STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

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DATE: February 24, 2012
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SUBJECT: Minnesota Break the Bonds Campaign, et al. v. Minnesota State Board of Investment
Court File No. 62-CV-11-10079

TRANSMISSION BY FACSIMILE

NUMBER OF PAGES (including cover page): 58

COMMENTS:

Enclosed please find:
1) Filing and Service Letter
2) Memorandum of Defendant Minnesota State Board of Investment In Opposition to Plaintiffs' Motion to Dismiss Count One of the Complaint,
3) Affidavit of Kristyn Anderson with Exhibits A-C, and
4) Affidavit of Howard Bicker with Exhibits A-D
Copies to follow by United States Mail.

FOR TRANSMISSION PROBLEMS, PLEASE CALL: Barb Fehrman @ 651-757-1445.

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

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February 24, 2012

Hand Delivered

Court Administrator
600 Ramsey County Courthouse
15 Kellogg Boulevard West
St. Paul, MN 55102

Re: *Minnesota Break the Bonds Campaign, et al., v. Minnesota State Board of Investment*
Court File No. 62-CV-11-10079; Judge Margaret M. Marrinan

Dear Court Administrator:

Enclosed for filing please find:

1. Memorandum of Defendant Minnesota State Board of Investment ("SBI") In Opposition to Plaintiffs' Motion for Summary Judgment on Count One;

2. Affidavit of Howard Bicker with Exhibits A-D;

3. Affidavit of Kristyn Anderson with Exhibits A-C; and

4. Affidavit of Service by Facsimile and United States Mail.

Courtesy copies of the above documents are being delivered to the Honorable Margaret M. Marrinan.

Also by copy of this letter, service is being made upon counsel for Plaintiffs by facsimile and U.S. Mail.

Sincerely,

KRISTYN ANDERSON
Assistant Attorney General

(651) 757-1225 (Voice)
(651) 282-5832 (Fax)

Enclosures
cc: The Honorable Margaret M. Marrinan (w/encs.) (hand delivered)
Jordan S. Kushner (w/encs.) (via fax and U.S. Mail)
Bruce D. Nestor (w/encs.) (via fax and U.S. Mail)
Peter J. Nickitas (w/encs.) (via fax and U.S. Mail)
AG: #2963277-v1

STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT

Court File No. 62-CV-11-10079
Judge Margaret M. Marrinan

Minnesota Break the Bonds Campaign, Bil'in Popular Committee Against the Wall and Settlements, Women Against Military Madness-Middle East Committee, Lucia Wilkes Smith, Margaret Sarfehjooy, Catharine Abbott, Barbara Hill, Polly Mann, Leona Ross, Sylvia Schwarz, Nadim Shamat, Sarah Martin, Robert Kosuth, Mary Eoloff, Nick Eoloff, Vern Simula, Cynthia Arnold, Newland F. Smith, III, Ronnie Barkan, Ofer Neiman, David Nir, Lehee Rothschild, Renen Raz, Dorothy Naor, Gal Lugassi, Boycott From Within and David Boehnke,

Plaintiffs,

vs.

Minnesota State Board of Investment,

Defendant.

DEFENDANT'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON COUNT ONE

INTRODUCTION

As discussed in Defendant's Memorandum in support of its Motion to Dismiss, the SBI is authorized by statute to invest in "international securities" "in addition to" other delineated investments. Minn Stat. § 11A.24, subd. 6(a)(5). The common and ordinary meaning of "international securities" includes foreign government bonds. Thus, the plain language of the statute authorizes the SBI to invest in government bonds of foreign countries.

Even if the Court determines that the statute is ambiguous, the SBI has long interpreted the statute to include foreign government bonds, and has invested in such bonds of countries other than Canada for at least two decades. The Court should give substantial deference to this longstanding interpretation by the agency which proposed the law in question, assisted in its

drafting, and is charged with the statute's administration. Moreover, a contrary conclusion would adversely impact the SBI's ability to diversify its holdings in a global economy, undermine the very purpose for which the law was enacted, and produce an unreasonable and absurd result.

Plaintiffs' interpretation of the phrase "international securities" contradicts its plain language, renders the provision meaningless, conflicts with the purpose and longstanding application of the statute, and results in absurdity. Plaintiffs are not entitled to summary judgment on Count One.[1] Instead, the Court should grant Defendant's motion to dismiss Plaintiffs' Complaint in its entirety.

DOCUMENTS COMPRISING THE RECORD IN OPPOSITION TO PLAINTIFFS' MOTION

1. Affidavit of Howard Bicker ("Bicker Aff.") and attached Exhibits.

2. Affidavit of Kristyn Anderson ("Anderson Aff.") and attached Exhibits.

ARGUMENT

I. THE PLAIN MEANING OF "INTERNATIONAL SECURITIES" INCLUDES FOREIGN GOVERNMENT BONDS.

"The touchstone for statutory interpretation is the plain meaning of a statute's language." *ILHC of Eagan, LLC v. County of Dakota*, 693 N.W.2d 412, 419 (Minn. 2005) (citing Minn. Stat. § 645.16). When the words of a statute are clear in their application to a particular case, the plain meaning of the law controls and "shall not be disregarded under the pretext of pursuing the spirit [of the statute]." Minn. Stat. § 645.16. Indeed, the plain language of a statute controls

[1] The court may grant summary judgment for a non-moving party when there is no genuine issue of material fact, the non-moving party deserves judgment as a matter of law, and the moving party is not prejudiced. *Anderson v. Lappegaard*, 224 N.W.2d 504, 510 (Minn. 1974); *Hebrink v. Farm Bureau Life Ins. Co.*, 664 N.W.2d 414, 419 (Minn. Ct. App. 2003). For the same reasons the Court should deny summary judgment to Plaintiffs, it should grant summary judgment on Count One to Defendant.

whether or not the reviewing court considers the result to be "reasonable" or "good policy." *Hyatt v. Anoka Police Dep't*, 691 N.W.2d 824, 826-28 (Minn. 2005). When a statute's meaning is plain from its language, "statutory construction is neither necessary nor permitted." *American Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001).

Minnesota Statutes Section 11A.24, subd. 6(a)(5) plainly authorizes the SBI to invest in non-Canadian foreign government bonds. The provision reads as follows:

> **Subd. 6. Other investments.** (a) *In addition to the investments authorized in subdivisions 1 to 5*, and subject to the provisions in paragraph (b), the state board may invest funds in:
>
> *******
>
> (5) international securities.

Minn. Stat. § 11A.24, subd. 6(a)(5) (emphasis added).

The Court must apply words in a statute according to their most natural and obvious meaning. *ILHC*, 693 N.W.2d at 419. As Defendant explained in its memorandum in support of its Motion to Dismiss, the common meaning of the phrase "international securities" unambiguously includes foreign government bonds. (See Def.'s Mem. Mot. Dismiss, pp. 6-7, *citing e.g., Webster's Ninth New Collegiate Dictionary*, p. 632 (1988) (defining "international" to mean "reaching beyond national boundaries."); *InvestorWords*, http://www.investorwords.com/4446/security (defining security to mean "[a]n investment instrument, other than an insurance policy or fixed annuity, issued by a corporation, government, or other organization which offers evidence of debt or equity."); 15 U.S.C. § 78C(a)(10) (Securities and Exchange Act defining "security" to include "bonds"); Minn. Stat. § 11A.24, subd. 1 (referencing "securities" described in subdivisions 2 to 6, which include bonds, notes, bills, mortgages, stocks and convertible issues)). Moreover, the phrase "international securities" is not limited to a particular country. Thus, Defendant's interpretation gives effect to the statute's plain and ordinary

meaning, and is dispositive of Plaintiffs' claim in Count One of their Complaint. (See Def.'s Mem. Mot. Dismiss, pp. 5-7.)

II. EVEN ASSUMING, *ARGUENDO*, THAT THE STATUTE IS AMBIGUOUS, IT IS PROPERLY CONSTRUED TO AUTHORIZE THE SBI TO PURCHASE FOREIGN GOVERNMENT BONDS.

As discussed above, the plain language of the statute authorizes the SBI to purchase foreign government bonds. Thus, there is no need for the Court to look any further to interpret the statute. *See* Minn. Stat. § 645.16. However, to the extent the Court disagrees and believes that the statute is ambiguous, the Court may construe the statute by considering factors that assist the Court in determining legislative intent. *See* Minn. Stat. § 645.16(1)-(4), (6), (8).

A. The Purpose Of The Statute, The SBI's Longstanding Interpretation, And The Avoidance of Unreasonable And Absurd Results, Require The Court To Construe The Law To Allow The SBI To Purchase Foreign Government Bonds.

First, "[i]n construing a statute for the ascertainment of legislative intent, the occasion and necessity for the law, the circumstances under which it was enacted, the mischief to be remedied, and the object to be attained may all be considered." *County of Hennepin v. County of Houston*, 39 N.W.2d 858, 860 (Minn. 1949); Minn. Stat. § 645.16(1)-(4). In 1988, Subdivision 6(a)(5) was added to the list of "Authorized Investments" of Section 11A.24 at the request of the SBI. (Bicker Aff. ¶¶ 3-4 & Ex. A; Anderson Aff. Ex. B.) The SBI requested the amendment to enable it to further diversify its holdings beyond those already authorized by law. (Bicker Aff. ¶ 4.) Thus, Defendant's construction of Subdivision 6(a)(5) is consistent with legislative intent, as demonstrated by these factors.

Second, courts should defer to the interpretation given the statute by the agency which administers the law. *Krumm v. R.A. Nadeau Co.*, 276 N.W.2d 641, 644 (Minn. 1979) (stating it is an established principle that "[w]hen the meaning of a statute is doubtful, courts should give

great weight to a construction placed upon it by the department charged with its administration"); Minn. Stat. § 645.16(8). This judicial deference is "rooted in the separation of powers doctrine." *In re Minnesota Power*, 807 N.W.2d 484, 488 (Minn. Ct. App. 2011), *rev. granted* (Minn. Feb. 14, 2012) (finding that "'judicial deference, rooted in the separation of powers doctrine, is extended to an agency decision-maker in the interpretation of statutes that the agency is charged with administering and enforcing.'") (citations omitted). In particular, courts give "considerable weight" to a construction contemporaneous with a statute's enactment by the agency charged with its administration. *Bremer v. Comm'r of Taxation*, 75 N.W.2d 470, 452-453 (Minn. 1956) (reasoning that agency's construction "is relevant and material evidence of the understanding and opinions of those who were charged with the responsibility of putting the statute in operation and who were familiar with, and probably active in, drafting the statute."). This is especially true of agency interpretations which are longstanding. *Soo Line R. Co. v. Comm'r of Revenue*, 277 N.W.2d 7, 10 (Minn. 1979) (construing statute to give effect to longstanding administrative practice of agency). *See also Emerson v. Sch. Bd. of Indep. Sch. Dist. 199*, ___N.W.2d ___, 2012 WL 280384, at *7 (Minn. Feb. 1, 2012) (rejecting statutory construction which would overturn interpretation by school board that had been applied for decades, although it was not an administrative interpretation within meaning of Minn. Stat. § 645.16(8)) (Anderson Aff. Ex. C).

The SBI proposed and assisted in drafting Section 11A.24, subd. 6(a)(5) and has consistently construed it to authorize the purchase of foreign government bonds. (Bicker Aff. ¶¶ 4-6 & Exs. A, B, C, D.) The SBI requested the legislation to enable it to further diversify its holdings through the purchase of foreign corporate equity and debt and foreign government debt. (Bicker Aff. ¶ 4.) Based on this understanding, the SBI has purchased non-Canadian foreign government bonds continuously since at least 1991, and has held Israel bonds since at least 1993.

(Bicker Aff. ¶¶ 5-6 & Exs. B, C, D.) Consistent with the above-referenced case law, the Court should defer to this longstanding interpretation of the SBI.

Finally, the consequences of the constructions at issue are also pertinent. *See* Minn. Stat. § 645.16(6); *Burkstrand v. Burkstrand*, 632 N.W.2d 206, 210 (Minn. 2001). The SBI's construction enabled the SBI to diversify its investments in the global economy. In contrast, Plaintiffs' interpretation would require the SBI to divest from a dozen of its current holdings. (*See* Bicker Aff. ¶ 5 & Ex. C.) This result would be unreasonable and absurd in light of the statute's purpose of authorizing diversification of the SBI's investments. *See, e.g.*, Minn. Stat. § 645.17(1) (creating presumption that legislature did not intend unreasonable or absurd result).

B. "*Ejusdem Generis*" Does Not Apply.

Plaintiffs argue, using the cannon of "*ejusdem generis*," that because Subdivision 2 of Section 11A.24 references Canadian bonds, that "international securities" as used in Subdivision 6 cannot include non-Canadian government obligations. Plaintiffs' argument is wrong for several reasons.[2]

First, *ejusdem generis*" is a principle of statutory construction which only applies if a statute is ambiguous. *Winters v. City of Duluth*, 84 N.W. 788, 789 (Minn. 1901) (holding that *ejusdem generis* "can be used only as an aid in ascertaining the legislative intent, and when that is apparent from the statute itself the rule has no application."); *Lefto v. Hoggsbreath Enters., Inc.*, 567 N.W.2d 746, 749 (Minn. Ct. App. 1997) (refusing to resort to use of *ejusdem generis*

[2] "Ejusdem generis" is a rule of construction, and not of substantive law, and should not be applied in a manner that "confine[s] the operation of the statute within narrower limits than intended by the lawmakers. . . . And when it appears that the Legislature intended to go beyond the specifications, effect must be given that intent and the statute construed accordingly." *Westerlund v. Kettle River Co.*, 162 N.W. 680, 682 (Minn. 1917). *See also Orme v. Atlas Gas & Oil Co.*, 13 N.W.2d 757, 765 (Minn. 1944) (stating that *ejusdem generis* cannot be used to render general words meaningless).

where statute was unambiguous), *aff'd*, 581 N.W.2d 855, 856 (Minn. 1998). *See also Garcia v. U.S.*, 469 U.S. 70, 74-75 (1984) ("'[T]he rule of *ejusdem generis*, while firmly established, is only an instrumentality for ascertaining the correct meaning of words when there is uncertainty.'") (citations omitted). As discussed above, Subdivision 6(a)(5) plainly authorizes the purchase of foreign government bonds beyond those authorized by Subdivision 2. Therefore, the cannon of construction does not apply.

Second, even assuming the statute is ambiguous, Plaintiffs' construction entirely ignores the language in Subdivision 6 which states that "international securities" are authorized "*[i]n addition to* the investments authorized in *subdivisions 1 to 5*." (Emphasis added.) Thus, Plaintiffs' argument violates the cannon of construction that "[e]very law should be construed, if possible, to give effect to all its provisions," Minn. Stat. § 645.16, and reads into the statute a limitation that was not included by the legislature. *See Reiter v. Kiffmeyer*, 721 N.W.2d 908, 911 (Minn. 2006) (stating that "we will not read into a statute a provision that the legislature has omitted, either purposely or inadvertently"); *Hutchinson Tech., Inc. v. Comm'r of Revenue*, 698 N.W.2d 1, 12 (Minn. 2005) (stating that "we are unwilling to write into a statute what the legislature did not"). *See also State v. Peck*, 773 N.W.2d 768, 772 (Minn. 2009) ("We have consistently refused to assume a legislative intent in plain contradiction to words used by the legislature.").

Third, Plaintiffs' contention renders Subdivision 6(a)(5) superfluous. For example, Subdivision 5 of Section 11A.24 addresses investment in U.S. and Canadian corporate stock. If "international securities" cannot include any type of security addressed in the supposedly more specific provisions of Section 11A.24, then the SBI also could not invest in the stock of foreign corporations other than the stock of Canadian domiciled corporations. Under Plaintiffs'

reasoning, the SBI therefore could not invest in non-Canadian foreign corporate or government securities, rendering Subdivision 6(a)(5) meaningless.[3]

In order to give effect to Subdivision 6(a)(5), it must mean that the SBI is authorized to invest in government bonds and corporate stock different from and in addition to the U.S. and Canadian government debt and corporate stock authorized by Minn. Stat. § 11A.24, subds. 2 and 5. *See, e.g., Westerlund v. Kettle River Co.*, 162 N.W. 680, 682 (Minn. 1917) (rejecting use of *ejusdem generis*, and stating that "[t]he general purpose of a statute, as disclosed by the provisions thereof, taken as a whole, often requires that the final general clause, inserted with a view of bringing within its scope matters not specifically mentioned, should not be restricted in meaning by the preceding specifications.").

Finally, the cannon of *ejusdem generis* does not apply where "the general provision shall be enacted at a later session and it shall be the manifest intention of the legislature that such a general provision shall prevail." Minn. Stat. § 645.26, subd. 1. Here, Subdivision 6(a)(5) was added in 1988, after Subdivision 2 and after the provisions in Subdivision 6(a)(1) to (4). *See* Minn. Laws 1980, ch. 607, art. 14 § 22 (Anderson Aff. Ex. A); Minn. Laws 1988, ch. 453, § 8 (Anderson Aff. Ex. B).

[3] Plaintiffs rely on the SBI's publications regarding its Guidelines on International Investing and the International Stock Pool to argue that the SBI has interpreted "international securities" to include only international stock. (Pl. Mem. at 11.) This reliance is misplaced. The Guidelines were created in response to concerns expressed by labor unions and environmentalists about investment in companies doing business in foreign countries and the potential adverse effects on the competitiveness of American businesses. The Guidelines do not address bonds issued by foreign countries because foreign governments do not compete against American businesses. (Bicker Aff. ¶ 8.) Additionally, foreign government bonds are not part of the International Stock Pool, they are primarily part of the SBI's Bond Pool. (*Id.*)

The only reasonable way to read the statute and give effect to all of its provisions is that Subdivision 6(a)(5) gives the SBI authority, beyond that which was provided in other portions of the statute, to purchase non-Canadian foreign government bonds.

C. Unlike the SBI's Interpretation, Plaintiffs' Application Of Minn. Stat. § 11A.24, Subd. 6(a)(5) Leads To Absurd Results.

Plaintiffs wrongly argue that the SBI's interpretation of "international securities" leads to absurd results. First, as discussed above, the language of Minn. Stat. § 11A.24, subd. 6(a)(5) is clear and cannot be ignored. *See Weston v. McWilliams & Assoc., Inc.*, 716 N.W.2d 634, 639 (Minn. 2006) (holding that rule of construction of avoiding absurd results "only operates where the words of a statute are ambiguous; the rule cannot generally be used to override the plain language of a statute"). *See also Green Giant Co. v. Comm'r of Revenue*, 534 N.W.2d 710, 712 (Minn. 1995) ("We will not supply that which the legislature purposefully omits or inadvertently overlooks.").

Second, contrary to Plaintiffs' argument, the SBI's interpretation does not permit it to purchase Iran or Sudan bonds. (Pl.'s Mem. p. 10.) Minnesota Statutes Sections 11A.243 and .244 forbid the investment in companies doing business in particular sectors of the Sudan and Iran economies, with various exceptions. Those statutes do not address investment in Sudan or Iran government bonds. The SBI cannot purchase Sudan and Iran government bonds, however, because investment in those governments is prohibited by federal law. *See* Sudan Sanctions Regulations, 31 C.F.R. § 538.201 (adopted in 1998); Iran Transactions Regulations, 31 C.F.R. § 560.207 (adopted in 1999). Moreover, those bonds have never existed on an organized secondary market. (Bicker Aff. ¶ 7.) In other words, those bonds are not even available to the

SBI for purchase.[4] As a result, although "international securities" of Subdivision 6(a)(5) includes foreign government debt, the legislature had no need to address Sudan or Iran government bonds in §§ 11A.243 and .244, since the SBI cannot purchase those bonds in any event.

Finally, as discussed above, Plaintiffs' interpretation, not the SBI's, would lead to an unreasonable and absurd result. The SBI has invested in non-Canadian foreign government bonds since at least 1991, and in Israel bonds since at least 1993. To construe "international securities" to exclude foreign government bonds other than those issued by Canada would read into the statute a limitation not provided by the legislature, and conflict with the SBI's longstanding practice. Plaintiffs' interpretation would deprive the SBI of the ability to comply with its statutory duty to diversify its investments, Minn. Stat. § 356A.06, subd. 2, in derogation of the purpose of Subdivision 6(a)(5). It would also require the divestment of millions of dollars of current investments in the bonds of non-Canadian foreign countries. *See Minnesota State Board of Investment Alphabetical Asset Listing As Of December 31, 2011*, pp. 76, 79, 84, 96, 98, 99, 100, 104, 106, 108 (Bicker Aff. ¶ 5 & Ex. C.). The Court should reject such a construction.

[4] Plaintiffs' argument that the SBI's investments in foreign government bonds lack standards is also erroneous. Indeed, the SBI invests in accordance with its statutory standard of care. Minn. Stat. §§ 11A.09, 356A.04.

CONCLUSION

For all of the reasons discussed above, Defendant respectfully requests the Court to deny Plaintiffs' Motion for Summary Judgment on Count One, and instead grant Defendant's Motion to Dismiss Plaintiffs' Complaint in its entirety.[5]

Dated: February 24, 2012

Respectfully submitted,

OFFICE OF THE ATTORNEY GENERAL
State of Minnesota

KRISTYN ANDERSON
Assistant Attorney General
Atty. Reg. No. 0267752

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ATTORNEYS FOR DEFENDANT
MINNESOTA STATE BOARD
OF INVESTMENT

AG: #2955614-v1

[5] As discussed above in footnote 1, the Court can also grant summary judgment to Defendant on Count One.

STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT

Case Type: Declaratory Judgment Action

Court File No. 62-CV-11-10079
Judge Margaret M. Marrinan

AFFIDAVIT OF KRISTYN ANDERSON

Minnesota Break the Bonds Campaign, Bil'in Popular Committee Against the Wall and Settlements, Women Against Military Madness-Middle East Committee, Lucia Wilkes Smith, Margaret Sarfehjooy, Catharine Abbott, Barbara Hill, Polly Mann, Leona Ross, Sylvia Schwarz, Nadim Shamat, Sarah Martin, Robert Kosuth, Mary Eoloff, Nick Eoloff, Vern Simula, Cynthia Arnold, Newland F. Smith, III, Ronnie Barkan, Ofer Neiman, David Nir, Leehee Rothschild, Renen Raz, Dorothy Naor, Gal Lugassi, Boycott From Within and David Boehnke,

Plaintiffs,

vs.

Minnesota State Board of Investment,

Defendant.

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

KRISTYN ANDERSON, Assistant Attorney General representing the Defendant in the above-entitled matter, being first duly sworn on oath, deposes and states as follows:

1. Attached hereto as Exhibit A is a true and correct copy of Minn. Laws 1980, ch. 607, art. 14 § 22.

2. Attached hereto as Exhibit B is a true and correct copy of Minn. Laws 1988, ch. 453, § 8.

3. Attached hereto as Exhibit C is a true and correct copy of *Emerson v. Sch. Bd. of Indep. Sch. Dist. 199*, ___N.W.2d ___, 2012 WL 280384 (Minn. Feb. 1, 2012).

Further your affiant saith not.

KRISTYN ANDERSON

Subscribed and sworn to before me on this 24th day of February, 2012.

NOTARY PUBLIC

AG: #2962583-v1

BARBARA J FEHRMAN
NOTARY PUBLIC - MINNESOTA
MY COMMISSION
EXPIRES JAN 31, 2015

334.03 **USURIOUS CONTRACTS INVALID; EXCEPTIONS.** All bonds, bills, notes, mortgages, and all other contracts and securities, and all deposits of goods, or any other thing, whereupon or whereby there shall be reserved, secured, or taken any greater sum or value for the loan or forbearance of any money, goods, or things in action than prescribed, except such instruments which are taken or received in accordance with and in reliance upon the provisions of any statute, shall be void except as to a holder in due course. No merely clerical error in the computation of interest, made without intent to avoid the provisions of this chapter, shall constitute usury. Interest at the rate of one-twelfth of eight percent for every 30 days shall not be construed to exceed eight percent per annum; nor shall the payment of interest in advance of one year, or any less time, at a rate not exceeding eight percent per annum constitute usury; and nothing herein shall prevent the purchase of negotiable mercantile paper, usurious or otherwise, for a valuable consideration, by a purchaser without notice, at any price before the maturity of the same, when there has been no intent to evade the provisions of this chapter, or where such purchase has not been a part of the original usurious transactions; but where the original holder of a usurious note sells the same to an innocent purchaser, the maker thereof, or his representatives, may recover back from the original holder the amount of principal and interest paid by him on the note. This section does not apply when the loan or forbearance is made by a lender and the lender is liable for the penalty provided in section 2 in connection with the loan or forbearance. For purposes of this section, the term "lender" means a bank or savings bank organized under the laws of this state, a federally chartered savings and loan association, a savings association organized under chapter 51A, a federally chartered credit union, a credit union organized under chapter 52, or a mortgagee or lender approved or certified by the secretary of housing and urban development or approved or certified by the administrator of veterans affairs.

Sec. 5. **EFFECTIVE DATE.** Sections 1 to 4 are effective the day following final enactment.

Approved April 23, 1980

CHAPTER 607—H.F.No. 1121

An act relating to the operation and financing of state and local government; adopting certain federal income tax changes; allowing a subtraction of certain interest and dividend income; increasing the pension exclusion; adopting technical and conforming amendments to income tax and property tax refund provisions; providing an income tax credit for contributions to candidates for federal offices; providing a definition of "quadriplegic"; increasing low income credit amounts, eliminating indexing of that credit, and allowing it to be taken as an alternative tax; modifying provisions of the renewable energy source credit; authorizing deduction of certain interest; increasing the dependent care credit; allowing involuntary conversion treatment of divestitures

Anderson Aff.
Exhibit A

ARTICLE XIV
STATE INVESTMENT BOARD

Section 1. **[11A.01] STATEMENT OF PURPOSE.** The purpose of sections 1 to 23 is to establish standards which will insure that state and pension assets subject to this legislation will be responsibly invested to maximize the total rate of return without incurring undue risk.

Sec. 2. **[11A.02] DEFINITIONS.** Subdivision 1. For the purposes of sections 1 to 23, the terms defined in this section shall have the meanings given them.

Subd. 2. "State board" means the Minnesota state board of investment created by article XI, section 8 of the constitution of the state of Minnesota for the purpose of administering and directing the investment of all state funds and pension funds.

Subd. 3. "Council" means the investment advisory council created by section 6.

Subd. 4. "Fund" means any of the individual funds, including but not limited to the permanent school fund, general fund of the state, retirement funds and other funds and accounts for which the state board has responsibilities.

Subd. 5. "Director" means the executive director of the state board.

Subd. 6. "Management" means the performance or delegation of general management duties relating to any fund established pursuant to this chapter.

Sec. 3. **[11A.03] STATE BOARD; MEMBERSHIP; ORGANIZATION.** Pursuant to article XI, section 8, of the constitution of the state of Minnesota, the state board shall be composed of the governor, state auditor, state treasurer, secretary of state and attorney general. The governor shall serve as ex officio chairman of the state board.

Sec. 4. **[11A.04] DUTIES AND POWERS.** The state board shall:

(1) Act as trustees for each fund for which it invests or manages moneys in accordance with the standard of care set forth in section 7.

(2) Formulate policies and procedures deemed necessary and appropriate to carry out its functions. Procedures adopted by the board shall allow fund beneficiaries and members of the public to become informed of proposed board actions. Procedures and policies of the board shall not be subject to the administrative procedure act.

(3) Employ an executive director as provided in section 5.

(4) Employ investment advisors and consultants as it deems necessary.

(5) Prescribe policies concerning personal investments of all employees of the board to prevent conflicts of interest.

(3) Correctional employees retirement plan established pursuant to Minnesota Statutes, Chapter 352;

(4) Highway patrol retirement fund established pursuant to Minnesota Statutes, Chapter 352B;

(5) Unclassified employees retirement plan established pursuant to Minnesota Statutes, Chapter 352D;

(6) Public employees retirement fund established pursuant to Minnesota Statutes, Chapter 353;

(7) Public employees police and fire fund established pursuant to Minnesota Statutes, Chapter 353;

(8) Teachers' retirement fund established pursuant to Minnesota Statutes, Chapter 354;

(9) Judges' retirement fund established pursuant to Minnesota Statutes, Chapter 490; and

(10) Any other funds required by law to be invested by the board.

Sec. 22. **[11A.24] AUTHORIZED INVESTMENTS.** Subdivision 1. **SECURITIES GENERALLY.** The state board shall have the authority to purchase, sell, lend or exchange the following securities for funds or accounts specifically made subject to this section including the writing of covered call options.

Subd. 2. **GOVERNMENT OBLIGATIONS.** The state board may invest funds in governmental bonds, notes, bills, mortgages and other fixed obligations, including guaranteed or insured issues of (a) the United States, its agencies or its instrumentalities, including financial contracts traded upon a contract market designated and regulated by a federal agency; (b) Canada and its provinces, provided the principal and interest is payable in United States dollars; (c) the states and their municipalities, political subdivisions, agencies or instrumentalities, where backed by the state's full faith and credit or if the issuer has not been in default in payments of principal or interest within the past ten years or in the case of revenue bonds the obligor has been completely self-supporting for the five prior years; (d) the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, or any other United States Government sponsored organization of which the United States is a member, provided the principal and interest is payable in United States dollars and the issues are rated in the highest quality category by a nationally recognized rating agency.

Subd. 3. **CORPORATE OBLIGATIONS.** The state board may invest funds in bonds, notes, debentures, transportation equipment obligations, or any other longer term evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States or any state thereof, or the Dominion of Canada or any province thereof if they conform to the following provisions:

(a) The principal and interest of obligations of corporations incorporated or organized under the laws of the Dominion of Canada or any province thereof shall be payable in United States dollars;

(b) The consolidated net pretax earnings of corporations other than finance corporations shall have been on average for the preceding five years at least 1.5 times the annual interest charges on total funded debt applicable to that period;

(c) The consolidated net pretax earnings of banks and finance corporations shall have been on average for the preceding five years at least 1.2 times the annual interest charges on total funded debt applicable to that period;

(d) Obligations shall be rated among the top three quality categories by a nationally recognized rating agency or if unrated, then the corporation shall have other comparably secured issues similarly rated or the consolidated net pretax earnings of the corporation shall have been on average for the preceding five fiscal years at least twice the ratios required in clauses (b) and (c).

Subd. 4. **OTHER OBLIGATIONS.** The state board may invest funds in bankers acceptances, certificates of deposit, commercial paper, mortgage participation certificates and pools, repurchase agreements and reverse repurchase agreements and savings accounts if they conform to the following provisions:

(a) Bankers acceptances of United States banks shall be limited to those eligible for purchase by the Federal Reserve System;

(b) Certificates of deposit shall be limited to those issued by banks and savings institutions that meet the collateral requirements established in Minnesota Statutes, Section 9.031, unless sufficient volume is unavailable at competitive interest rates. In that event, noncollateralized certificates of deposit may be purchased from United States banks and savings institutions that are rated in the highest quality category by a nationally recognized rating agency;

(c) Commercial paper shall be limited to those issued by United States corporations or their Canadian subsidiaries, shall be of the highest quality and mature in 270 days or less;

(d) Mortgage participation certificates and pools secured by first mortgages or trust deeds on improved real estate located in the United States where there is a guarantee of replacement by a note or bond of comparable value and security in the event of a default, and where the loan to value ratio for each loan does not exceed 80 percent for fully amortizable residential properties and in all other respects meets the requirements of section 61A.28, subdivision 3.

(e) Repurchase agreements and reverse repurchase agreements shall be limited to the securities described in subdivision 2, clause (a);

(f) Savings accounts shall be limited to those fully insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

Subd. 5. **CORPORATE STOCKS.** The state board may invest funds in stocks or convertible issues of any corporation organized under the laws of the United States or the states thereof, the Dominion of Canada or its provinces, or any corporation listed on the New York Stock Exchange or the American Stock Exchange, if they conform to the following provisions:

(a) The aggregate value of corporate stock investments, as adjusted for realized profits and losses, shall not exceed 50 percent of the book value of a fund;

(b) Investments in any one corporation shall not exceed three percent of the book value of a fund;

(c) Investments shall not exceed five percent of the total outstanding shares of any one corporation;

(d) Cash dividends on corporate stock investments shall have been earned and paid for the preceding five years;

(e) Investments which do not conform to the dividend standard contained in clause (d) may be held but the total amount of these securities shall not exceed five percent of the book value of a fund.

Sec. 23. [11A.25] **ADDITIONAL INVESTMENT PROVISIONS.** When *investing assets of any funds or accounts specifically made subject to this section* or not otherwise referred to in sections 1 to 23, all securities shall be debt obligations maturing within three years of the date of purchase and shall conform to the applicable provisions of section 22.

Sec. 24. By January 1, 1981, the executive director shall prepare and submit to the state board and the legislature a report analyzing whether or not increased portions of the funds under the investment control of the state board could be invested in ways directly beneficial to all Minnesotans and be consistent with the investment standard of care set forth in statute for the board. The report shall assess the policy desirability of these increased investments. If the director concludes that such investments are desirable and can be accomplished consistent with the investment standard of care, he shall identify any statutory amendments needed to permit this increased investment. In preparing this report the director *shall consult with representatives of fund beneficiaries and other persons interested* in the investment of public moneys.

Sec. 25. Minnesota Statutes, 1979 Supplement, Section 15A.081, Subdivision 1, is amended to read:

15A.081 **SALARIES AND SALARY RANGES FOR CERTAIN EMPLOYEES.** Subdivision 1. The following salaries or salary ranges are provided for the below listed employees in the executive branch of government:

	Salary or Range	
	Effective July 1, 1979	Effective July 1, 1980
Administration, department of *commissioner*	$44,000	$47,000

Key: (1) ~~language to be deleted~~ (2) new language

1988, Regular Session

Laws of Minnesota 1988

CHAPTER 453-H.F.No. 1806

An act relating to state agencies; amending and repealing various statutes administered by the state board of investments; amending Minnesota Statutes 1986, sections 11A.17, subdivisions 1, 4, 9, 11, and 14; 11A.19, subdivision 4; and 352D.04, subdivision 1; Minnesota Statutes 1987 Supplement, sections 11A.24, subdivisions 4 and 6; 136.81, subdivision 3; and 353D.05, subdivision 2; repealing Minnesota Statutes 1986, section 11A.17, subdivisions 12 and 13.

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

Section 1. Minnesota Statutes 1986, section 11A.17, subdivision 1, is amended to read:

Subdivision 1. [~~ESTABLISHMENT~~ PURPOSE.] ~~There is hereby established a~~ The purpose of the supplemental investment fund ~~for the purpose of providing~~ is to provide an investment vehicle for the assets of various public retirement plans and funds. ~~This~~ The fund ~~shall consist~~ consists of ~~seven~~ six investment accounts: an income share account, a growth share account, ~~a bond account,~~ a money market account, a guaranteed return account, a bond market account, and a common stock index account. The supplemental investment fund ~~shall be~~ is a continuation of the supplemental retirement fund in existence on January 1, 1980.

Sec. 2. Minnesota Statutes 1986, section 11A.17, subdivision 4, is amended to read:

Subd. 4. [INVESTMENT.] The assets of the supplemental investment fund ~~shall~~ must be invested by the state board subject to ~~the provisions of~~ section 11A.24; provided, however, that:

(1) the bond market account and the ~~bond~~ money market account ~~shall~~ must be invested entirely in debt obligations~~,~~;

(2) the growth share account and the common stock index account may be invested entirely in corporate stocks; and

~~(2)~~ (3) the guaranteed return account may be invested entirely in guaranteed investment contracts~~; and~~

~~(3) the money market account shall be invested entirely in debt obligations maturing within three years~~.

Sec. 3. Minnesota Statutes 1986, section 11A.17, subdivision 9, is amended to read:

Subd. 9. [VALUATION OF INVESTMENT SHARES.] The value of investment shares in the income share account, the growth share account, the bond market account, and the common stock index

Anderson Aff. Exhibit B

~~state board will, in its judgment, be comparable to that available on similar mortgage loans at the date of the bonds or notes. The state board may also enter into agreements with the agency for the investment of any portion of the funds of the agency for such period, with such withdrawal privileges, and at such guaranteed rate of return, if any, as may be agreed between the state board and the agency;~~

~~(e)~~ (5) collateral for repurchase agreements and reverse repurchase agreements ~~shall be~~ is limited to letters of credit and securities authorized in this section;

~~(f)~~ (6) guaranteed investment contracts ~~shall be~~ are limited to those issued by insurance companies or banks rated in the top four quality categories by a nationally recognized rating agency;

~~(g)~~ (7) savings accounts ~~shall be~~ are limited to those fully insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(b) Sections 16A.58 and 16B.06 do not apply to certifications of deposit and collateralization agreements executed by the state board under paragraph (a), clause (2).

(c) In addition to investments authorized by paragraph (a), clause (4), the state board may purchase from the Minnesota housing finance agency all or any part of a pool of residential mortgages, not in default, that has previously been financed by the issuance of bonds or notes of the agency. The state board may also enter into a commitment with the agency, at the time of any issue of bonds or notes, to purchase at a specified future date, not exceeding 12 years from the date of the issue, the amount of mortgage loans then outstanding and not in default that have been made or purchased from the proceeds of the bonds or notes. The state board may charge reasonable fees for any such commitment and may agree to purchase the mortgage loans at a price sufficient to produce a yield to the state board comparable, in its judgment, to the yield available on similar mortgage loans at the date of the bonds or notes. The state board may also enter into agreements with the agency for the investment of any portion of the funds of the agency. The agreement must cover the period of the investment, withdrawal privileges, and any guaranteed rate of return.

Sec. 8. Minnesota Statutes 1987 Supplement, section 11A.24, subdivision 6, is amended to read:

Subd. 6. [OTHER INVESTMENTS.] (a) In addition to the investments authorized in subdivisions 1 to 5, and subject to the provisions in clause (b), the state board may invest funds in:

(1) Venture capital investment businesses through participation in limited partnerships and corporations;

(2) Real estate ownership interests or loans secured by mortgages or deeds of trust through investment in limited partnerships, bank sponsored collective funds, trusts, and insurance company commingled accounts, including separate accounts;

(3) Regional and mutual funds through bank sponsored

collective funds and open-end investment companies registered under the Federal Investment Company Act of 1940;

(4) Resource investments through limited partnerships, private placements and corporations; ~~and~~

(5) Debt obligations not subject to subdivision 3; and

(6) International securities.

(b) The investments authorized in clause (a) ~~may only be made if they~~ must conform to the following provisions:

(1) The aggregate value of all investments made according to clause (a) ~~shall~~ may not exceed 35 percent of the market value of the fund for which the state board is investing;

(2) There ~~shall~~ must be at least four unrelated owners of the investment other than the state board for investments made under paragraph (a), clause (1), (2), (3), or (4);

(3) State board participation in an investment vehicle ~~shall be~~ is limited to 20 percent thereof for investments made under paragraph (a), clause (1), (2), (3), or (4); and

(4) State board participation in a limited partnership does not include a general partnership interest or other interest involving general liability. The state board ~~shall~~ may not engage in any activity as a limited partner which creates general liability.

Sec. 9. Minnesota Statutes 1987 Supplement, section 136.81, subdivision 3, is amended to read:

Subd. 3. (a) Each person described in section 136.80, subdivision 1, may elect to purchase shares in one or a combination of the income share account, the growth share account, the money market account, the bond market account, the guaranteed return account, or the common stock index account established in section 11A.17. The person may elect to participate in one or more of the investment accounts in the fund by specifying, on a form provided by the executive director of the teachers retirement fund, the percentage of salary deductions and state matching funds to be used to purchase shares in each of the accounts.

(b) Twice in any calendar year, ~~each~~ a person described in section 136.80, subdivision 1, may indicate in writing on forms provided by the teachers retirement association a choice of options for subsequent purchases of shares. After a choice is made, and until a different written indication is made, the executive director shall purchase shares in the supplemental fund as selected. A change in choice of investment ~~option~~ options is effective ~~no later than the first pay date that occurs 30 or more days after~~ the first of the month following receipt of the request for a change.

(c) One month before the start of a new guaranteed investment contract, a person described in section 136.80, subdivision 1, may elect to transfer all or a portion of the participant's shares previously purchased in the income share, growth share, common stock index, bond market, or money market accounts to the new guaranteed investment contract in the guaranteed return account. If a partial transfer is made, a minimum of $1,000 must be transferred and a minimum balance of

Westlaw.

-- N.W.2d ---, 2012 WL 280384 (Minn.)
(Cite as: 2012 WL 280384 (Minn.))

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Only the Westlaw citation is currently available.

Supreme Court of Minnesota.
Steven EMERSON, Appellant,
v.
SCHOOL BOARD OF INDEPENDENT SCHOOL DISTRICT 199, Inver Grove Heights, Minnesota, Respondent.

No. A09-1134.
Feb. 1, 2012.

Background: School district employee sought review of decision of school district to terminate and not renew his contract without a hearing via a petition for writ of certiorari. The Court of Appeals, 782 N.W.2d 844, affirmed. Employee sought further review.

Holding: The Supreme Court, Christopher J. Dietzen, J., held that employee was not a "teacher" entitled to hearing under continuing-contract statute.

Affirmed.

Stras, J., dissented, with opinion, in which Page, J., joined.

West Headnotes

[1] Appeal and Error 30 ⚿893(1)

30 Appeal and Error
30XVI Review
30XVI(F) Trial De Novo
30k892 Trial De Novo
30k893 Cases Triable in Appellate Court
30k893(1) k. In General. Most Cited Cases

Statutory construction is a question of law that the Supreme Court reviews de novo.

[2] Statutes 361 ⚿188

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k187 Meaning of Language
361k188 k. In General. Most Cited Cases

In construing the language of a statute, the court gives words and phrases their plain and ordinary meaning.

[3] Statutes 361 ⚿176

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k176 k. Judicial Authority and Duty. Most Cited Cases

Statutes 361 ⚿190

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k187 Meaning of Language
361k190 k. Existence of Ambiguity. Most Cited Cases

If the language of a statute is clear and free from ambiguity, the court's role is to enforce the language of the statute.

[4] Statutes 361 ⚿190

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k187 Meaning of Language
361k190 k. Existence of Ambiguity. Most Cited Cases

A statute is unclear or ambiguous only if it is susceptible to more than one reasonable interpretation.

Anderson Aff.
Exhibit C

--- N.W.2d ----, 2012 WL 280384 (Minn.)
(Cite as: 2012 WL 280384 (Minn.))

[5] Schools 345 ⚿63(1)

345 Schools
345II Public Schools
345II(C) Government, Officers, and District Meetings
345k63 District and Other Local Officers
345k63(1) k. Appointment, Qualification, and Tenure. Most Cited Cases

Schools 345 ⚿133.6(6)

345 Schools
345II Public Schools
345II(K) Teachers
345II(K)1 In General
345k133.6 Permanent Tenure
345k133.6(6) k. Persons Entitled. Most Cited Cases

School activities director did not qualify as a "teacher" under the continuing-contract statute, which defined "teacher," in part, as "any other professional employee required to hold a license from the state department," and, thus, he was not entitled to a hearing before school district decided not to renew his contract, as a person in the position of activities director was not required by statute to hold a license from the Minnesota Department of Education (MDE), and, thus, was not a "professional employee required to hold a license from the state department." M.S.A. § 122A.40(1).

[6] Schools 345 ⚿133.6(6)

345 Schools
345II Public Schools
345II(K) Teachers
345II(K)1 In General
345k133.6 Permanent Tenure
345k133.6(6) k. Persons Entitled. Most Cited Cases

Pursuant to the continuing-contract statute, which defines "teacher," in part, as "any other professional employee required to hold a license from the state department," a professional employee is required to hold a license issued from the Minnesota Department of Education (MDE) to be deemed a "teacher" within the meaning of the statute. M.S.A. § 122A.40(1).

[7] Appeal and Error 30 ⚿762

30 Appeal and Error
30XII Briefs
30k762 k. Reply Briefs. Most Cited Cases

Supreme Court would not consider on school district employee's appeal of Court of Appeals' decision upholding school district's decision not to renew his contract the issue of whether he should be deemed a continuing-contract employee, such as would entitle him to a hearing before school district decided not to renew his contract, because while he was employed as school activities director he was performing job duties typically performed by a principal, as employee made this argument for the first time in his reply brief. M.S.A. § 122A.40.

Syllabus by the Court

***1** 1. Pursuant to Minn.Stat. § 122A.40, subd. 1 (2010), a professional employee is required to hold a license issued from the Minnesota Department of Education to be deemed a "teacher" within the meaning of the statute.

2. An activities director does not qualify as a "teacher" under Minn.Stat. § 122A.40, subd. 1, because a person in that position is not required by Minn.Stat. ch. 122A (2010) to hold a license from the Minnesota Department of Education, and therefore is not a "professional employee required to hold a license from the state department."

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--- N.W.2d ---, 2012 WL 280384 (Minn.)
(Cite as: 2012 WL 280384 (Minn.))

OPINION

DIETZEN, Justice.

Appellant Steven Emerson was employed by respondent Independent School District No. 199 (school district) in Inver Grove Heights, Minnesota, for 3 school years as the activities director, and then for 1 school year as interim middle school principal. Subsequently, the school district terminated Emerson's employment. Emerson filed a grievance on the ground that he was a continuing-contract employee and entitled to continuing-contract rights under Minn.Stat. § 122A.40 (2010). The school district denied the grievance and his subsequent grievance appeals. Emerson filed a petition for writ of certiorari with the court of appeals, which affirmed the decision of the school district. We affirm.

In March 2005 Emerson responded to a posting by the school district for the position of district activities director.[FN1] The posting stated, among other things, that "[c]andidates must hold a current Minnesota principal license or be in the process of obtaining administrative licensure." At the time of his application and during his employment with the school district, Emerson held a K–12 principal's license. At no time during Emerson's employment did the Minnesota Department of Education (MDE) require a person in the position of activities director to be licensed.

The school district employed Emerson as activities director for 3 school years, from the fall of 2005 to the spring of 2008. Subsequently, an opening occurred for the position of interim middle school principal for the 2008–09 school year, and the school district hired Emerson for that position. In April 2009, the school board voted to not renew Emerson's contract for the 2009–10 school year. The school board did not conduct a hearing or afford Emerson the rights of a continuing-contract employee.

Emerson filed a grievance, arguing that while he was employed as activities director he was a "teacher" within the meaning of section 122A.40, subdivision 1, the continuing-contract statute, and therefore had continuing-contract rights. The continuing-contract statute defines a "teacher" as "a principal, supervisor, and classroom teacher and any other professional employee required to hold a license from the state department." Minn.Stat. § 122A.40, subd. 1. The school board denied the grievance on the ground that Emerson was only a "teacher" when he was employed for 1 year as middle school principal, and therefore was still within the probationary period under Minn.Stat. § 122A.40, and could be terminated at the discretion of the school board.[FN2] Emerson filed the necessary grievance appeals, which were also denied by the school board. Emerson then filed a petition for writ of certiorari to the court of appeals.

*2 The court of appeals affirmed the decision of the school board that Emerson was not a continuing-contract employee, and therefore the decision to not renew his contract was not an error of law. *Emerson v. Sch. Bd. of Indep. Sch. Dist. 199*, 782 N.W.2d 844, 847 (Minn.App.2010). The court determined that a school district employee is not a "teacher" under the continuing-contract statute, Minn.Stat. § 122A.40, unless the MDE requires a license for the work performed by the employee. *Id.* The court reasoned that the statutory definition of a teacher "unambiguously hinges on state licensure requirements," and because the MDE does not require an activities director to be licensed, Emerson did not qualify as a "teacher" while he was employed as an activities director and was not entitled to the rights of a continuing-contract employee. *Id.* at 846–47. Subsequently, we granted review.

I.

The question we must decide is whether appellant Steven Emerson's employment by the school district as an activities director falls within the definition of a "teacher" under section 122A.40, subdivision 1, and therefore he is entitled to continuing-contract rights under the statute.

Emerson argues that he qualifies as a "professional employee" under section 122A.40, subdivision 1, because the school district required that he hold a license as a principal to be employed as activities director. The school district counters that whether an individual qualifies as a "teacher" under subdivision 1 depends solely on whether the MDE requires the individual to hold a license for one of the positions enumerated in the statute. Amici curiae Education Minnesota and the Minnesota School Boards Association also urge us to adopt the interpretation proposed by the school district. It is undisputed that an activities director is not required to be licensed by the MDE. It is also undisputed that the school district advertised that an applicant for activities director

must either hold a license as a principal, or be in the process of obtaining administrative licensure, in order to be hired to the position of activities director.

[1][2][3][4] Statutory construction is a question of law that we review de novo. *Premier Bank v. Becker Dev., LLC*, 785 N.W.2d 753, 758 (Minn.2010). The goal of all statutory construction is to effectuate the intent of the legislature. Minn.Stat. § 645.16 (2010). In construing the language of a statute, we give words and phrases their plain and ordinary meaning. Minn.Stat. § 645.08 (2010); *Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn.1999). Thus, if the language of a statute is clear and free from ambiguity, our role is to enforce the language of the statute. A statute is unclear or ambiguous only if it is susceptible to more than one reasonable interpretation. *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn.2000).

Minnesota Statutes § 122A.40, subd. 1, provides:

> A principal, supervisor, and classroom teacher and any other professional employee required to hold a license from the state department shall be deemed to be a "teacher" within the meaning of this section. A superintendent is a "teacher" only for purposes of subdivisions 3 and 19.[FN3]

*3 The court of appeals concluded that Emerson was hired by the school district as an activities director, that an activities director is not a "professional employee required to hold a license from the state department," and therefore Emerson was not a "teacher" within the meaning of the continuing-contract statute.

The crux of the dispute turns on the meaning of the statutory phrase "required to hold a license from the state department." It is undisputed that in subdivision 1 the "state department" means the MDE. *See* Minn.Stat. § 122A.40, subd. 1. The dispute centers on what the word "required" means, and what the word "required" modifies. Put differently, a professional employee is "required *by whom* " to be licensed.[FN4]

We conclude that the phrase "required to hold a license from the state department" in the statute is susceptible of two reasonable interpretations, and therefore is ambiguous. On the one hand, the broad interpretation proposed by Emerson that "required to hold a license" means required by any person or entity with authority to impose the obligation, including a school district as part of its hiring policy, is reasonable. On the other hand, the narrower interpretation proposed by the school district and amici Education Minnesota and Minnesota School Boards Association is also a reasonable interpretation of the statutory language. The school district and amici contend that the "license" in the statutory phrase "required to hold a license from the state department" is a license not only issued by the state department, but also *required by* the state department. This interpretation recognizes a connection between the authority that requires the license and the authority that issues the license. The Legislature could reasonably have presumed that since there is a logical connection between issuing a license and requiring a license, that the explicitly identified issuing entity ("from the state department") and the requiring entity were intended to be the same. In other words, the reference to the licensing agency (the state department) in section 122A.40 negated the need for a precursor reference to its licensing statute.[FN5] That this interpretation of the statutory language is reasonable is bolstered by two factors. First, the Legislature used similar "required to hold a license from" language in Minn.Stat. § 122A.06, subd. 2 (2010) ("*required to hold a license from* the Board of Teaching") (emphasis added), and in that context Emerson's proposed broader interpretation would make no sense. *See infra* pp. 14–15. Second, the school district's narrower interpretation has been consistently used by school districts and amici for decades.[FN6]

Because there are two reasonable interpretations, the statutory language is ambiguous. Consequently, we must resolve the ambiguity of whether the statutory phrase "required to hold a license" means "required [by the State licensing authority] to hold a license from the state department," or "required [by the school district] to hold a license from the state department," or both.

*4 When the language of a statute is unclear or ambiguous, we will go beyond the specific language of the statute to determine the intent of the legislature. Minn.Stat. § 645.16. The Legislature has set forth a nonexclusive list of factors we should consider to determine legislative intent. *Id.*

We believe that the most relevant factors in this case are: the purpose of the legislation, the occasion and necessity for the law, the mischief to be remedied, the object to be attained, and the consequences of the interpretations proposed by the parties. *See* Minn.Stat. § 645.16(1), (3), (4), (6).

Minnesota Statutes § 122A.40, which is popularly known as the continuing-contract statute, was enacted in 1937.[FN7] Act of Apr. 5, 1937, ch. 161, § 1, 1937 Minn. Laws 229, 229–30. The purpose of the continuing-contract statute was "to do away with the then existing chaotic conditions in respect to termination of teachers' contracts." *Downing v. Indep. Sch. Dist. No. 9*, 207 Minn. 292, 297, 291 N.W. 613, 615 (1940). Before enactment of the continuing contract statute, many teachers were left in a "state of uncertainty" as to whether their teaching contract would be renewed for the next school year. *Id.* To address this problem, the Legislature added statutory language that provided for automatic contract renewal unless the contract was terminated prior to April 1. 207 Minn. at 297, 291 N.W. at 616. Under the statute, if no termination of the contract occurred before April 1, the contract continued in "full force and effect." *Id.* Thus, the statute adopted a uniform standard—April 1—that was applicable to all school districts and teachers. In doing so, the Legislature enacted one unified system applicable to all school districts to avoid the chaotic conditions that resulted from individual determinations by individual school districts.

The school district's proposed interpretation that the licensure requirement to qualify for continuing-contract status must be imposed by the State licensing authority furthers the legislative purpose of having one unified system that is applicable to all school districts. Moreover, such an interpretation avoids the chaotic conditions that result in individualized determinations by hundreds of different school districts. Emerson's proposed interpretation is contrary to the legislative purpose of having one unified system applicable to all school districts.

Notably, the Legislature has promulgated one unified system for the licensing of all qualified teachers. Specifically, Minn.Stat. ch. 122A (2010), sets forth the procedure for principals, supervisors, and classroom teachers to be licensed. *See* Minn.Stat. § 122A.18, subd. 1 (providing that the Board of Teaching must license "teachers" as defined in section 122A.15, subdivision 1, and the Board of School Administrators must license "supervisory personnel" (including principals) as defined in section 122A.15, subdivision 2); Minn.Stat. § 122A.162 (providing that the Commissioner of Education sets the requirements for all other positions within the school system). More importantly, all licenses are issued through the MDE. Minn.Stat. § 122A.18, subd. 1(c). And the MDE has promulgated rules to provide for the licensing of specific positions. *See, e.g.*, Minn. R. 3512.0300, subps. 1, 3–5 (2011) (requiring any individual who serves as or performs the duties of a principal to hold a license); Minn. R. 8710.2000–.5800 (2011) (setting forth the licensure requirements for specific teaching positions). The professional employees required to hold a license from the MDE are enumerated in specific rules promulgated by the MDE pursuant to statute. *See, e.g.*, Minn. R. 8710.5900–.6400 (2011) (setting forth licensure requirements for "other school professionals," including school nurses, psychologists, and social workers).

***5** The broad interpretation proposed by Emerson, and embraced by the dissent, does not support the legislative purpose of one uniform standard for determining continuing-contract status applicable to all school districts. Rather, Emerson's interpretation will create a decentralized system in which hiring policies adopted by individual school districts, including licensure requirements not imposed by the State, as here, will result in hundreds of different continuing-contract standards. This potential for uncontrolled variations in positions through which a person can achieve continuing-contract status is magnified by the possible delegation of hiring standards from a school board to each school principal, or even a faculty-community committee.

Moreover, an individual school district's variation from state-imposed licensing requirements that make a position eligible for continuing-contract status may adversely affect other school districts as well. Specifically, section 122A.40, subdivision 5, provides that after the first 3 years of experience in a qualifying position in one school district, the probationary period in a subsequent school district is only 1 year. Thus, when a prior school district establishes its own standards that qualify for continuing-contract status, the subsequent-hiring school district may be required to grant continuing-contract status in only 1 year to a person who does not qualify by its own

standards. Consequently, a subsequent school district could easily determine that the uncertainty created by differing license standards for continuing contract rights among school districts renders it too risky to hire a "transferred" employee and determine within 1 year whether to grant that employee continuing-contract status. Significantly, the net result of the uncertainty created by differing standards is to adversely affect the transferability of state-licensed employees to subsequent school districts. The uncertainty of differing standards among school districts is the type of condition that the statute was intended to avoid.

In contrast, the school district's proposed interpretation, which recognizes a relationship between the authority that requires the license and the authority that issues the license, harmonizes the language of section 122A.40, subdivision 1—"license from the state department"—with the licensing statutes in sections 122A.15 and 122A.18. *See Schroedl*, 616 N.W.2d at 277 (interpreting each section of a statute in light of the surrounding sections "to avoid conflicting interpretations"). Pursuant to this interpretation, subdivision 1 limits the individuals included within the meaning of a teacher, and does not expand continuing-contract rights to all professional employees the school district may choose to employ. Notably, a school district may impose additional hiring qualifications for the position of activities director, but those additional qualifications are not required by either chapter 122A or an applicable rule promulgated by the MDE. A school district, however, does not have the legal authority under Minn.Stat. chapter 122A to issue a license to professional employees. *Cf. Bd. of Ed. of Minneapolis v. Sand*, 227 Minn. 202, 211, 34 N.W.2d 689, 695 (1948) (stating that a right to tenure cannot be created through representations by a school district when not authorized by statute).

*6 Additionally, the school district's proposed interpretation that recognizes a relationship between the authority that requires the license and the authority that issues the license is supported by other provisions in the continuing-contract statute that implicate state licensing requirements rather than district hiring standards. Section 122A.40, subdivision 3, provides that "[c]ontracts for teaching and supervision of teaching can be made only with qualified teachers." Minnesota Statutes § 122A.16(a) defines a qualified teacher as "one holding a valid license, under this chapter, to perform the particular service for which the teacher is employed in a public school." Thus, a contract recognized under the continuing-contract statute can only be with a qualified teacher, and the definition of qualified teacher requires a fit between the teaching position and the license required by the State licensing authority under chapter 122A, not a license required only by school district hiring policy. The relationship mandated in subdivision 3 between the license required by State law and the position for which the teacher is hired is consistent with the relationship between State licensure requirements and the teaching position inherent in the school board's interpretation of the language in subdivision 1.

Emerson's proposed interpretation of section 122A.40, subdivision 1, would lead to absurd results. As noted above, the Legislature used similar language in section 122A.06, subdivision 2, by defining teacher to mean "a classroom teacher or other similar professional employee *required to hold a license from* the Board of Teaching." Minn.Stat. § 122A.06, subd. 2 (emphasis added). This definition is "[f]or the purpose[s] of section[s] 122A.05 to 122A.09 ... unless another meaning is clearly indicated." *Id.*, subd. 1. Sections 122A.05 to 122A.09 establish and set out the licensing authority of the Board of Teaching. Applying Emerson's proposed interpretation of section 122A.40, subdivision 1, would lead to results that are absurd and unreasonable. Specifically, defining "teacher" to mean the hiring policies of each school board would make the provisions of sections 122A.05 to 122A.09 almost impossible to execute. For example, section 122A.09, subdivision 4(a), provides that "[t]he board must adopt rules to license public school teachers and interns." The broad interpretation proposed by Emerson would require the Board of Teaching to adopt rules to license any position for which a school board decided to impose a license requirement from the Board. Similarly, section 122A.09, subdivision 4(c), provides that the "board must adopt rules to approve teacher preparation programs." Emerson's interpretation of "required to hold a license" would put in the hands of each school district what position-preparation programs the Board would need to address. In summary, the consequence of Emerson's proposed interpretation of section 122A.40, subdivision 1, applied to section 122A.06, subdivision 2, is that any professional employee required by any entity, such as a school district, to hold a license from the Board of Teaching is a teacher, and therefore the scope of the Board's re-

sponsibilities would be governed by hundreds of individual school districts.

*7 Finally, we observe that the school board's proposed interpretation has been uniformly applied by school districts and teachers' unions for decades. Although this is not an administrative interpretation within the meaning of section 645.16(8), it is not insignificant that these parties operated under this interpretation since the statute was enacted. The consequence of Emerson's proposed interpretation would be to overturn an interpretation that is long-standing.

[5][6] We conclude that an activities director is not a professional employee "required to hold a license from the state department" and therefore is not a "teacher" within the meaning of the continuing-contract statute. Emerson's proposed interpretation that one entity may require the license (school district) and another entity may issue it is sufficiently reasonable to indicate ambiguity in the language. But the more logical interpretation of the language is to recognize a relationship between the entity that "issues" the license and the entity that "requires" the employee to hold a license. It logically follows that the "required to hold a license" language means a professional employee required by the state licensing authority in chapter 122A to hold a license from the MDE. Our interpretation furthers the legislative purpose of the statute to adopt one unified system applicable to all school districts and avoids the chaotic situations that would result from individualized determinations by hundreds of school districts. Moreover, our interpretation is consistent with the licensing procedures of the MDE, and with related statutes in chapter 122A. Accordingly, we hold that Emerson was not a "professional employee required to hold a license from the state department," and therefore is not a "teacher" under section 122A.40. Minn.Stat. § 122A.40, subd. 1.

II.

[7] Appellant also argues that he should be deemed a continuing-contract employee because "while employed in the Activities Director position [appellant] was performing job duties typically performed by a principal." But appellant makes this argument for the first time in his reply brief to this court. We acknowledge that in his initial brief appellant made a one-sentence reference to his duties as activities director, stating that many of his duties were consistent with employment as a principal. But appellant made no argument in that brief that he should have been considered a "principal" for purposes of section 122A.40 based on those duties. Similarly, in his brief to the court of appeals, appellant referenced his job responsibilities, but did not explicitly argue that those job responsibilities made the activities director position a "principal" position under the statute.

Previously, we have held that we will not address issues raised for the first time on appeal, particularly when the issue is raised in a reply brief. *See George v. Estate of Baker*, 724 N.W.2d 1, 7 (Minn.2006) (citations omitted). Accordingly, appellant's argument based on his job duties as activities director is not properly before the court, and we decline to address it.

*8 Affirmed.

ANDERSON, PAUL H., J., took no part in the consideration or decision of this case.

DISSENTSTRAS, Justice (dissenting).

The question presented by this case is whether Steven Emerson, who was an employee of Independent School District No. 199 ("ISD–199") for 4 years, was a teacher entitled to the procedural protections granted by statute to continuing-contract employees. The answer to that question turns on the plain and unambiguous language of Minn.Stat. § 122A.40, subd. 1 (2010), which defines the class of "teacher[s]" who are eligible for continuing-contract rights. Here, Emerson is entitled to continuing-contract rights because, under the plain language of subdivision 1, Emerson was a "professional employee required to hold a license from the [Minnesota Department of Education]." Minn.Stat. § 122A.40, subd. 1. Only by adding words to the unambiguous language in subdivision 1 does the court conclude otherwise. Because the court's interpretation of subdivision 1 is inconsistent with the statute's plain language, I respectfully dissent.

I.

Minnesota Statutes § 122A.40 provides rules for the hiring and firing of Minnesota "teacher[s]" employed by school districts that are not located in "first-class" cities.[FN1] Minn.Stat. § 122A.40 (2010). For "probationary" employees, a school board gener-

ally has discretion about whether to renew a teacher's annual contract as the board "see[s] fit." Minn.Stat. § 122A.40, subd. 5(a). A teacher who has completed his or her probationary period, however, is entitled to certain procedural protections, including written notice and a possible hearing, prior to termination of his or her contract. *Id.*, subd. 7. Typically, "[t]he first three consecutive years of a teacher's first teaching experience in Minnesota in a single district is deemed to be a probationary period of employment." *Id.*, subd. 5(a). But for a teacher who has completed a probationary period in another Minnesota school district, "the probationary period in each district in which the teacher is thereafter employed shall be one year." *Id.*

ISD–199 concedes that Emerson completed a probationary period with another Minnesota school district prior to beginning his employment with ISD–199. Emerson worked at ISD–199 for 3 years as its District Director of Activities ("activities director") and one year as an interim middle school principal. Emerson argues that, because the activities director position falls within the definition of "teacher" in Minn.Stat. § 122A.40, subd. 1, he was entitled to the procedural protections granted to employees who have attained continuing-contract rights, including the right to a hearing before ISD–199 discharged him.[FN2]

Whether Emerson satisfied the statutory definition of "teacher" is a question of law that is subject to de novo review. *See Larson v. State*, 790 N.W.2d 700, 703 (Minn.2010). In interpreting statutes, we "give words and phrases their plain and ordinary meaning." *Premier Bank v. Becker Dev., LLC*, 785 N.W.2d 753, 759 (Minn.2010) (citing Minn.Stat. § 645.08 (2010)). If a statute is unambiguous on its face, then we look no further than the statute's plain language to determine its meaning. *See Hutchinson Tech., Inc. v. Comm'r of Revenue*, 698 N.W.2d 1, 8 (Minn.2005) (citations omitted).

*9 Minnesota Statutes § 122A.40, subd. 1, states in relevant part: "A principal, supervisor, and classroom teacher and any other professional employee required to hold a license from the state department shall be deemed to be a 'teacher' within the meaning of this section." To qualify as a "teacher" eligible for continuing-contract rights under subdivision 1, a school employee must be a principal, supervisor, classroom teacher, or other professional employee. Minn.Stat. § 122A.40, subd. 1. If the employee is a professional employee, then he or she must be "required to hold a license from the state department." *Id.* As the court correctly notes, the "state department" refers to the Minnesota Department of Education ("MDE").

Emerson was a "professional employee," and neither the court nor ISD–199 assert otherwise. A professional is someone "engaged in ... an occupation requiring a high level of training and proficiency." *Webster's Third International Dictionary of the English Language Unabridged* 1811 (2002). ISD–199's job description for activities director stated that Emerson was "responsible for the overall operation of K–12 co-curricular programs of ISD–199." Emerson's job responsibilities included planning and implementing programs for ISD–199; supervising, evaluating, and recruiting coaches and counselors throughout ISD–199; developing and maintaining the activities budget for ISD–199; and reporting directly to the superintendent of ISD–199. The qualifications required for the position emphasized supervisory and leadership experience in school settings. Given the job requirements and correspondingly high level of responsibility for the position of activities director, Emerson's position qualifies as "an occupation requiring a high level of training and proficiency." Therefore, Emerson was a "professional employee" under Minn.Stat. § 122A.40, subd. 1.

The dispute in this case is whether Emerson was "required to hold a license from the state department." It is undisputed that Emerson held three licenses during his employment with ISD–199: a K–12 principal's license, a license to teach English and language arts, and a coaching license. The MDE issued each of Emerson's licenses. Even so, the parties dispute whether Emerson was "*required* to hold a license from the" MDE as activities director for ISD–199. Minn.Stat. § 122A.40, subd. 1 (emphasis added).

The question presented, therefore, is what it means to "require" a license from the MDE. In this context, the meaning of the word "require" is "to demand as necessary or essential." *Webster's Third International Dictionary of the English Language Unabridged* 1929 (2002); *see also The American Heritage Dictionary of the English Language* 1482

(4th ed.2009) (defining "require" as "[t]o call for as obligatory or appropriate; demand"). Implicit in the definition of the word "require" is that the person, entity, or other body making the demand must have the authority to deem something necessary and essential. In other words, a particular qualification or characteristic cannot be "required" unless the entity imposing the obligation has the authority to do so.

*10 In this case, a variety of entities and bodies had the authority to require Emerson to hold a license *from* the MDE. The Minnesota Legislature has the power to enact statutes requiring licensure, as it has done here for professional employees. By statute, the Board of Teaching "must adopt rules to license public school teachers," Minn.Stat. § 122A.09, subd. 4(a) (2010), and the Board of School Administrators must "license school administrators," Minn.Stat. § 122A.14, subd. 1 (2010). For those positions "not licensed by the Board of Teaching or Board of School Administrators," the MDE "may make rules relating to the licensure of school personnel." Minn.Stat. § 122A.162 (2010). In addition, the school district that hires a professional employee and sets the minimum job requirements for the position also has the authority to "require[ ] a license from the" MDE. After all, it is unquestionably the prerogative of the school district to refuse to hire any employee who does not meet a position's minimum qualifications, as communicated by the school district through its job announcements and position listings.

ISD–199's job announcement stated the following requirement for its activities director position: "Candidates *must* hold a current Minnesota principal license or be in the process of obtaining administrative licensure." (Emphasis added). The position description also required a principal's license for the activities director.[FN3] As the hiring entity, and unlike certain other groups in the school district, such as a parent teacher association or a student group, there can be no serious argument that ISD–199 lacked the authority to "require [ ]" Emerson to hold a particular license or qualification. ISD–199 made the ultimate hiring decision with respect to the activities director position, and as a result, had the authority to reject candidates who did not meet certain qualifications, such as having a K–12 principal's license. Accordingly, Emerson was eligible for continuing-contract rights under section 122A.40 because he was a "professional employee required to hold a license from the state department."

II.

The court apparently agrees that ISD–199 had the authority to require Emerson, as a professional employee, to "hold a license from the" MDE. Despite ISD–199's unquestioned authority to "require" Emerson "to hold a license from the state department," the court argues that subdivision 1 imposes an additional requirement: the MDE, the Board of Teaching, or the Board of School Administrators must require a professional employee to hold a license from the MDE. The flaw in the court's approach, however, is that subdivision 1 does not hint, much less contain, any language that supports the court's interpretation. Indeed, the plain language of subdivision 1 does not explicitly limit the entities that may require a professional employee to hold a license from the MDE.

Instead of interpreting the statute as written, the court finds an ambiguity through legislative silence and then proceeds to add words to the statute to support its unnatural reading of subdivision 1. In the court's view, the Legislature *really meant* to enact the following statute: "[a] principal, supervisor, and classroom teacher and any other professional employee required *by the State licensing authority* to hold a license from the state department shall be deemed to be a 'teacher' within the meaning of this section ." But that is not the statute the Legislature enacted, and the court's strained approach to statutory interpretation finds no support in our case law or in the canons of statutory construction.

*11 First, this court has never found an ambiguity through legislative silence because a statute does not contain a sufficiently comprehensive definition of a term. As we have repeatedly stated, courts may not add words to a statute "that are purposely omitted or inadvertently overlooked" by the Legislature. *Premier Bank* 785 N.W.2d at 760 (citing *Genin v.1996 Mercury Marquis*, 622 N.W.2d 114, 117 (Minn.2001)). I can find only two cases in which this court has found an ambiguity through legislative silence: in *Burkstrand v. Burkstrand*, 632 N.W.2d 206 (Minn.2001), and *MBNA America Bank, N.A. v. Commissioner of Revenue*, 694 N.W.2d 778 (Minn.2005), the statutes at issue set forth a specific procedural requirement, but then failed to provide a remedy for violation of the requirement.[FN4] Given that subdivision 1 merely defines the term "teacher,"

the court does not contend—nor could it—that subdivision 1 contains a procedural requirement or is silent regarding a remedy for violation of such a procedural requirement. *See* MBNA Am. Bank, 694 N.W.2d at 782; *Burkstrand*, 632 N.W.2d at 210; *see also Beardsley v. Garcia*, 753 N.W.2d 735, 738–39 (Minn.2008) (discussing *MBNA America Bank* and *Burkstrand*, and rejecting, "especially," the suggestion that silence in the statute at issue created an ambiguity). Therefore, the court's conclusion that subdivision 1 is ambiguous is contrary to our longstanding rule that we may not add words to a statute that "are purposely omitted or inadvertently overlooked" by the Legislature. *Premier Bank*, 784 N.W.2d at 760.

Second, the court is simply wrong that subdivision 1 is ambiguous. In concluding that subdivision 1 is ambiguous through legislative silence, the court fails to point to any ambiguity in the express language of the statute. Instead, the court concludes that subdivision 1 is ambiguous because ISD–199's interpretation "recognizes a connection between the authority that requires the license and the authority that issues the license," and because this interpretation "has been consistently used by school districts and amici for decades." The court apparently concludes, therefore, that the mere mention of the MDE in the text of subdivision 1 means that the MDE is the only entity that may "require" a professional employee to hold a license. The flaw in the court's alternative interpretation of subdivision 1, however, is that it is flatly inconsistent with the plain language of the statute.

The fact that subdivision 1 explicitly references the MDE tells us only that Emerson must be required to hold a license "*from* " the MDE—a fact compelled by the text of the statute and not disputed by anyone—not that Emerson must be required to hold a license *by* the MDE. To find an ambiguity, the court must therefore alter the text of subdivision 1 as follows: "any other professional employee required [by the State licensing authority] to hold a license from the state department." That alternative interpretation is unreasonable, however, because the statute does not include the bracketed phrase added to the statute by the court: "by the State licensing authority." It is axiomatic that a court may not create a statutory ambiguity by changing the plain text of an otherwise unambiguous statute. To hold otherwise would mean that we could deem any statute ambiguous once we conceive of alternative language that the Legislature could have included in the statute. *See* Laase v.2007 Chevrolet Tahoe, 776 N.W.2d 431, 438 (Minn.2009) (stating that this court "cannot rewrite a statute under the guise of statutory interpretation" by substituting words in the statute (citation omitted)); *Beardsley*, 753 N.W.2d at 740 (rejecting an invitation to rewrite the text of a statute in order to find ambiguity because "[t]he prerogative of amending a statute in such a fashion belongs to the legislature, not to this court").

***12** Third, the court contravenes case law by using extrinsic evidence to conclude that subdivision 1 is ambiguous. Specifically, the court relies on the fact that its alternative interpretation is consistent with "decades" of interpretation and practice by school districts. Even aside from the fact that there is no evidence in the record to suggest that school districts have consistently interpreted subdivision 1 to mean that only the licensing authorities may require a professional employee to hold a license, we have repeatedly held that it is improper to resort to extrinsic evidence to find a statutory ambiguity. *In re Welfare of R.S.*, 805 N.W.2d 44, 52 (Minn.2011) ("[E]xtrinsic evidence can be used only to resolve existing statutory ambiguity; it cannot be used to create ambiguity where none exists."); *Reiter v. Kiffmeyer*, 721 N.W.2d 908, 911 (Minn.2006) ("[U]se of extrinsic aids to determine legislative intent where there is no ambiguity in the express language of the statute would be unnecessary and improper."). Here, the court improperly bootstraps extrinsic, historical evidence of custom and practice into its finding of ambiguity, and then relies on that same extrinsic evidence to conclude that its alternative interpretation of the statute is the more reasonable one. Such an analysis deviates from our traditional approach to statutory interpretation.

In sum, the court's opinion represents a radical departure from traditional methods of statutory interpretation. The court finds an ambiguity through legislative silence in a novel circumstance, the court adds words to a statute to create an alternative interpretation of an otherwise unambiguous statute, and the court resorts to extrinsic evidence to support its conclusion that the statute is ambiguous. In my view, the court concludes that subdivision 1 is ambiguous by creating a false dichotomy: either (1) the Legislature intended to include the phrase "required by [*the*

school district] to hold a license"; or (2) the Legislature intended to include the phrase "required by [*the State licensing authority*] to hold a license." But the court apparently overlooks a third alternative: the statute means exactly what it says and the Legislature failed to include any language qualifying who or what may require a school employee to hold a license from the MDE.[FN5] I would adopt that third interpretation, which gives effect to the plain and unambiguous language of subdivision 1 without adding words to the statute or otherwise modifying the statutory text.

III.

In this case, the statute at issue requires Emerson to show: (1) that he is a "professional employee"; and (2) that he was required to hold a license issued from the MDE. Minn.Stat. § 122A.40, subd. 1. By satisfying both statutory requirements, Emerson is entitled to continuing-contract rights. Accordingly, I would reverse the decision of the court of appeals and remand this case to the school board of ISD–199 for further proceedings consistent with this opinion.

PAGE, J. (dissenting).

***13** I join in the dissent of Justice Stras.

FN1. This position is referred to in the record as "District Director of Activities," "Activities Director," and "District Activities Director." For consistency, we will refer to this position as "activities director."

FN2. Pursuant to section 122A.40, when a teacher has completed either a 3–year probationary period, or a 1–year probationary period if the teacher has already achieved continuing-contract status in another district, the teacher may only be dismissed for reasons provided within the statute. Minn.Stat. § 122A.40, subds. 5, 7. Moreover, the teacher is allowed certain procedural protections, including a hearing before the school board or an arbitrator. Minn.Stat. § 122A.40, subds. 14, 15.

There is a discrepancy over whether Emerson was required to complete 3 years as a probationary teacher or whether he had already attained continuing-contract status in another district and thus was only required to complete 1 year as a probationary teacher. The court of appeals stated that Emerson "did not complete three probationary 'teacher' years." *Emerson*, 782 N.W.2d at 847. The school district, however, does not deny that Emerson had already attained continuing-contract status in another district, and therefore he needed to complete only 1 year of probationary teaching. Emerson does not address this question, but the answer does not affect our analysis because Emerson was employed by the school district for a total of 4 years, encompassing either period in which to establish continuing-contract status under the statute.

FN3. It is important to note that section 122A.40 only applies to school districts in cities that are not "first-class." Minn.Stat. § 122A.40, subd. 18. A first-class city is one having "more than 100,000 inhabitants." Minn.Stat. § 410.01 (2010). Inver Grove Heights is not a city of the first class.

FN4. Emerson argues that the "required to hold a license" language in section 122A.40, subdivision 1, modifies "other professional employee" and does not modify the other positions specified in the statute, namely the positions of "principal," "supervisor," and "classroom teacher." Emerson cites the grammatical rule of the "last antecedent" that a limiting clause or phrase modifies only the noun or phrase it immediately follows to support his argument. *See Barnhart v. Thomas*, 540 U.S. 20, 26–27, 124 S.Ct. 376, 157 L.Ed.2d 333 (2003); *see also Woodhall v. State*, 738 N.W.2d 357, 361–62 (Minn.2007) (construing statutory language by using the rule of the last antecedent as a "rule of grammar" in conjunction with the "clear language of the statute"). To the extent that Emerson suggests that a "principal," "supervisor," or "classroom teacher" is not required to hold a license to qualify as a teacher under the statute, the argument lacks merit.

In subdivision 1, the Legislature identified two groups of employees: (1) "principal[s], supervisor[s], and classroom teacher[s]," and (2) "any other profes-

sional employee[s] required to hold a license from the state department." Minn.Stat. § 122A.40, subd. 1. Specifically, it makes sense that the Legislature did not attach the "required to hold a license from the state department" language to the first group, because every principal, supervisor, or classroom teacher is required by law to hold a license from the department. *See* Minn.Stat. §§ 122A.15, subd. 1, 122A.18, subd. 1. The "required to hold a license" language would have been superfluous if applied to principals, supervisors, and classroom teachers. In contrast, the second category, "other professional employee," includes some positions for which a license is required from the department and others for which no license is required.

More importantly, Emerson's argument is a nonsequitur. Simply stated, Emerson's conclusion that "required to hold a license from the state department" modifies "professional employee" does not resolve the primary dispute between the parties over the meaning of a "professional employee required to hold a license from the state department."

FN5. The dissent contends that we depart from established methods of statutory interpretation by finding ambiguity in legislative silence and by adding words to the statute. We do not agree that the narrower interpretation is based on silence, in the sense that silence has been addressed in previous cases. Nor do we add words to the statute. Rather, the interpretation draws a logical inference from words that do appear in the statute: the answer to the question "required by whom" is provided by a logical inference from the reference in the following clause to the issuer of the license, the state department. Moreover, even if this were an example of legislative silence, our approach to interpretation is not as rigid as portrayed by the dissent. We have explained:

[S]ilence in a statute regarding a particular topic does not render the statute unclear or ambiguous unless the statute is susceptible of more than one reasonable interpretation. Put differently, we must resolve whether the statutory construction issue here involves a failure of expression or an ambiguity of expression. If the legislature fails to address a particular topic, our rules of construction forbid adding words or meaning to a statute that are purposely omitted or inadvertently overlooked. But if the silence causes an ambiguity of expression resulting in more than one reasonable interpretation of the statute, then we may go outside the language of the statute to determine legislative intent.

Premier Bank, 785 N.W.2d at 760 (citations omitted) (internal quotations omitted). To the extent that the statute at issue here is silent, that silence causes an ambiguity of expression that results in two reasonable interpretations of the language. The examples cited by the dissent of statutes in which the Legislature has made express cross-reference to another statute are unhelpful because none have a subsequent clause that makes specific reference to a state licensing agency and, implicitly, its licensing authority.

FN6. The dissent also contends that reference to this long-standing practical application of the statute is an improper reference to extrinsic evidence to create ambiguity. In assessing whether an interpretation of statutory language is reasonable, it is not improper to note that the regulated parties have used that interpretation for decades. *Cf. Mattson v. Flynn*, 216 Minn. 354, 358, 13 N.W.2d 11, 14 (1944) ("A member of the present attorney general's staff has written an opinion in conflict with those of his predecessors in office. The fact that able lawyers, after careful study of the provisions of the statute, have taken opposite views as to its meaning supports the conclusion that the language itself does not explicitly convey the intention of the legislature and that construction is necessary.").

FN7. In 1937, the continuing-contract stat-

ute was codified at Mason's Minn.Stat. § 2903 (Supp.1940). Subsequently, it was renumbered as Minn.Stat. § 130.18 (1957); Minn.Stat. § 125.12 (1996); and Minn.Stat. § 122A.40 (2010).

FN1. A "first-class" city has more than 100,000 inhabitants. Minn.Stat. § 410.01 (2010). Inver Grove Heights is not a "first-class" city.

FN2. Neither party disputes that Emerson was a "teacher" within the meaning of section 122A.40, subdivision 1, when he worked as an interim middle school principal during the 2008–09 school year. Nonetheless, Emerson's single year as a principal was insufficient, by itself, to confer continuing-contract rights because ISD–199 informed Emerson in April 2009 that it did not intend to renew his contract for an additional year. Minn.Stat. § 122A.40, subd. 5(a) (Supp.2011) (allowing the school board to decline to renew a teacher's contract during his or her probationary period, so long as it provides written notice of that decision before June 1). Accordingly, to attain continuing-contract rights under Minn.Stat. § 122A.40, Emerson must show that he was a "professional employee required to hold a license from the state department" in any or all of the 3 years he served as activities director. *Id.*, subd. 1.

FN3. The position description for activities director stated in relevant part: "*Must* hold a principal licensure or be in the process of obtaining licensure which must be completed within 24 months from the date of employment." (Emphasis added). Even assuming, as ISD–199 argues, that the position required only that the activities director obtain a principal's license within 24 months of hiring, rather than immediately, Emerson would still be eligible for continuing-contract rights because of his 2 years of continuous service with the school district following that 24–month period. In other words, even if ISD–199 is correct that a principal's license was not strictly required for the first 2 years of Emerson's employment as activities director, he would still have met the statutory definition of "teacher" during his third year as activities director and first year as interim principal because licensure was required for both years. Those 2 years of service would exceed the 1–year probationary period required for continuing-contract rights under Minn.Stat. § 122A.40, subd. 5(a). *See supra* note 2.

FN4. In *Burkstrand*, the statute at issue was silent regarding the consequences of the district court's failure to hold a hearing within 7 days after issuing an order of protection, as required by Minn.Stat. § 518B.01, subd. 7(c) (2000). 632 N.W.2d at 208–10. Because section 518.01, subdivision 7(c), was silent about the "consequences" of a district court's noncompliance with the statute's requirements, we concluded that the statute was ambiguous. *See Burkstrand*, 632 N.W.2d at 210. Similarly, in *MBNA America Bank*, we declared a statute ambiguous when it required the Commissioner of Revenue to provide certain information in assessment notices mailed to taxpayers, but provided no remedy for the Commissioner's noncompliance with that procedural requirement. *See* 694 N.W.2d at 779–82.

FN5. Section 122A.40 does not hint, much less provide, a limitation on who may require a teacher to obtain a license from the MDE. Notably, in a number of other statutes, the Legislature has explicitly cross-referenced a certain chapter or statutory provision when it intends to limit or delineate the scope of a particular statutory requirement. *See* Minn.Stat. § 60A.08, subd. 12 (2010) (stating that commercial automobile policies "must provide coverage for rented vehicles *as required in Chapter 65B* " (emphasis added)); Minn.Stat. § 62E.06, subd. 4 (2010) (describing that a health maintenance organization is a number three qualified plan if it provides services "*required by Chapter 62D* " (emphasis added)); Minn.Stat. § 79.34, subd. 5 (2010) (referring to insurance "*required by chapter 176* " (emphasis added)); Minn.Stat. § 116.073, subd. 1(a)(3)

(2010) (explaining Pollution Control Agency staff and Department of Natural Resources Conservation officers can issue citations to a person who "fails to take discharge preventive or preparedness measures *required under chapter 115E* " (emphasis added)). And in statutes relating to education, the Legislature also has been explicit when it intends to incorporate the requirements of a particular chapter or statute in delineating the obligations imposed by another statute. *See* Minn.Stat. § 123A.79 (2010) (establishing a "joint powers board" for districts and stating that notice of regular and special meetings must be given "*as required under Chapter 13D* " (emphasis added)); Minn.Stat. § 126C.63, subd. 4 (2010) (defining a "[d]ebt service fund" as aggregate of funds maintained by school districts for paying off principal and interest "*as required by Chapter 475* " (emphasis added)). The fact that the Legislature has not similarly limited the scope of subdivision 1 by including an explicit cross-reference to statutes discussing the duties of the state licensing authorities undermines the court's interpretation of the statute.

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