



Senate Counsel, Research, and Fiscal Analysis
State of Minnesota

Executive Appointment and Confirmation Process in the Senate

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Making an Appointment

The confirmation process for executive appointments begins when an appointing authority submits an appointment to the Senate.¹ This must be done in accordance with Minnesota Statutes, section 15.066, subdivision 2, which requires that a letter of appointment be presented to the president of the Senate, that the Senate be provided a copy of the appointee's application (for appointments subject to the open appointments program), and that notice be provided to the Campaign Finance and Public Disclosure Board (for appointments requiring the filing of a statement of economic interest). For the Senate's part, the Engrossing Secretary verifies receipt of these required documents and tracks appointees through the confirmation process. Once this statutory procedure for submission is complete and the effective date in the appointment letter is reached, the appointment becomes effective, and the appointee may begin serving. Notably, the Minnesota Supreme Court has held that at this point – that is, when the appointing authority has completed his or her part in the appointment process – the appointment is beyond the appointing authority's ability to rescind or recall, and the matter is in the hands of the Senate.² With that said, it is important to keep in mind that an appointee begins serving once the appointment is effective, which means that the confirmation process in the Senate is *not* one of granting a nominee permission to take office. In fact, an appointee might serve out his or her entire term without confirmation by the Senate.

Appointments in Committee

Under Senate Rule 8.1, when an appointment has been submitted to the Senate, it must be referred to the appropriate committee. The committee to which an appointment has been referred may choose to act on the appointment and send it back to the full Senate with a recommendation to confirm the appointment, with a recommendation not to confirm the appointment, or without any recommendation at all. None of these actions stand in for the place of the full body, and regardless of the committee's action, the appointee continues to serve. Alternatively, a committee that has been referred an appointment might also choose not to act on it. Once again, since the full body will not have acted in this instance, the appointee would continue to serve. However, Senate Rule 8.2 provides that if a committee has not reported back to the Senate an appointment referred to it within 60 legislative days, the appointment is withdrawn from committee and placed on the confirmation calendar.³ At this point, the appointment awaits further action by the full body, though a member could make a motion to re-refer the appointment back to committee. In sum, the committee process opens up a variety of options for hearing and acting (or not) on appointments, but none has any effect on the ability of those appointees to continue serving.

¹ For almost all appointments subject to advice and consent of the Senate, this authority is the governor. The only exception is the Gambling Control Board, to which the Commissioner of Public Safety and the Attorney General each appoint one member.

² *State Ex Rel. John J. Todd v. William W. Essling*, 128 N.W.2d 307 (Minn. 1964).

³ Rule 8.2 does not apply to appointees whose terms have expired or who are no longer serving.

Appointments on the Floor

Options before the full Senate are somewhat more limited. The confirmation calendar may or may not be taken up. Individuals or slates on the confirmation calendar may or may not be taken up (or particular individuals divided out of slates). But once an appointment is taken up, the final question before the body under Senate Rule 8.3 is, “Will the Senate, having given its advice, now consent to this appointment?”⁴ If the motion prevails, the appointment is confirmed; if the motion does not prevail, the appointment is not confirmed, and the appointee can no longer continue in office. Only at this stage does the Senate’s action affect the ability of an appointee to serve.

Special Cases and Considerations

In two cases, the Senate’s sole authority to confirm or reject appointments is compromised somewhat by statute and shared with the House of Representatives. In the first case, members of the MNsure Board are subject to the advice and consent of the Senate and House acting separately, with appointments to the Board only terminating the day following the second body’s rejection (Minnesota Statutes, section 62V.04, subdivision 2). In practice, this means a vote by either body to consent to the appointments renders the consent of the other body effectively irrelevant. The other case is for members of the Campaign Finance and Public Disclosure Board, who face a variety of higher statutory obstacles on their paths to confirmation. As with other appointees, CFPDB members begin serving upon appointment, and like MNsure Board members, their appointments are submitted to both bodies. However, the vote in each chamber must be by a 3/5 majority (rather than the simple majority required for other confirmations), and each body must act within 45 legislative days. Rejection by either body or failure of either body to act within the allotted time or by adjournment *sine die* results in termination of the appointment. So, in a reversal of the MNsure situation, one body’s *rejection* (rather than consent) renders the consent of the other body effectively irrelevant. Further, the statutory deadline for legislative action prevents an appointee to the CFPDB from serving out a full term without confirmation (Minnesota Statutes, section 10A.02, subdivision 1).

Except for the CFPDB, failure to act on an appointment before adjournment *sine die* does not preclude the Senate from acting on appointees with unexpired terms in the future. While Mason’s section 445.3 provides that “A motion to adjourn *sine die* has the effect of closing the session and terminating all unfinished business before the house,” with respect to appointments, this only has the effect of ending the progress of unconfirmed appointees through the Senate confirmation process. Appointments for unexpired terms are resubmitted to the Senate upon its reorganization in the new year and are referred to their appropriate committees to begin the process anew, regardless of previous committee action or placement on the confirmation calendar.

⁴ For an appointment with an unfavorable recommendation, a committee chair might take this chance to encourage a vote of “no” on the question.

Finally, while most appointments terminate on a fixed date, the appointments of commissioners terminate either with the end of a governor's term or upon a vacancy in the office of governor. In either case, the governor must appoint a permanent commissioner, subject to the advice and consent of the Senate, within 45 legislative days. In the period before a permanent commissioner is appointed, the governor may appoint a temporary or acting commissioner who is not subject to the advice and consent of the Senate. However, permanent commissioners who are held over from one governor's administration to another, or even from one term to another in the same administration, are still subject to the submission requirement and to the Senate confirmation process, regardless of whether they have been confirmed previously by the Senate.