

STATEMENT OF NEED AND REASONABLENESS

Minnesota Department of Transportation Office of Transit and Active Transportation

Proposed Permanent Amendments to Rules Governing the Public Transit Participation Program, Minnesota Rules, Chapter 8835; Revisor's ID Number R-04523

INTRODUCTION

The Minnesota Department of Transportation, Office of Transit and Active Transportation, (Department) administers the Public Transit Participation Program (Program) for *Greater Minnesota* as established in Minnesota Statutes, section 174.24. This Program provides financial assistance to entities that provide public transit to citizens living in Greater Minnesota. In administering this program, the Department is guided by the statutory purposes in Minnesota Statutes, section 174.21:

- To provide access to transit for persons who have no alternative mode of transit available;
- To increase the efficiency and productivity of public transit systems;
- To alleviate problems of automobile congestion and energy consumption and promote desirable land use where such activities are cost-effective;
- To maintain a state commitment to public transportation; and
- To meet the needs of individual transit systems to the extent they are consistent with the other objectives stated above.

Program Description

The Department funds operating and capital costs for approximately 30 public transit systems in Greater Minnesota through a grant agreement between an eligible recipient and the Department. The grant agreement disburses both federal and state public transit funds according to formulas established by state and federal law and policy. Recipients also provide a local match of funds, if required, to ensure the participation required by state law is met and must comply with all applicable federal laws and regulations when they receive federal funds under the Program. The state legislature has determined that recipients that are eligible to receive public transit assistance include "any legislatively established public transit commission or authority, any county or home rule charter city providing financial assistance to or operating public transit, any private operator of public transit, or any combination thereof" (Minnesota Statutes, section 174.24, subdivision 2).

History of Chapter 8835 and Proposed Rule Amendments

The Public Transit Participation Program first started with legislation adopted in 1977. Temporary rules were adopted to implement the 1977 legislation. Permanent rules were adopted in 1978 with subsequent amendments to the rules in 1980, 1984 and 2000. The Program and legislation have evolved over the years and today, the Department continues to make improvements to the Program and proposes to revise and update Minnesota Rules, Chapter 8835.

Minnesota Rules, Chapter 8835 establishes the procedures and standards for review and approval of applications for *state* financial assistance for public transit in Greater Minnesota. Topics covered by the rules include the contents of an application and the procedures for applying for financial assistance, Departmental funding priorities, allowable and unallowable costs of a public transit system, sources of the local share of funds, capital assistance, the financial assistance contract, third party contracts, and financial records, reports, and audits.

This rulemaking is limited to proposed amendments in the following three rule parts:

- **8835.0250, subp. 5 B Certified Resolution.** Proposed rule amendment to remove the requirement for two persons to sign the resolution and to remove language requiring a certified resolution.
- **Part 8835.0320, Capital Assistance Allocation Formula.** Proposed amendments to clarify capital assistance provisions.
- **Part 8835.0330, Subpart 1. Content.** Proposed amendment to remove the requirement for a one year grant contract.

This rulemaking is Phase 1 of a larger rulemaking project. The Phase I rulemaking updates a limited number of rule provisions which can have an impact now. For example, removing the one year length limitation on the term of an operating grant agreement will enable our office to move forward with new programming efforts. The Department is undergoing further improvements to the Program which will guide the future proposed amendments to chapter 8835 in Phase II of the rulemaking project.

The Department worked with an advisory committee (Committee) consisting of representatives that are directly affected by Chapter 8835 by virtue of their need to apply for state and federal financial assistance to operate public transit systems in greater Minnesota and other stakeholders who also provide public transportation or who have an interest in public transportation. See **Exhibit A** for a list of Committee members and the organizations they represent.

ALTERNATIVE FORMAT

Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact The Office of Equity and Diversity at 651-366-4723 or 1-800-627-3529 (Greater Minnesota); 711 or 1-800-627-3529 (Minnesota Relay).

You may also send an e-mail to ADArequest@state.mn.us (Please request at least one week in advance).

STATUTORY AUTHORITY

The rulemaking authority for Chapter 8835 is found at Minnesota Statutes, section 174.23, subdivisions 2 and 7:

...The commissioner shall establish by rule the procedures and standards for review and approval of applications for financial assistance submitted to the commissioner pursuant to sections 174.21 to 174.27...

...The commissioner shall by rule define "total operating cost" as the term is used in carrying out the purposes of section 174.24. "Total operating cost" may include provisions for a fee for service. The commissioner shall consult with eligible recipients to the maximum extent feasible in formulating these

rules and develop necessary and reasonable changes in cost and fee allowability provisions and financial examination procedures where possible. The rules are subject to the provisions in the Administrative Procedure Act of section 14.001 to 14.69...

Under these statutes, the Department has the necessary statutory authority to adopt the proposed rules.

REGULATORY ANALYSIS

(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

The class of persons who will be affected by proposed amendments to Chapter 8835 are the public transit systems throughout Greater Minnesota who are eligible to receive state public transit funds for operating and capital costs of running a public transit system under Minn. Stat. 174.24, subdivision 2. The Department enters into grant agreements with cities, counties, a combination of cities or counties, and several non-profit organizations, such as community action programs, which provide public transit services throughout Greater Minnesota. These entities are most likely to be affected by amendments to Chapter 8835 because they submit applications for financial assistance through the Office of Transit and Active Transportation through the public transit participation program in section 174.24.

There are no new costs anticipated with this rule amendment. The rule amendments will benefit the parties most likely to be affected because it will reflect current Department and state grant policies and procedures and it will be less burdensome and easier for the affected parties to use, understand, and comply with the proposed amendments to Chapter 8835.

(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

The Department expects no new costs associated with amendments to Chapter 8835. One of the main purposes of the proposed rule is to remove the requirement for one year grant agreements and move toward multi-year grant agreements. Multi-year grant agreements should reduce the administrative costs to the agency and affected parties. The agency will spend less administrative time on processing annual applications for financial assistance.

- There are no additional probable costs to the agency of implementation and enforcement;
- There are no additional probable costs to any other agency of implementation and enforcement; and
- There are no anticipated effect on state revenues.

(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

The main purpose of these amendments to Chapter 8835 concern the removal of the one year contract requirement under part 8835.0330. With the Department being able to offer multi-year grant agreement this will mean less costly administrative costs for the transit systems in applying for financial assistance. The proposed rules amendment will streamline the application process to eventually produce a less costly and less intrusive application process.

(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.

As part of the rulemaking project, the Department held four Rule Advisory Committee Meetings. Of the three rule provisions that were considered under this rulemaking project, the committee proposed alternative rule language for part 8835.0320, Capital Assistance. The Department listened and seriously considered the alternatives that were proposed by the Committee regarding part 8835.0320.

Subpart 3 of part 8835.0320 sets forth the allocation formula for capital assistance. Subpart 3 contains two elements. First, the subpart recognizes that under Minn. Stat. 174.24, subd. 3c the commissioner has sole discretion to determine the amount of capital assistance that shall be allocated for the public transit participation program. Second, even with the discretion allowed to the commissioner under section 174.24, subd. 3c, the rule sets a baseline allocation formula that provides that the Department shall fund 80 percent of the capital costs and the remaining 20 percent of the approved capital costs shall be from local sources. This baseline formula, however, can be modified under subparts 4 and 5 of the same part either on a program deviation level under subpart 4 or on an individual exception under subpart 5.

In discussions with the Committee, there were recommendations proposed for subpart 3 regarding the 80/20 capital allocation formula. The proposals were as follows:

- No more than 20 percent local share would be required for *vehicle* capital purchases
- No more than 20 percent local share would be required for *any* capital purchase

Both proposals were discussed at the Committee meetings, however, there was not a consensus on either approach by the Committee.

The Department seriously considered both of the proposed options regarding the capital allocation formula. However, in the end, the Department did not go forward with either of the above proposals and decided in favor of keeping the capital allocating formula at 80/20 with the options for a program deviation or individual system exception as the rule currently provides. The Department decided to keep the capital formula allocation in the current rules for the following reasons:

- the commissioner has the discretion to determine the allocation formula under Minn. Stat. 174.24, subdivision 3c and the Department needs to maintain that flexibility to respond to changes in state funding that may occur in any given year, instead of having a locked in formula;
- both subparts 4 and 5 allow for either a program deviation in the allocation formula or a deviation in the allocation formula for individual transit system exceptions; and
- the Department is undergoing a review of how its operating and capital programs are funded and felt that any changes to the capital allocation rule at this point would be premature.

(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.

The Department believes that the proposed amendments to Chapter 8835 will add no significant costs for either applicants or the Department. It believes that clarifying and updating Chapter 8835 under this rulemaking will enable the Department to move forward with the multi-year grant agreements which will ultimately reduce administrative costs and streamline the application process.

(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.

The probable costs or consequences of not adopting the proposed rules would mean not amending the rules to allow for multi-year grant agreements which would limit the Department's ability to move the Program forward and reduce overall costs and administrative requirements. The costs of annual grant contracts would continue to be borne by the Department as well as the affected parties without the rule amendments.

(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

Chapter 8835 governs application for financial assistance under the *state* public transit participation program in section 174.24. The financial assistance grant contract between a subrecipient and the Department is also the legal vehicle for passing through federal public transit funds. The Federal Transit Administration (FTA) has its own regulations for administering federal funds, separate from chapter 8835, which the state is bound to comply with when it applies for and receives federal transit funds. However, the FTA does not mandate a particular form for the state application, except that recipients must agree to comply with annual federal certifications and assurances that apply to all recipients of federal public transit funds. These certifications and assurances are included in the financial assistance grant contract signed by both the Department and the subrecipient.

(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule. . . . '[C]umulative effect' means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.

These are the only state rules that deal with state financial assistance for Greater Minnesota transit. As described above, the Department also needs to comply with the requirements of the Federal Transit Administration for those systems that also receive federal funding. The state financial assistance complements the federal financial assistance and works in conjunction with the federal funding to provide complete funding for the transit systems in greater Minnesota. The proposed rules would allow for multi-year grant agreements and this will work within the framework of the federal financial assistance which also allows for funds to be allocated over multiple years. Therefore, the proposed rule amendments would streamline the process to obtain state funding and benefit transit systems.

PERFORMANCE-BASED RULES

Minnesota Statutes, sections 14.002 and 14.131, require that the SONAR describe how the agency, in developing the rules, considered and implemented performance-based standards that emphasize superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.

The main goal of proposed amendment in this phase of the rulemaking project is to remove the one year grant contract requirement in part 8835.0330. Removal of the one year grant contract requirement will provide maximum flexibility in the administration of the contracts for the agency and hopefully provide

less administrative burdens for the transit systems who will not have to apply for transit grant contracts annually. This amendment will enhance flexibility as to the length of a grant contract so that the purpose of Chapter 8835 could be achieved without being overly prescriptive.

ADDITIONAL NOTICE

Minnesota Statutes, sections 14.131 and 14.23, require that the SONAR contain a description of the Department's efforts to provide additional notice to persons who might be affected by the proposed rules or explain why these efforts were not made.

This Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved in a [date] letter by Administrative Law Judge [name].

Our Notice Plan includes giving notice required by statute. We will mail the rules and Notice of Intent to Adopt to everyone who has registered to be on the Department's rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a. We will also give notice to the Legislature per Minnesota Statutes, section 14.116.

Our Notice plan also includes providing notice to the following persons who might be affected by the proposed rules:

- Public Transit Rule Advisory Committee members
- Current transit grant subrecipients
- MnDOT Office of Transit and Active Transportation Local Coordination Plan Stakeholders
- Transit System Advisory Committee members
- Representatives from stakeholder groups that were involved in developing the Greater Minnesota Investment Plan
- Third Party Operating Contractors
- Minnesota Council on Transportation Access (MCOTA) members
- Minnesota Public Transit Association (MPTA)
- Chairs, DFL and Republican Leads and Ranking members of House and Senate Transportation Committee members

Our Notice Plan did not include notifying the Commissioner of Agriculture because the rules do not affect farming operations per Minnesota Statutes, section 14.111.

CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the Department will consult with Minnesota Management and Budget (MMB). We will do this by sending MMB copies of the documents that we send to the Governor's Office for review and approval on the same day we send them to the Governor's office. We will do this before the Department's publishing the Notice of Intent to Adopt. The documents will include: the Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. The Department will submit a copy of the cover correspondence and any response received from Minnesota Management and Budget to OAH at the hearing or with the documents it submits for ALJ review.

DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

As required by Minnesota Statutes, section 14.128, subdivision 1, the agency has considered whether these proposed rules will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. The agency has determined that they do not because the local governments will be able to apply, implement and execute grant contracts as they have done in the past and having multi-year grant contracts should not require any new ordinances.

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

Agency Determination of Cost

As required by Minnesota Statutes, section 14.127, the Department has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The Department has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city. The Department is hopeful that the multi-year contracts will be less administrative costs for the transit systems. In addition, the transit systems receives state grant money from the Department that is dependent upon the funds appropriated by the legislature and constitutionally by the highway user tax distribution fund. The local governments may have to provide a local share for capital grant agreements and the determination of that amount is not increasing with the proposed rules.

LIST OF WITNESSES

If these rules go to a public hearing, the Department anticipates having the following witnesses testify in support of the need for and reasonableness of the rules:

- Relevant staff from the Office of Transit and Active Transportation, as applicable.

RULE-BY-RULE ANALYSIS

8835.0250 APPLICATION FOR FINANCIAL ASSISTANCE.

The Department proposes to make the following amendments to subparts 3 and 5:

Subp. 3. **Submission; deadline.** An applicant shall request financial assistance using an application prescribed by the department. The department shall ~~annually~~ establish a deadline for submission of applications for financial assistance and shall provide adequate notice of the deadline to applicants. A complete application contains a management plan, a ~~certified~~ resolution from the applicant's governing body, and other forms and certifications required by federal or state law or regulation.

Subpart three proposes two amendments. One, to remove the word "annually" to be consistent with the proposed amendment in part 8835.0330, subpart 1 and the second is to remove the word "certified" to be consistent with the proposed amendment in part 8835.0330, subpart 5. Please see those rule parts for an explanation of the proposed amendment.

Subp. 5. **~~Certified~~ resolution.** An applicant shall submit with the application a resolution by the governing body that:

- A. resolves to provide public transit;

B. ~~authorizes two~~ indicates the person or persons authorized by title to execute a contract with the department and all amendments to the contract; and

C. authorizes funds for the local share of financial assistance, if applicable.

The proposed amendments to subpart 5 are to remove the word “certified” from the rule subpart heading, remove the requirement to have two persons authorized to execute a grant contract in item B and to add the phrase “if applicable” to item C.

Heading. The heading is not part of the rule and the remaining part of subpart 5 does not require a certified resolution, yet the word “certified” was used in part subpart 3 above. Therefore, the Department is removing the word “certified” from the heading in subpart 5 as well as the use of the word “certified” in subpart 3 above. In addition, there is no statutory requirement that the resolution be certified therefore, it is reasonable to remove the requirement from the rule. Organizations and entities may approve their resolutions according their own bylaws.

Item B. Item B updates the rule to remove the requirement that two persons need to sign the resolution. It is reasonable to remove this requirement as with the certification requirement, the organization itself, through its bylaws, will determine how many people must sign each resolution. The removal of this requirement is another way the Department is ensuring that the rules are less prescriptive and more flexible for the grant subrecipients.

Item C. Item C adds the phrase “if applicable” regarding inclusion of the local share funds in the resolution. It is necessary to remove this requirement because not all grant contracts require a local funding match. Adding the phrase “if applicable” is a reasonable way to address this issue.

8835.0320 CAPITAL ASSISTANCE.

The Department proposes to make the following amendments to subpart 4:

Subp. 4. **Program deviation from allocation formula.** Under the discretion provided to the commissioner in Minnesota Statutes, section 174.24, subdivision 3c, the department may establish a capital assistance allocation formula that deviates from the formula established in subpart 3. In setting this formula, the department must consider all relevant conditions relating to funding the annual public transit participation program ~~and must announce the formula to recipients by July 1 for the following calendar year.~~

The proposed amendments in subpart 4 removes the word “annual” when referring to the grant program to be consistent with the proposed amendment in part 8835.0330, subpart 1. See explanation in part 8835.0330 for further information regarding the removal of the word annual as it relates to grant contracts.

The Department is also proposing to remove the phrase “and announce the formula by July 1 for the following calendar year.” Removal of this phrase, like the removal of the word “annual,” is also to be consistent with the proposed amendment in part 8835.0330, subpart 1. Instead of having annual grant contracts, the Department will be moving in the direction of having multi-year grant contracts. Therefore, the timing of the solicitation may vary and the July 1st deadline currently in the rules is too restrictive and may not align with the timing of future solicitations.

Subp. 5. **Individual exception to allocation formula.** The department may deviate from the capital assistance allocation formula for an exceptional circumstance. A recipient that seeks capital assistance from the public transit participation program in an amount greater than the allocation formula, established under subpart 3 or 4, must make a written request to the department that includes:

- A. a detailed description of the exceptional circumstance that is the basis of the written request; and
- ~~B. a revised five-year capital plan for the public transit system that addresses the exceptional circumstance that is the basis of the written request; and~~
- C. B. a resolution from the governing body ~~certifying~~ that the request is due to an exceptional circumstance.

The department shall consider a request for an individual exception to the allocation formula after assessing the nature of the exceptional circumstance, balancing the request against other requests from recipients for capital assistance, and considering the assurance provided by the governing body that the circumstance that gave rise to the request is exceptional.

In subpart 5, the Department is proposing to delete Item B regarding having a five year capital plan that addresses the exceptional circumstances as to why it is requesting a deviation from the funding formula in part 8835.0320, subpart 3. It is necessary to delete the requirement for a revised five-year capital plan because the transit systems have or are working on a ten year capital plan for their capital assets, both vehicles and facilities. An evaluation of the a systems' capital assets is an on-going process when applying for financial assistance and the requirement of a revised five-year plan under subpart 5 is outdated, therefore it is reasonable to delete this requirement. "Certifying" is also proposed to be deleted to be consistent with the amendment in part 8835.0250.

8835.0330 CONTRACT FOR FINANCIAL ASSISTANCE.

The Department proposes to amend subpart 1 as follows:

Subpart 1. **Content.** The financial assistance contract is a cost reimbursement contract that is based on the total operating cost in part 8835.0280. The contract must specify the maximum amount of financial assistance to be awarded to the recipient by the department and state the terms and conditions of assistance. ~~For recipients receiving payment under the method described in Minnesota Statutes, section 174.24, subdivision 5, the contract is effective for no more than one year. The term of the contract may be extended by amendment for capital assistance.~~ The final application, including the management plan, must be incorporated into the contract as a legal part of the contract document. A resolution by the governing body, as provided in part 8835.0250, subpart 5, must be included with the contract.

The Department proposes to amend and update subpart 1 to remove the requirement for a one year grant contract term. It is necessary to remove the one year grant contract requirement because the Department is moving towards multi-year grant agreements. Under Minn. Stat. 16B.98, subd. 5(b), grant agreements with amendments can extend up to five years without special authorization as follows:

- ...(b) The combined grant agreement and amendments must not exceed five years without specific, written approval by the commissioner according to established policy, procedures, and

standards, or unless the commissioner determines that a longer duration is in the best interest of the state.

Removing the one year grant contract requirement is reasonable and complies with the length of grant agreements allowed under Minn. Stat. 16B.98. In addition, longer grant contracts will allow for less of an administrative burden on the transit systems who will no longer have to apply annually to maintain their on-going transit operations. In addition, multi-year grant agreements will allow the transit systems to plan and budget for a number of years instead of budgeting and living year to year. Because of this proposed amendment, the Department is also proposing the deletion of the word "annual" when referencing grants in other parts of the rules as is discussed above.

The Department is also proposing the deletion of the phrase "The final application, including" from subpart 1 as well. It is necessary to delete this phrase because the management plan is incorporated into the grant agreement but not the whole application. The management plan contains the service plan of the transit system and budgets, but this information is only part of the application. It is reasonable to remove this phrase to clarify that the whole application is not incorporated in to the grant contract just the management plan requirements.

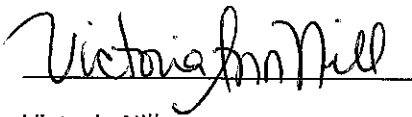
LIST OF EXHIBITS

In support of the need for and reasonableness of the proposed rules, the Department anticipates that it will enter the following exhibits into the hearing record:

Exhibit A. List of Rule Advisory Committee Members.

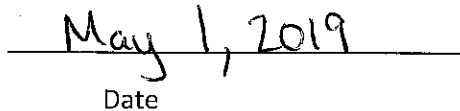
CONCLUSION

Based on the foregoing, the proposed rules are both needed and reasonable.



Victoria Nill

Director, Office of Transit and Active Transportation



Date

Exhibit A
MnDOT Office of Transit and Active Transportation
Public Transit Rules, Chapter 8835
Advisory Committee Members

Metropolitan Planning Organizations (MPOs)

Tom Faella – Executive Director, La Crosse Area Planning Committee

Minnesota Council on Transportation Access (MCOTA)

Joan Willshire - MCOTA Vice Chair- Minnesota State Council on Disability

Minnesota Public Transit Association (MPTA)

Sherry Munyon

Department of Human Services (DHS)

Ilya Garelik – Minnesota Department of Human Services, Mn Board on Aging

Sarah Sinderbrand – Minnesota Department of Human Services, Disability Service Division

Rural Area Formula Grant Program- 5311s

Amy Repinski- Three Rivers Community Action (Goodhue, Rice and Wabasha Counties)

Jack Larson- Arrowhead Economic Opportunity Agency, Inc. (Aitkin, Carlton, Cook, Itasca, Koochiching, Lake, Pine and St. Louis Counties)

Gary Ludwig- Trailblazer Joint Powers Board, Executive Director (Sibley, McLeod, & Wright Counties)

Pat LaCourse- Brown County Heartland Express, Transit Manager (New Ulm and Brown Counties)

Lori Schultz- Tri County Action Program, Executive Director (Benton, Morrison, Sherburne, Stearns, Mille Lacs Counties)

Intercity Bus- 5311fs

Steve Woelfel - Jefferson Lines

Urbanized Area Formula Program- 5307s

Paula Mastey- St. Cloud Metro Transit Commission, Chief Finance & Administration Officer (St. Cloud, Sartell, Waite Park and Sauk Rapids)

Scott Retzlaff- City of Rochester, Parking and Transit Assistant

Enhanced Mobility of Seniors and Individuals with Disabilities Program- 5310s

Karen Herman- Udac – Executive Director (Duluth)

Shannon Brumbaugh - Midwest Special Services, Inc., Director of Development (St. Paul)

Alan Herrmann - Scott County (Metro area)

Scott Wagner- TSE, Inc. (Metro area)

At-large Representatives

Larry Eisenstadt- Minnesota Department of Employment and Economic Development (DEED), Youth Program Coordinator

Kim Pettman- Citizen Member

