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# State of Minnesota

## HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. **1831**

01/24/2012 Authored by Wardlow, Drazkowski, Lohmer, Hancock, Scott and others

The bill was read for the first time and referred to the Committee on Government Operations and Elections

1.1 A bill for an act  
1.2 relating to state government; providing for legislative review of certain rules;  
1.3 providing for sunset and legislative approval of existing rules; proposing coding  
1.4 for new law as Minnesota Statutes, chapter 14A.

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

1.6 Section 1. **[14A.01] DEFINITIONS.**

1.7 Subdivision 1. **Applicability.** The definitions in this section apply to this chapter.

1.8 Subd. 2. **Agency.** "Agency" means an agency as the term is defined in section  
1.9 14.02, except that it does not include agencies directly within the legislative or judicial  
1.10 branches, the Department of Military Affairs, the Office of Administrative Hearings, or  
1.11 the Tax Court.

1.12 Subd. 3. **Rule.** "Rule" means a rule as the term is defined in section 14.02, except  
1.13 that the term does not include:

1.14 (1) a rule pertaining solely to internal agency organization, procedure, or practice that  
1.15 does not directly or substantially affect the rights or obligations of nonagency parties; or

1.16 (2) a rule promulgated or otherwise decreed pursuant to the emergency powers in  
1.17 sections 12.31 to 12.37.

1.18 Subd. 4. **Major rule.** "Major rule" means a rule that the agency promulgating the  
1.19 rule, after consulting with the commissioner of employment and economic development,  
1.20 finds has resulted in or is likely to result in:

1.21 (1) an adverse effect or impact on the private-sector economy of the state of  
1.22 Minnesota of \$2,000,000 or more in a single year;

(2) a significant increase in costs or prices for consumers, individual private-sector industries, state agencies, local governments, individuals, or private-sector enterprises within certain geographic regions inside the state of Minnesota; or

(3) significant adverse impacts on the competitiveness of private-sector Minnesota-based enterprises, or on private-sector employment, investment, productivity, or innovation within the state of Minnesota.

Subd. 5. **Nonmajor rule.** "Nonmajor rule" means a rule that is not a major rule.

## Sec. 2. **[14A.02] LEGISLATIVE REVIEW.**

Subdivision 1. **Report to legislature before rule takes effect.** Before a rule may take effect and have the force of law, the agency promulgating the rule shall prepare and submit to the speaker of the house, president of the senate, and the chairs of the respective house and senate standing committees with jurisdiction, a report containing:

(1) a copy of the rule;

(2) a concise, general statement summarizing the rule;

(3) a classification of the rule as a major or nonmajor rule, including an explanation of the classification specifically addressing each criteria for a major rule contained within section 14A.01, subdivision 4, clauses (1), (2) and (3); and

(4) a list of any other related regulatory actions intended to implement the same statutory provision or regulatory objective as well as the individual and aggregate economic effects of those actions.

Subd. 2. **Information to be made available.** (a) The report pursuant to subdivision 1 submitted by the agency promulgating the rule shall be prepared by the agency, which shall employ reasonable efforts to prepare the report, with the cooperation and assistance of the commissioner of employment and economic development as needed to classify the rule pursuant to subdivision 1, clause (3). The classification of the rule required by subdivision 1, clause (3), shall be made based upon and considering all items identified in paragraph (b) that are relevant to making the classification.

(b) The agency promulgating the rule must make available to the commissioner of employment and economic development in connection with the preparation of the report required by subdivision 1, and make available to both houses of the legislature on the date of the submission of the report for inspection or review upon the request of any member of either house of the legislature, the following:

(1) any cost-benefit analysis of the rule, any analysis of private-sector jobs added or lost, and any analysis of the economic or employment impacts of the rule, actual or anticipated, and any information, document, analysis, or report relevant to the

determination required to be made under subdivision 1, clause (3), that are within the possession, custody, or control of the agency, or which the agency knows to exist and is able to obtain without undue or disproportionate burden or expense;

(2) any statements of need and reasonableness prepared pursuant to section 14.131 or 14.23 regarding the rule or any previously proposed version of the rule;

(3) any relevant written comments received by the agency regarding the rule or any previously proposed version of the rule;

(4) any transcript of any hearing related to the rule or any previously proposed version of the rule that was prepared pursuant to a request under section 14.14, subdivision 3;

(5) any findings, conclusions, orders, approvals, disapprovals, opinions, or reports issued by an administrative law judge in any way related to the rule or previously proposed versions of the rule, including any report prepared by an administrative law judge under section 14.15;

(6) any relevant advice and comment submitted to the agency pursuant to section 14.15, subdivision 4, or 14.26, subdivision 3;

(7) any opinions or orders issued by any federal or state court in any appeal of or other civil action challenging, in whole or in part, any administrative law judge's report under section 14.15 or any findings, conclusions, orders, approvals, disapprovals, opinions, or reports issued by any administrative law judge regarding the rule or any previously proposed version of the rule;

(8) any agency determinations regarding the rule under section 14.127, subdivisions 1 and 2, and any documents or other information relied upon by the agency in making such determination;

(9) any approvals or disapprovals issued by an administrative law judge pursuant to section 14.127, subdivision 2, of any determination made by the agency under that section;

(10) any written statements filed with the agency under section 14.127, subdivision 2, that relate to the rule;

(11) any other relevant information or requirements under any other act;

(12) any relevant executive orders; and

(13) any other information, documents, data, or analyses relied upon in order to make the determination required under subdivision 1, clause (3).

**Subd. 3. Classification of nonmajor rule; notice.** On the date that the report under subdivision 1 is submitted with regard to a rule that the agency promulgating the rule has classified as a nonmajor rule, the agency promulgating the rule shall publish a notice identifying the rule as a nonmajor rule and setting forth in full the explanation of

the classification that subdivision 1, clause (3), requires the agency to include in its report under subdivision 1.

**Subd. 4. Joint resolution of approval required for major rule.** (a) A major rule shall not take effect or have the force of law unless a joint resolution of approval as described under section 14A.03 is enacted into law.

(b) If a joint resolution of approval is not enacted within 20 legislative days, beginning on the legislative day on which the report referred to in subdivision 1 is received by the legislature, then the rule described in that resolution is not approved and does not take effect and does not have the force of law, and a subsequent joint resolution of approval relating to the same rule may not be considered under this chapter in the same biennial session of the legislature by either the house of representatives or the senate. If a report under subdivision 1 is received by the office of the speaker of the house and the office of the president of the senate on a day that is not a legislative day, then the 20-day period begins on the first subsequent legislative day after receipt of the report, except as provided under subdivision 6.

(c) If a joint resolution of approval is not enacted in the time period specified in paragraph (b), the agency that has proposed the rule shall forthwith publish a notice in the State Register stating that the rule has not been approved by the legislature, is not effective, does not have the force of law, and is not to be considered an adopted rule. However, if the governor makes a determination and issues an executive order under subdivision 5, the agency shall delay publication of the State Register notice until the day following the end of the period of time described in the executive order pursuant to subdivision 5, paragraph (a).

**Subd. 5. Major rule taking effect under executive order.** (a) Notwithstanding any other provision of this section, but subject to paragraph (c), if the governor makes a determination under paragraph (b) and submits written notice of this determination to the speaker of the house, the president of the senate, and the chairs of the standing committees with jurisdiction, a major rule may take effect and have the force of law for one 90-calendar-day period, or, in the event that a report relating to a major rule classified as such under subdivision 1, clause (3), is submitted to the legislature after the legislature has adjourned a regular annual session and before the legislature has convened its next regular annual session, for one period of time not to exceed that period of time commencing with the date of the submission of such report as required by subdivision 1 and ending with the earlier of (1) the 20th legislative day of the next regular annual session of the legislature or (2) the final legislative day of the next regular annual session of the

legislature. An executive order issued pursuant to paragraph (b) shall state the time period of its effectiveness, as that time period is described in this paragraph.

(b) Paragraph (a) applies to a determination made by the governor by executive order that the major rule should take effect because the rule is:

(1) necessary because of an imminent threat to public health, safety, security, or other emergency; or

(2) necessary for the enforcement of criminal laws.

(c) An exercise by the governor of the authority under this subdivision has no effect on the procedures under this section or section 14A.03.

**Subd. 6. Approval of rules reported late in legislative sessions.** (a) In addition to the opportunity for review otherwise provided under this chapter, in the case of any rule for which a report was submitted in accordance with subdivision 1 during the period beginning on the date occurring 45 calendar days before the date the legislature is scheduled to adjourn a regular annual session of the legislature through the date on which the same or succeeding legislature first convenes its next regular annual session, section 14A.03 shall apply to such rule in the succeeding session of the legislature.

(b) In applying section 14A.03 for purposes of such additional review, a rule described under paragraph (a) shall be treated as if the report on such rule were submitted to the legislature under subdivision 1 on the fifth legislative day of the session.

(c) Nothing in this subdivision shall be construed to affect the requirement under subdivision 1 that a report shall be submitted to the legislature before a rule can take effect and have legal force.

(d) A rule described under paragraph (a) shall take effect as otherwise provided by law, including other subdivisions of this section and section 14A.03.

### **Sec. 3. [14A.03] LEGISLATIVE APPROVAL FOR MAJOR RULES.**

**Subdivision 1. Introduction of resolution.** (a) For purposes of this subdivision, the term "joint resolution" means only a joint resolution addressing a report classifying a rule as major pursuant to section 14A.02, subdivision 1, clause (3), that:

(1) bears no preamble;

(2) bears the following title (with blanks filled as appropriate): "Approving the rule submitted by ..... relating to .....";

(3) includes after its resolving clause only the following (with blanks filled as appropriate): "That the legislature approves the rule submitted by ..... relating to .....";

and

(4) is introduced pursuant to paragraph (b).

6.1 (b) After a house of the legislature receives a report classifying a rule as major  
6.2 pursuant to section 14A.02, subdivision 1, clause (3), the majority leader of that house or  
6.3 respective designee shall introduce a joint resolution described in paragraph (a) within  
6.4 three legislative days.

6.5 (c) A joint resolution described in paragraph (a) shall not be subject to amendment at  
6.6 any stage of proceeding.

6.7 Subd. 2. **Legislative procedure for consideration.** (a) A joint resolution described  
6.8 in subdivision 1 shall be referred in each house of the legislature to the committees having  
6.9 jurisdiction over the provision of law under which the rule is issued.

6.10 (b) In the house and senate, respectively, if the committee or committees to which a  
6.11 joint resolution described in subdivision 1 has been referred have not reported it back to  
6.12 the main body at the end of six legislative days after its introduction, such committee or  
6.13 committees shall be automatically discharged from further consideration of the resolution,  
6.14 and it shall be reported back to the main body, where it shall receive its second reading  
6.15 on the next legislative day, the seventh legislative day following its introduction. If the  
6.16 committee or committees to which such a joint resolution has been referred report it back to  
6.17 the main body before the end of the sixth legislative day following its introduction, it shall  
6.18 receive its second reading on the next legislative day no later than the seventh legislative  
6.19 day following its introduction. Immediately after receiving its second reading, the joint  
6.20 resolution shall be immediately placed on the appropriate calendar for consideration by  
6.21 the full house or senate. The joint resolution shall receive its third reading, be taken up for  
6.22 consideration, and a vote on final passage of the joint resolution shall be taken on or before  
6.23 the close of the ninth legislative day after the joint resolution receives its second reading.

6.24 (c) At any time after a joint resolution as described in subdivision 1 has received its  
6.25 second reading in either the house of representatives or the senate, and has been placed on  
6.26 the appropriate calendar for consideration by that body:

6.27 (1) in the house of representatives, it shall be in order for the speaker to recognize  
6.28 a member who favors passage of a joint resolution to call up that joint resolution for  
6.29 immediate consideration in the house without intervention of any point of order or  
6.30 procedure or procedural motion. After two hours of debate, it shall be in order for any  
6.31 member to move the previous question. Any such motion for the previous question shall  
6.32 be effective upon the seconds of 15 members, indicated by a showing of hands. After  
6.33 four hours of debate, the majority leader of the house, or the majority leader's designee,  
6.34 shall move the previous question. Any such motion for the previous question made by  
6.35 the majority leader or the majority leader's designee shall be effective without the need  
6.36 for any seconds. During the course of the debate and after any motion for the previous

question, no motion to table, to refer or re-refer to committee, or to postpone consideration shall be in order; and

(2) in the senate, it shall be in order for any senator who favors passage of a joint resolution to move the immediate consideration of the same without intervention of any point of order or procedure or procedural motion. After two hours of debate, it shall be in order for any senator to move the previous question. Any such motion for the previous question shall be effective upon the seconds of eight senators, indicated by a showing of hands. After four hours of debate, the majority leader of the senate (or the majority leader's designee) shall move the previous question. Any such motion for the previous question made by the majority leader or the majority leader's designee shall be effective without the need for any seconds. During the course of the debate and after any motion for the previous question, no motion to table, to refer or re-refer to committee, or to postpone consideration shall be in order.

(d) If, before passing a joint resolution described in subdivision 1, one house of the legislature receives from the other a joint resolution having the same text, then:

(1) the joint resolution of the other house shall not be referred to a committee; and

(2) the procedure in the receiving house shall be the same as if no joint resolution had been received from the other house until the vote on passage, when the joint resolution received from the other house shall supplant the joint resolution of the receiving house. This paragraph does not apply to the house of representatives if the joint resolution received from the senate is a revenue measure.

(e) If either house of the legislature has not taken a vote on final passage of the joint resolution by the last day of the period described in section 14A.02, subdivision 4, paragraph (b), then such vote shall be taken on that legislative day.

(f) A joint resolution that is passed in identical form in the house and the senate shall be enrolled and presented to the governor in the manner provided for bills.

#### Sec. 4. **[14A.04] JUDICIAL REVIEW.**

**Subdivision 1. No judicial review.** No determination, finding, action, or omission under this chapter is subject to judicial review.

**Subd. 2. Exceptions.** Notwithstanding subdivision 1:

(1) a court may determine whether an agency has completed the necessary procedural requirements under this chapter for a rule to take effect and have legal force; and

(2) upon a writ of certiorari within 60 days after publication in the State Register of a notice that an agency has classified a rule as a nonmajor rule, the Court of Appeals may review the agency's classification of such rule as a nonmajor rule. If the Court of Appeals

concludes that the agency's classification of a rule as a nonmajor rule was arbitrary, capricious, made in bad faith, or not based upon substantial evidence, the court may order relief limited to invalidating all or a severable portion of such rule which was improperly classified as nonmajor. In the event the court orders such relief, the invalidated rule or invalidated severable portion of the rule shall be deemed, for purposes of section 14A.02, subdivision 3, paragraph (d), only, to have been classified as a major rule for which a joint resolution of approval was not timely enacted. Any person shall have standing to seek relief under this paragraph as hereinafter described. For purposes of determining a person's standing to seek relief under this clause, the court shall assume that, had the rule at issue been classified as a major rule, such rule would have failed to be timely approved by a joint resolution under section 14A.03. For purposes of this clause, the term "person" does not include any state or federal agency or official in their official capacity, state or federal agency within the legislative or judicial branches of the state or federal government, municipal corporation, city, township, other unit of local government, or local government agency.

**Subd. 3. Effect of joint resolution.** The adoption of a joint resolution of approval under section 14A.03 shall not be interpreted to serve as a grant or modification of statutory authority by the legislature for the promulgation of a rule, shall not extinguish or affect any claim, whether substantive or procedural, against any alleged defect in a rule, and shall not form part of the record before the court in any judicial proceeding concerning a rule except for purposes of determining whether or not the rule is in effect.

**Sec. 5. [14A.05] SUNSET, SUNSET REVIEW, AND LEGISLATIVE REAPPROVAL OF MAJOR RULES.**

**Subdivision 1. Expiration of major rules.** Except as provided in this section, all rules classified as major rules pursuant to section 14A.02 and approved according to a joint resolution of approval pursuant to section 14A.03 shall remain in force and effect for no longer than two years from the date a joint resolution of approval for each major rule is enacted. Each such major rule shall expire and become of no force or effect at the end of the 730th day after the date the joint resolution of approval of such major rule was enacted unless, before such time, but in no event earlier than 180 days before the major rule at issue will automatically sunset and expire pursuant to this section, the agency that promulgated the rule, or to which jurisdiction over the rule has been transferred:

(1) submits a report in the form and manner prescribed by section 14A.02, subdivision 1, that classifies the rule as a nonmajor rule; or

(2) submits a report in the form and manner prescribed by section 14A.02, subdivision 1, that classifies the rule as a major rule, and a joint resolution of approval is subsequently and timely enacted pursuant to section 14A.03.

**Subd. 2. Required analysis.** For purposes of this section, the agency issuing the report to the legislature under section 14A.02, subdivision 1, shall, for the purposes of classifying the rule as major or nonmajor according to the criteria set forth in section 14A.01, subdivision 3, analyze:

(1) whether the rule did in fact result in the any of the impacts or effects identified in each such criterion during the time period commencing when the major rule at issue went into effect to the time of the preparation of the report being submitted; and

(2) whether the rule will likely result in any of the impacts or affects identified in each such criterion during the period commencing with the date the rule would otherwise sunset and expire pursuant to subdivision 1 and ending two years after that date.

**Subd. 3. Provisions applicable to prevent rules from expiring.** Except as expressly stated in this section, all of the provisions of this chapter apply to any reports submitted to the legislature pursuant to this section and to any joint resolutions of approval that may be introduced or enacted to prevent a major rule from sunseting and expiring according to the provisions of this section, as if the rules for which such reports and joint resolutions of approval are submitted, introduced, enacted, or otherwise acted upon are original rules being promulgated for the first time.

**Subd. 4. Expiration and sunset.** All major rules that do not sunset and expire because they are reapproved by a joint resolution of approval pursuant subdivision 1 shall likewise expire and sunset according to the provisions of subdivision 1, except as otherwise provided in this section.

## **Sec. 6. [14A.06] SUNSET AND LEGISLATIVE APPROVAL OF EXISTING RULES.**

**Subdivision 1. Rules deemed major rules unless otherwise reported.** All rules in effect on the effective date of this section shall be deemed major rules unless a report pursuant to section 14A.02, subdivision 1, classifying a rule as a nonmajor rule is submitted as required by section 14A.02, subdivision 1, by the agency that promulgated the rule (or which currently has jurisdiction over the rule), and the agency publishes the notice required by section 14A.02, subdivision 3, in the State Register within 180 days after the enactment of this act.

**Subd. 2. Rules currently in effect.** All rules in effect on the effective date of this section that are not determined to be nonmajor rules pursuant to subdivision 1 shall be

10.1 deemed to be major rules and, for purposes of section 14A.05, shall be deemed to have  
10.2 been approved by joint resolutions of approval as described in this chapter as of the date  
10.3 that is 180 days following the enactment of this act.

10.4 Sec. 7. **TITLE AND PURPOSE.**

10.5 Subdivision 1. **Citation.** This act may be cited as "The Responsible Rulemaking  
10.6 and Accountable Representation Act" or the "RRAR Act."

10.7 Subd. 2. **Purpose.** Over the course of several decades, the reach of the law has been  
10.8 extended over an increasingly wide range of subjects, to the point that very few aspects of  
10.9 an individual's life are not now touched in one way or another by the long arm of the state.  
10.10 As the scope and size of the state has expanded, the separation of powers guaranteed by  
10.11 the Minnesota Constitution, article III, has necessarily decayed. Over time, the legislature  
10.12 has delegated more and more of its legislative power to executive branch agencies which  
10.13 enact rules that have the force of law with little or no input or oversight from the people's  
10.14 elected representatives. By requiring a vote in the legislature, the RARR Act will result in  
10.15 narrower, more carefully drafted laws and rules. By clearing away unduly burdensome  
10.16 regulatory requirements, the RARR Act will unleash the power of free enterprise and  
10.17 promote private sector job creation. And by reining in excessive delegation of legislative  
10.18 authority to unelected civil servants, the RARR Act will make the legislature accountable  
10.19 to the people of Minnesota for the laws imposed on them.