney and prevails in their complaint, OAH can award them attorney fees up to \$5000. OAH is also able to dismiss frivolous complaints at an early stage. The statute of limitations for bringing complaints before OAH is 2 years. Citizens may still take their complaints to district court if they so choose. The law becomes effective July 1, 2010.

We are hopeful that this new process will be a more efficient and speedy process to resolve these disputes.

DEPARTMENT OF ADMINISTRATION'S OPEN MEETING LAW CHANGES **(SF 2518/HF 2958)**

The IPAD division of the Department of Administration met with MNA and other interest groups over the interim with the goal of fashioning some needed changes and clarifications to the open meeting law. While we had concerns about the first drafts of their proposal, we were able to successfully work with them to address these issues, and we did testify in favor of the bill as presented to committee in March.

When it was brought to the attention of Gene Pelowski, the House author, that a significant amendment dealing with advisory bodies was going to be offered on the House floor, he instead moved the bill back to committee to discuss the issue there. The committee had a fairly extensive discussion on the language and by a narrow vote, language on this issue was added to the bill. Because it was late in session, and there were still questions about whether the language needed additional work, the bill was set aside for the session and was not brought up on either the House or Senate floor.

The changes proposed in this bill and other open meeting law issues are likely to be taken up again next year.

OPEN JUVENILE COURT HEARINGS **(SF 2790)**

Current law provides that all juvenile court hearings where a child who is at least 16 years of age is alleged to have committed an offense, or has been proven to have committed an offense that would be a felony if committed by an adult, is an open hearing.

Legislation proposed by the Council on Crime and Justice this session would have amended this law to permit the judge to only open these hearings if the court determined that due to the violent and severe nature of the offense, the benefit to public safety of opening the hearing to the public outweighs the potential collateral consequences for the child that may result from a public record.

The Association expressed grave concerns about this proposal before the House Crime policy committee, and asked Rep. Tim Kelly to offer an amendment to remove it from the bill; his amendment was successful. The Senate Judiciary committee had a very lengthy late night discussion about the proposal, and did try and amend it to meet our concerns. We continued to oppose the language, and it was ultimately removed from the bill by the Senate author before it was brought up for consideration on the Senate floor.

Because of other provisions in that bill that did not raise concerns for the Association, the Governor ultimately vetoed the bill.

OMNIBUS DATA PRACTICES LEGISLATION **(CHAPTER 365)**

Last year's omnibus data practices bill was never brought up for consideration on the House floor because of the chief author's concern about language put on it in committee, called the Tubby Smith amendment, that would have included outside compensation of public employees and officials as public data. As a result, most of the remainder of that bill's language was ultimately moved into other bills last year.

This session, the House author brought the remainder of the bill back to committee, along with several new noncontroversial provisions, and successfully passed it. MNA did not have any concerns with the bill's final language.

EXIT POLLING **(Chapter 201)**

The Legislature in 2009 passed legislation that made a number of changes to election law, including amendments to the exit poll provision that had been successfully challenged by the broadcast media following its' passage by the Legislature in 2008. The bill that it was amended onto last year, though, was vetoed by the Governor for other reasons.

The proposal was passed by the Legislature again this year, and did get signed into law. It provides

that an individual who is conducting exit polling is permitted to stand within 100 feet of the building in which voting is taking place. They define "exit polling" as approaching voters in a predetermined pattern as they leave the polling place after they have voted and asking voters to fill out an anonymous, written questionnaire.

GANG LAW ENFORCEMENT DATA **(SF 2725)**

Following the disclosure of inappropriate and possibly criminal behavior on the part of some members of the Metro Gang Strike Force last summer, the Legislature conducted extensive hearings to discuss what structural changes were needed to this law enforcement tool. One bill that resulted from these hearings was SF 2725, a bill to revamp the strike forces throughout the state with new oversight control, and new procedures on how to handle gang investigative data systems. Because the data proposal raised concerns in the law enforcement community, the final bill language as sent to the governor instead provided for an interim task force to discuss these issues further and bring back recommendations to the Legislature. The task force will be convened by the superintendent of the Bureau of Criminal Apprehension, and must include representatives from a number of organizations, not to exceed 20 members---chiefs of police, sheriffs, peace and police officers, ACLU, NAACP, Board of Public Defense, county attorneys--and the Minnesota Newspaper Association. The group is asked to report to the Legislature by February, 2011 with recommendations on proposed legislative changes for the classification, storage, dissemination, and use of criminal investigative data, including data from other states, and for guidelines governing usage and collection of this data held by law enforcement.

The bill is waiting action by the Governor.

TRANSPARENCY OF STATE DATA/STATE WEBMASTER **(SF 3134)**

The state government policy bill contains language permitting the chief information officer to appoint a Webmaster responsible for the supervision and development of state Web sites to ensure that these Web sites are maintained in an easily accessible format consistent throughout state government and consistent with the accessibility standards developed under Minnesota law. The bill also requires the chief information officer, in consultation with the Information Policy Analysis Division, to develop standards to enhance public access to electronic data consistent with the requirements of Chapter 13. These standards are required to ensure that the state information architecture facilitates public access to agency data. By January 15th, 2011, the chief information officer is to report to the Legislature on the development of the standards to enhance public access to data, describing the process for development of the standards, the opportunity for public comment, the components of the standards that have been implemented, and a description of the level of public use of the new opportunities for data access under the standards. This bill has not yet been acted on by the Governor.

TAX ISSUES/ADVERTISING/PUBLICATION **EXEMPTION (HF 2263)**

In 2008, a 21st Century Tax Reform Commission appointed by the Governor held numerous hearings on major tax reform. Their report to the Legislature made a number of recommendations, including

extension of the sales tax to additional unnamed services to stabilize the sales tax base. This report was the basis for legislation introduced last session, HF 2263, that proposed broadly expanding the sales tax to a plethora of new services. While it did not include advertising taxes, it did include repeal of the publication exemption, resulting in a tax on the sale of newspapers. The Association testified against the proposal during the 2009 session at the only hearing held on the issue, and it was never acted on.

There was some discussion before this session about taking up this proposal again as a way to balance the anticipated budget deficit, but none were acted on or heard this year.

Since next year's projected deficit is now estimated to be close to \$6B, all gubernatorial candidates are talking about the need for structural tax reform. It is expected that expansion of the sales tax base will clearly be an item for serious consideration during the 2011 session.

One tax provision that did pass this year permits the Commissioner of Revenue to delay capital equipment sales tax and corporate income tax refunds for up to 180 days; it is expected to generate about \$152 million of one-time savings to help the state's cash flow situation.

PUBLICATION ISSUES

EDUCATION PUBLICATION MANDATES

(HF 3478)

Because of concerns about adequate education funding, a working group of the DFL members of the K-12 committee, chaired by Rep. John Benson, introduced legislation with the stated purpose of reducing mandates to school districts. As introduced, it included a provision permitting them to post certain public notices on their websites instead of publishing them in newspapers. The proposal was a bit bizarre, since the specific notices selected rarely appeared in newspapers, and therefore were fairly inconsequential in saving schools any money---and because the notices selected involved some of the most controversial decisions made by schools, including closing a schoolhouse.

We testified against the proposal in House committee, and it was laid over for possible inclusion in an omnibus bill that was going to be assembled later. With the assistance of a number of legislative friends, we were successful in convincing key committee members that it would result in a battle on the House floor, and it was not included in the final version of that bill.

A House floor amendment was offered to permit school boards to put their board minutes on their website instead of in the newspaper; that amendment failed.

BOARD OF GOVERNMENT INNOVATION/MINNOVATION COUNCIL

(HF 2227)

Legislation was again proposed this year to re-establish a board of innovation for a number of purposes, including making recommendations on state mandates on local governments that should be repealed, making recommendations on innovative government service delivery, and taking applications from local government to waive administrative rules and procedural laws, among other duties.

The powers given to this new Board were similar to those that formerly were in place for the Board

of Innovation that was sunsetted by the Legislature in 2002. As you may recall, several local governments applied to that Board in 2002 for a waiver of the law requiring them to publish their public notices in newspapers, following defeat of several of their proposed bills to make this change in the Legislature. MNA was successful in defeating that waiver application to the Board in 2002.

When the Legislature decided in 2005 to give similar powers to waive rules and procedural laws to the state auditor, we were successful in amending the proposal to clarify that a procedural law does NOT include statutory notice requirements. We were able to amend this year's proposal to establish the Minnovation Council with the same language on notice requirements as contained in current law for the auditor.

The Governor has not yet acted on this proposal.

OTHER PUBLIC NOTICE PUBLICATION PROPOSALS

After the Governor unallotted funds scheduled to go to local governments in 2009, he encouraged them to bring forth proposals to reduce state government mandates on local government as a way to reduce their costs. As a result, dozens of proposals were suggested by schools, counties, towns, and cities to reduce their expenses---and high on ALL their lists was the suggestion that they be permitted to alternatively post their public notices on their websites instead of publishing them in newspapers. We testified in virtually every policy committee and working group of the Legislature against these proposals, and with the strong assistance of the membership, were successful in defeating all of them.

Several additional bills to do the same were again introduced this session at the request of local government (see tracking list on the Association website for more details). We were greatly assisted in our efforts opposing these bills by AARP, the Association of Retired Persons, who agreed to provide us with a letter that generally opposed any legislation removing public notices from newspapers.

DELIVERY OF GOVERNMENT SERVICES REFORM COMMISSIONS AND COUNCILS

A number of bills passed by the Legislature this session established various reform commissions to look at the issue of more efficient and less expensive delivery of government services. In addition to the Minnovation Council, HF 2227 also contains a commission on service innovation to come up with a strategic plan for the delivery of government services, including consideration of how technology can be leveraged to reduce costs and enhance quality. This same language also appears in SF 3134. (Neither bill has yet been acted on by the Governor). The omnibus tax bill, HF 3729, also establishes a Council on Local Results and Innovation (this bill is expected to be signed, but also has not yet acted on by the Governor). Legislation establishing a Collaborative Governance Council did pass into law (Chapter 319). It gives the new council the power to develop recommendations to the Legislature to increase collaboration in government, including strategies or policies focused on the use of collaboration to improve the delivery of government services and the use of technology to connect entities and share information.

With the projected \$6B deficit for the next biennium, and the added pressure on local government to operate with less state aid, the issue of public notice publication will undoubtedly be front and center again next session. It may be timely for the Association to consider taking the lead and initiating our

own bill on the issue, as we did in 2004.

Interestingly, a number of bills passed this session to add publication requirements to current law, including several made at our suggestion.

There were also several proposals to again make significant changes to mortgage foreclosure law. We monitored them all closely to make certain that none of them changed current publication requirements.

An expungement bill, SF 560, also raised concerns for the Association as introduced. It was significantly amended throughout committee hearings last session and this year, and we did not oppose the final language. It is still awaiting action by the Governor.

We also closely followed miscellaneous legislation dealing with judicial elections/performance commissions, Vikings stadium funding proposals, and miscellaneous election and general business issues.

In addition to the issues discussed above, we also monitored all introduced legislation for its impact on the Association, and sent regular updates on the status of key issues. The House introduced 1459 bills this session and the Senate introduced 1266 bills.

All 201 members of the House and Senate are up for election this fall, along with all constitutional offices. 23 legislators have already announced that they do not intend to run for re-election to their current seat. Filings for office open May 18th and close on June 1. We will be monitoring all elections and will be publishing an elections guide for all our clients. We will also be traveling throughout the state to meet with legislators and candidates in their home districts and discuss issues likely to come before the 2011 Legislature.

We do not expect there to be many interim legislative hearings, but we will monitor any that occur and keep you fully informed.

The 2011 session of the Legislature will convene on January 4, 2011.

Our firm appreciates the honor of representing the Association before the Minnesota legislature. We do consider it a privilege to work with you! Many thanks to Mark Anfinson for his indispensable guidance and direction, and to Lisa Hills for the incredible job she does garnering assistance from the membership when needed.

Please contact us if you have any questions.

Sandy Neren
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