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State of Minnesota

Printed Page No. 98

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 375

01/17/2023 Authored by Hollins, Frazier, Reyer, Curran, Moller and others
The bill was read for the first time and referred to the Committee on State and Local Government Finance and Policy
03/08/2023 Adoption of Report: Placed on the General Register as Amended
Read for the Second Time

1.1 A bill for an act
1.2 relating to employment; modifications related to open appointments to multimember
1.3 agencies; making multimember agency appointments subject to ban the box law;
1.4 amending Minnesota Statutes 2022, sections 15.0597, subdivisions 1, 4, 5, 6;
1.5 351.01, subdivision 2; 364.021; 364.06, subdivision 1.

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

1.7 Section 1. Minnesota Statutes 2022, section 15.0597, subdivision 1, is amended to read:

1.8 Subdivision 1. Definitions. (a) As used in this section, the following terms shall have
1.9 the meanings given them.

1.10 (b) "Agency" means (1) a state board, commission, council, committee, authority, task
1.11 force, including an advisory task force created under section 15.014 or 15.0593, a group
1.12 created by executive order of the governor, or other similar multimember agency created
1.13 by law and having statewide jurisdiction; and (2) the Metropolitan Council, metropolitan
1.14 agency, Capitol Area Architectural and Planning Board, and any agency with a regional
1.15 jurisdiction created in this state pursuant to an interstate compact.

1.16 (c) "Vacancy" or "vacant agency position" means (1) a vacancy in an existing agency,
1.17 or (2) a new, unfilled agency position. ~~Vacancy includes a position that is to be filled through~~
1.18 ~~appointment of a nonlegislator by a legislator or group of legislators;~~ Vacancy does not
1.19 mean (1) a vacant position on an agency composed exclusively of persons employed by a
1.20 political subdivision or another agency, ~~or~~ (2) a vacancy to be filled by a person required
1.21 to have a specific title or position, (3) a vacancy that is to be filled through appointment of
1.22 a legislator by a legislator or group of legislators, or (4) a position appointed by a private

2.1 entity or individual, in the manner specified in the document creating the agency, unless
2.2 otherwise provided.

2.3 (d) "Secretary" means the secretary of state.

2.4 (e) "Appointing authority" means the individual or entity with the specific authority to
2.5 appoint open or direct appointment positions. This includes, but is not limited to, the
2.6 governor, state agency commissioners, indigenous Tribal leaders, designated legislative
2.7 leaders and local agency heads, persons who have been specifically delegated the authority
2.8 to make those appointments, or private entities or persons as designated by the document
2.9 creating the agency. Appointments should be evidenced by a document signed by the
2.10 appointing authority's most senior official. Appointments that do not specify an appointing
2.11 authority shall be made in the manner provided in section 4.04.

2.12 (f) "Direct appointments" refers to: (1) the appointment of members to an agency,
2.13 pursuant to a process not subject to this section; and (2) those members of an agency
2.14 appointed through a process not subject to this section. Direct appointments must be provided
2.15 for specifically in the documents creating the agency, whether enabling law, executive order,
2.16 commissioner's order, or otherwise.

2.17 Sec. 2. Minnesota Statutes 2022, section 15.0597, subdivision 4, is amended to read:

2.18 Subd. 4. **Notice of vacancies.** The chair of an existing agency, shall notify the secretary
2.19 by electronic means of a vacancy scheduled to occur in the agency as a result of the expiration
2.20 of membership terms at least 45 days before the vacancy occurs. The chair of an existing
2.21 agency ~~shall give electronic notification to~~ must notify the secretary of each vacancy
2.22 occurring as a result of newly created agency positions and of every other vacancy occurring
2.23 for any reason other than the expiration of membership terms as soon as possible upon
2.24 learning of the vacancy and in any case within 15 days after the occurrence of the vacancy.
2.25 The chair may submit vacancy notices by posting seat openings on the secretary of state's
2.26 boards and commissions website.

2.27 (b) If a vacancy is to be appointed by the governor, the chair must first notify the governor
2.28 and receive permission to post the vacancy. Where a vacancy is created by resignation, the
2.29 vacancy may not be posted until receipt and acceptance of the resignation of the incumbent
2.30 as provided by section 351.01, subdivision 1, clause (2), is confirmed by the governor.

2.31 (c) The appointing authority for newly created agencies shall give electronic notification
2.32 to the secretary of all vacancies in the new agency within 15 days after the creation of the

3.1 agency. The secretary may require the submission of notices required by this subdivision
3.2 by electronic means.

3.3 (d) The secretary shall publish monthly on the website of the secretary of state a list of
3.4 all vacancies of which the secretary has been so notified. Only one notice of a vacancy shall
3.5 be so published, unless the appointing authority rejects all applicants and requests the
3.6 secretary to republish the notice of vacancy. One copy of the listing shall be made available
3.7 at the office of the secretary to any interested person. The secretary shall distribute by mail
3.8 or electronic means copies of the listings to requesting persons.

3.9 (e) The listing for all vacancies scheduled to occur in the month of January shall be
3.10 published on the website of the secretary of state together with the compilation of agency
3.11 data required to be published pursuant to subdivision 3.

3.12 (f) If a vacancy occurs within three months after an appointment is made to fill a regularly
3.13 scheduled vacancy, the appointing authority may, upon notification by electronic means to
3.14 the secretary, fill the vacancy by appointment from the list of persons submitting applications
3.15 to fill the regularly scheduled vacancy.

3.16 Sec. 3. Minnesota Statutes 2022, section 15.0597, subdivision 5, is amended to read:

3.17 Subd. 5. **Nominations for vacancies.** Any person may make a self-nomination for
3.18 appointment to an agency vacancy by completing an application on a form prepared and
3.19 distributed by the secretary. The secretary may provide for the submission of the application
3.20 by electronic means. Any person or group of persons may, on the prescribed application
3.21 form, nominate another person to be appointed to a vacancy so long as the person so
3.22 nominated consents on the application form to the nomination. The application form shall
3.23 specify the nominee's name, mailing address, electronic mail address, telephone number,
3.24 preferred agency position sought, a statement that the nominee satisfies any legally prescribed
3.25 qualifications, ~~a statement whether the applicant has ever been convicted of a felony,~~ and
3.26 any other information the nominating person feels would be helpful to the appointing
3.27 authority. The nominating person has the option of indicating the nominee's sex, political
3.28 party preference or lack thereof, status with regard to disability, race, veteran status, and
3.29 national origin on the application form. The application form shall make the option known.
3.30 If a person submits an application at the suggestion of an appointing authority, the person
3.31 shall so indicate on the application form. Twenty-one days after publication of a vacancy
3.32 on the website of the secretary of state pursuant to subdivision 4, the secretary shall submit
3.33 electronic copies of all applications received for a position to the appointing authority
3.34 charged with filling the vacancy. ~~If no applications have been received by the secretary for~~

4.1 ~~the vacant position by the date when electronic copies must be submitted to the appointing~~
4.2 ~~authority, the secretary shall so inform the appointing authority.~~ Applications received by
4.3 the secretary shall be deemed to have expired one year after receipt of the application. An
4.4 application for a particular agency position shall be deemed to be an application for all
4.5 vacancies in that agency occurring prior to the expiration of the application and shall be
4.6 public information.

4.7 Sec. 4. Minnesota Statutes 2022, section 15.0597, subdivision 6, is amended to read:

4.8 Subd. 6. **Appointments.** (a) In making an appointment to a vacant agency position, the
4.9 appointing authority shall consider applications for positions in that agency supplied by the
4.10 secretary. No appointing authority may appoint someone to a vacant agency position until
4.11 ~~(1) ten~~ five days after receipt of the applications for positions in that agency from the
4.12 secretary ~~or (2) receipt of notice from the secretary that no applications have been received~~
4.13 ~~for vacant positions in that agency~~ as provided for in subdivision 5. At least five days before
4.14 the date of appointment, the appointing authority shall issue a public announcement and
4.15 inform the secretary by electronic means of the name of the person the appointing authority
4.16 ~~intends to appoint~~ has appointed to fill the agency vacancy and the expiration date of that
4.17 person's term.

4.18 (b) No person may serve in a position until the appointing authority has submitted either
4.19 (1) a signed notice of appointment or (2) the documents required by paragraph (e) to the
4.20 secretary of state, and the term of the appointee may not commence on a date preceding the
4.21 date of the signature on the notice of appointment or the paragraph (e) submission.

4.22 (c) An oath of office for each appointee to an agency must be submitted to the secretary
4.23 of state under section 358.05.

4.24 (d) If the appointing authority intends to appoint a person other than one for whom an
4.25 application was submitted pursuant to this section, the appointing authority shall complete
4.26 an application form on behalf of the appointee and submit it to the secretary indicating on
4.27 the application that it is submitted by the appointing authority.

4.28 (e) An appointing authority making a direct appointment must submit a letter to the
4.29 secretary of state stating the name of the person appointed, the agency and the specific seat
4.30 to which they are appointed, contact information, the date on which the term begins, and
4.31 length of the term.

5.1 (f) No person may simultaneously occupy more than one position on the same agency
5.2 board. Appointment or designation of a member as chair of an agency does not constitute
5.3 a violation of this paragraph.

5.4 Sec. 5. Minnesota Statutes 2022, section 351.01, subdivision 2, is amended to read:

5.5 Subd. 2. **When effective.** Except as provided by subdivision 3 or other express provision
5.6 of law or charter to the contrary, a resignation is effective when it is received by the officer,
5.7 body, or board authorized to receive it. In the case of a position appointed by the governor
5.8 under section 15.0597, the resignation must be submitted to the governor.

5.9 Sec. 6. Minnesota Statutes 2022, section 364.021, is amended to read:

5.10 **364.021 PUBLIC AND PRIVATE EMPLOYMENT; CONSIDERATION OF**
5.11 **CRIMINAL RECORDS.**

5.12 (a) A public or private employer may not inquire into or consider or require disclosure
5.13 of the criminal record or criminal history of an applicant for employment until the applicant
5.14 has been selected for an interview by the employer or, if there is not an interview, before a
5.15 conditional offer of employment is made to the applicant.

5.16 (b) This section does not apply to the Department of Corrections or to employers who
5.17 have a statutory duty to conduct a criminal history background check or otherwise take into
5.18 consideration a potential employee's criminal history during the hiring process.

5.19 (c) This section does not prohibit an employer from notifying applicants that law or the
5.20 employer's policy will disqualify an individual with a particular criminal history background
5.21 from employment in particular positions.

5.22 (d) An appointing authority may not inquire into or consider or require disclosure of the
5.23 criminal record or criminal history of an applicant for appointment to multimember agencies,
5.24 including boards, commissions, agencies, committees, councils, authorities, advisory task
5.25 forces, and advisory councils, on an application form or, until the applicant has been selected
5.26 for an interview by the appointing authority or is otherwise selected as a final candidate for
5.27 appointment.

5.28 **EFFECTIVE DATE.** This section is effective August 1, 2023.

5.29 Sec. 7. Minnesota Statutes 2022, section 364.06, subdivision 1, is amended to read:

5.30 Subdivision 1. **Public employers.** Any complaints or grievances concerning violations
5.31 of sections 364.01 to 364.10 by public employers or violations of section 364.021 by public

- 6.1 appointing authorities shall be processed and adjudicated in accordance with the procedures
- 6.2 set forth in chapter 14, the Administrative Procedure Act.