

**SENATE
STATE OF MINNESOTA
NINETIETH SESSION**

S.F. No. 3113

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OFFICIAL STATUS
Introduction and first reading
Referred to State Government Finance and Policy and Elections

1.1 A bill for an act
1.2 relating to state government; modifying rulemaking; amending Minnesota Statutes
1.3 2016, sections 14.05, by adding subdivisions; 14.116; 14.126; 14.127, subdivision
1.4 4; 14.22, subdivision 1; 14.366; 14.381, subdivision 3; 14.388, subdivision 2;
1.5 14.45; repealing Minnesota Statutes 2016, section 14.05, subdivision 5.

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

1.7 Section 1. Minnesota Statutes 2016, section 14.05, is amended by adding a subdivision
1.8 to read:

1.9 Subd. 1a. **Limitation regarding certain policies, guidelines, and other interpretive**
1.10 **statements.** An agency shall not seek to implement in a permit or contract, or enforce against
1.11 any person through monetary or nonmonetary penalty, a policy, guideline, bulletin, criterion,
1.12 manual, standard, interpretive statement, or similar pronouncement, including but not limited
1.13 to the metropolitan solid waste policy plan revisions authorized by other law that has not
1.14 been published under section 14.22, or was first published under section 14.22, more than
1.15 two years prior to the date the agency seeks to implement the policy in a permit or contract
1.16 or enforce against a person. In any proceeding under this chapter challenging an agency
1.17 action prohibited by this subdivision, the reviewing authority must independently and without
1.18 reference to the agency determine if the agency has violated this subdivision. The agency
1.19 must overcome the presumption that its action is prohibited.

1.20 Sec. 2. Minnesota Statutes 2016, section 14.05, is amended by adding a subdivision to
1.21 read:

1.22 Subd. 5a. **Review and repeal of environmental assessment worksheets and impact**
1.23 **statements.** By December 1, 2018, and every five years thereafter, the Environmental

Quality Board, Pollution Control Agency, Department of Natural Resources, and Department of Transportation, after consultation with political subdivisions, shall submit to the governor, the Legislative Coordinating Commission, the chairs and ranking minority members of the legislative committees having jurisdiction over environment and natural resources, and the revisor of statutes a list of mandatory environmental assessment worksheets or mandatory environmental impact statements for which the agency or a political subdivision is designated as the responsible government unit, and for each worksheet or statement, a document including:

(1) intended historic purpose of the category;

(2) whether projects that fall within the category are also subject to local, state, or federal permits; and

(3) a justification for why the mandatory worksheet or statement should not be eliminated and its intended outcomes achieved through an existing permit or other federal, state, or local law.

Sec. 3. Minnesota Statutes 2016, section 14.116, is amended to read:

14.116 NOTICE TO LEGISLATURE.

(a) By January 15 each year, each agency must submit its rulemaking docket maintained under section 14.366, ~~and~~ the official rulemaking record required under section 14.365 for any rule adopted during the preceding calendar year, and all agency policies, guidelines, bulletins, criteria, manuals, standards, interpretive statements, or similar pronouncements to the chairs and ranking minority members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule and to the Legislative Coordinating Commission. Each agency must post a link to its rulemaking docket on the agency Web site home page.

(b) When an agency ~~mails~~ sends a notice of intent to adopt rules hearing under section 14.14, or a notice of intent to adopt rules or dual notice under section 14.22, the agency must send a copy of the same notice and a copy of the statement of need and reasonableness to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rules and to the Legislative Coordinating Commission.

(c) In addition, if the mailing of the notice is within two years of the effective date of the law granting the agency authority to adopt the proposed rules, the agency shall make reasonable efforts to send a copy of the notice and the statement to all sitting legislators

who were chief house of representatives and senate authors of the bill granting the rulemaking authority. If the bill was amended to include this rulemaking authority, the agency shall make reasonable efforts to send the notice and the statement to the chief house of representatives and senate authors of the amendment granting rulemaking authority, rather than to the chief authors of the bill.

Sec. 4. Minnesota Statutes 2016, section 14.126, is amended to read:

14.126 COMMITTEE AUTHORITY OVER RULE ADOPTION AND GUIDANCE.

Subdivision 1. **Delay action.** If the Legislative Coordinating Commission votes or if the standing committee of the house of representatives and the standing committee of the senate with jurisdiction over the subject matter of a proposed rule both vote to advise an agency that a proposed rule should not be adopted or a guidance document listed under section 14.366, paragraph (b), clause (2), should not be used as proposed, the agency may not adopt the rule or use the guidance document until the legislature adjourns the annual legislative session that began after the vote of the committees. The speaker of the house and the president of the senate shall determine if a standing committee has jurisdiction over a rule or guidance document before a committee may act under this section.

Subd. 2. **Vote.** (a) A commission or committee vote under this section must be by a majority of the commission or committee.

(b) For rulemaking, the vote may occur any time after the publication of the rulemaking notice under section 14.14, subdivision 1a, 14.22, 14.389, subdivision 2, or 14.3895, subdivision 3, and before notice of adoption is published in the State Register under section 14.18, 14.27, 14.389, subdivision 3, or 14.3895, subdivision 3. A commission or committee voting under this ~~section~~ paragraph shall notify the agency, the revisor of statutes, and the chief administrative law judge of the vote as soon as possible.

(c) For guidance documents, the vote may occur any time within one year after the listing of the docket as prescribed in section 14.366, paragraph (b), clause (2). A commission or committee voting under this paragraph shall notify the agency of the vote as soon as possible.

(d) The commission or committee shall publish notice of the vote in the State Register as soon as possible.

Sec. 5. Minnesota Statutes 2016, section 14.127, subdivision 4, is amended to read:

Subd. 4. **Exceptions.** (a) Subdivision 3 does not apply if the administrative law judge approves an agency's determination that the legislature has appropriated money to sufficiently

4.1 fund the expected cost of the rule upon the business or city proposed to be regulated by the
4.2 rule.

4.3 (b) Subdivision 3 does not apply if the administrative law judge approves an agency's
4.4 determination that the rule has been proposed pursuant to a specific federal statutory or
4.5 regulatory mandate.

4.6 (c) This section does not apply if the rule is adopted under section 14.388 or under
4.7 another law specifying that the rulemaking procedures of this chapter do not apply.

4.8 (d) This section does not apply to a rule adopted by the Public Utilities Commission.

4.9 ~~(e) Subdivision 3 does not apply if the governor waives application of subdivision 3.~~
4.10 ~~The governor may issue a waiver at any time, either before or after the rule would take~~
4.11 ~~effect, but for the requirement of legislative approval. As soon as possible after issuing a~~
4.12 ~~waiver under this paragraph, the governor must send notice of the waiver to the speaker of~~
4.13 ~~the house and the president of the senate and must publish notice of this determination in~~
4.14 ~~the State Register.~~

4.15 Sec. 6. Minnesota Statutes 2016, section 14.22, subdivision 1, is amended to read:

4.16 Subdivision 1. **Contents.** (a) Unless an agency proceeds directly to a public hearing on
4.17 a proposed rule and gives the notice prescribed in section 14.14, subdivision 1a, the agency
4.18 shall give notice of its intention to adopt a rule without public hearing and its intention to
4.19 use a policy, guideline, bulletin, criteria, manual, standard, interpretative statement, or
4.20 similar pronouncement. The notice must be given by publication in the State Register and
4.21 by United States mail or electronic mail to persons who have registered their names with
4.22 the agency under section 14.14, subdivision 1a. The mailed notice must include either a
4.23 copy of the proposed rule or policy or an easily readable and understandable description of
4.24 its nature and effect and an announcement that a free copy of the proposed rule or policy is
4.25 available on request from the agency. In addition, each agency shall make reasonable efforts
4.26 to notify persons or classes of persons who may be significantly affected by the rule or
4.27 policy by giving notice of its intention in newsletters, newspapers, or other publications, or
4.28 through other means of communication. The notice in the State Register must include the
4.29 proposed rule or the amended rule in the form required by the revisor under section 14.07,
4.30 an easily readable and understandable summary of the overall nature and effect of the
4.31 proposed rule or policy, a citation to the most specific statutory authority for the proposed
4.32 rule or policy, a statement that persons may register with the agency for the purpose of
4.33 receiving notice of rule proceedings and notice that a rule has been submitted to the chief
4.34 administrative law judge, and other information required by law or rule. When an entire

rule or policy is proposed to be repealed, the notice need only state that fact, along with an easily readable and understandable summary of the overall nature of the rules or policies proposed for repeal, and a citation to the rule to be repealed. The notice must include a statement advising the public:

(1) that the public has 30 days in which to submit comment in support of or in opposition to the proposed rule or policy and that comment is encouraged;

(2) that each comment should identify the portion of the proposed rule or policy addressed, the reason for the comment, and any change proposed;

(3) that if 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held;

(4) of the manner in which persons must request a public hearing on the proposed rule or policy;

(5) of the requirements contained in section 14.25 relating to a written request for a public hearing, and that the requester is encouraged to propose any change desired;

(6) that the proposed rule or policy may be modified if the modifications are supported by the data and views submitted; and

(7) that if a hearing is not required, notice of the date of submission of the proposed rule to the chief administrative law judge for review will be mailed to any person requesting to receive the notice.

In connection with the statements required in clauses (1) and (3), the notice must also include the date on which the 30-day comment period ends.

(b) The chief administrative law judge may authorize an agency to omit from the notice of intent to adopt the text of any proposed rule or policy, the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient if:

(1) knowledge of the rule or policy is likely to be important to only a small class of persons;

(2) the notice of intent to adopt states that a free copy of the entire rule or policy is available upon request to the agency; and

(3) the notice of intent to adopt states in detail the specific subject matter of the omitted rule, cites the statutory authority for the proposed rule or policy, and details the proposed rule's or policy's purpose and motivation.

Sec. 7. Minnesota Statutes 2016, section 14.366, is amended to read:

14.366 PUBLIC RULEMAKING DOCKET.

(a) Each agency shall maintain a current, public rulemaking docket.

(b) The rulemaking docket must contain a listing of the precise subject matter of:

(1) each possible proposed rule currently under active consideration within the agency for proposal, the name and address of agency personnel with whom persons may communicate with respect to the matter, and an indication of its present status within the agency-; and

(2) any policy, guideline, bulletin, criterion, manual, standard, interpretive statement, or similar pronouncement used for permitting, if the guideline, bulletin, criterion, manual, standard, interpretive statement, or similar pronouncement has not been adopted according to the rulemaking process provided under this chapter.

(c) The rulemaking docket must list each pending rulemaking proceeding. A rulemaking proceeding is pending from the time it is begun, by publication of the notice of solicitation, the notice of intent to adopt, or notice of hearing, to the time it is terminated, by publication of a notice of withdrawal or the rule becoming effective. For each rulemaking proceeding, the docket must indicate:

(1) the subject matter of the proposed rule;

(2) a citation to all published notices relating to the proceeding;

(3) where written comments on the proposed rule may be inspected;

(4) the time during which written comments may be made;

(5) the names of persons who have made written requests for a public hearing, where those requests may be inspected, and where and when the hearing will be held;

(6) the current status of the proposed rule and any agency determinations with respect to the rule;

(7) any known timetable for agency decisions or other action in the proceeding;

(8) the date of the rule's adoption;

(9) the date the rule was filed with the secretary of state; and

(10) when the rule will become effective.

Sec. 8. Minnesota Statutes 2016, section 14.381, subdivision 3, is amended to read:

Subd. 3. **Costs.** The agency is liable for all Office of Administrative Hearings costs associated with review of the petition. If the administrative law judge rules in favor of the agency, the agency may recover all or a portion of the costs from the petitioner unless the petitioner is entitled to proceed in forma pauperis under section 563.01 or the administrative law judge determines that the petition was brought in good faith and that an assessment of the costs would constitute an undue hardship for the petitioner. ~~If an agency has reason to believe it will prevail in the consideration of a petition, and that an effort to recover costs from the petitioner will be unsuccessful, it may request the chief administrative law judge to require the petitioner to provide bond or a deposit to the agency in an amount the chief administrative law judge estimates will be the cost to the Office of Administrative Hearings to review the petition.~~

Sec. 9. Minnesota Statutes 2016, section 14.388, subdivision 2, is amended to read:

Subd. 2. **Notice.** An agency proposing to adopt, amend, or repeal a rule under this section must give notice to the chairs and ranking minority members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rules and to the Legislative Coordinating Commission, must give electronic notice of its intent in accordance with section 16E.07, subdivision 3, and must give notice by United States mail or electronic mail to persons who have registered their names with the agency under section 14.14, subdivision 1a. The notice must be given no later than the date the agency submits the proposed rule to the Office of Administrative Hearings for review of its legality and must include:

(1) the proposed rule, amendment, or repeal;

(2) an explanation of why the rule meets the requirements of the good cause exemption under subdivision 1; and

(3) a statement that interested parties have five business days after the date of the notice to submit comments to the Office of Administrative Hearings.

Sec. 10. Minnesota Statutes 2016, section 14.45, is amended to read:

14.45 RULE DECLARED INVALID.

In proceedings under section 14.44, the court shall declare the rule or agency policy, guideline, bulletin, criterion, manual, standard, interpretive statement, or similar pronouncement invalid if it finds that it violates constitutional provisions or exceeds the

statutory authority of the agency or if the rule was adopted or the policy, guideline, bulletin, criterion, manual, standard, interpretive statement, or similar pronouncement was improperly implemented or enforced without compliance with statutory rulemaking procedures. Any party to proceedings under section 14.44, including the agency, may appeal an adverse decision of the Court of Appeals to the Supreme Court as in other civil cases.

Sec. 11. **REPEALER.**

Minnesota Statutes 2016, section 14.05, subdivision 5, is repealed.

Sec. 12. **EFFECTIVE DATE; APPLICATION.**

(a) This act is effective August 1, 2018, and applies to rules for which a notice of hearing under Minnesota Statutes, section 14.14; a notice of intent to adopt under Minnesota Statutes, section 14.22; or a dual notice under Minnesota Statutes, section 14.225, is published in the State Register on or after that date.

(b) This act also applies to policies, guidelines, bulletins, criteria, manuals, standards, interpretive statements, and similar pronouncements existing or published on or after August 1, 2018.

14.05 GENERAL AUTHORITY.

Subd. 5. **Review and repeal of rules.** By December 1 of each year, an agency must submit to the governor, the Legislative Coordinating Commission, the policy and funding committees and divisions with jurisdiction over the agency, and the revisor of statutes, a list of any rules or portions of rules that are obsolete, unnecessary, or duplicative of other state or federal statutes or rules. The list must also include an explanation of why the rule or portion of the rule is obsolete, unnecessary, or duplicative of other state or federal statutes or rules. By December 1, the agency must either report a timetable for repeal of the rule or portion of the rule, or must develop a bill for submission to the appropriate policy committee to repeal the obsolete, unnecessary, or duplicative rule. Such a bill must include proposed authorization to use the expedited procedures of section 14.389 to repeal or amend the obsolete, unnecessary, or duplicative rule. A report submitted under this subdivision must be signed by the person in the agency who is responsible for identifying and initiating repeal of obsolete rules. The report also must identify the status of any rules identified in the prior year's report as obsolete, unnecessary, or duplicative. If none of an agency's rules are obsolete, unnecessary, or duplicative, an agency's December 1 report must state that conclusion.