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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 269

01/22/2015 Authored by Kresha

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

1.1 A bill for an act
1.2 relating to state government; modifying the administrative procedure act;
1.3 proposing various rulemaking reform initiatives; enhancing legislative oversight;
1.4 providing additional statement of need and reasonableness requirements; limiting
1.5 the use of certain nonbinding interpretive statements; amending Minnesota
1.6 Statutes 2014, sections 3.842, subdivision 4a; 14.02, by adding a subdivision;
1.7 14.05, subdivision 1, by adding a subdivision; 14.116; 14.131; 14.19; 14.388,
1.8 subdivision 2; 14.389, subdivision 2; repealing Minnesota Statutes 2014, section
1.9 14.127.

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

1.11 Section 1. Minnesota Statutes 2014, section 3.842, subdivision 4a, is amended to read:

1.12 Subd. 4a. **Objections to rules or proposed rules.** (a) ~~For purposes of this~~
1.13 ~~subdivision, "committee" means the house of representatives policy committee or senate~~
1.14 ~~policy committee with primary jurisdiction over state governmental operations. The~~
1.15 ~~commission or a committee may object to a rule or proposed rule as provided in this~~
1.16 ~~subdivision. If the commission or a committee objects to all or some portion of a rule~~
1.17 ~~because the commission or committee considers it to be on the grounds that the rule or~~
1.18 proposed rule: (1) is beyond the procedural or substantive authority delegated to the
1.19 agency, including a proposed rule submitted under section 14.15, subdivision 4, or 14.26,
1.20 subdivision 3, paragraph (c); or (2) is inconsistent with the enabling statute; is unnecessary
1.21 or redundant; has a substantial economic impact as defined in section 14.02, subdivision
1.22 5; is not based on sound, reasonably available scientific, technical, economic, or other
1.23 information; is not cost effective; is unduly burdensome; or is more restrictive than the
1.24 standard, limitation, or requirement imposed by federal law or rule pertaining to the same
1.25 subject matter. If the commission objects to all or some portion of a rule or proposed rule,
1.26 the commission or committee may shall file that objection in the Office of the Secretary

2.1 of State. The filed objection must contain a concise statement of the commission's or
2.2 committee's reasons for its action. ~~An objection to a proposed rule submitted by the~~
2.3 ~~commission or a committee under section 14.15, subdivision 4, or 14.26, subdivision 3,~~
2.4 ~~paragraph (c), may not be filed before the rule is adopted~~ For a proposed rule, the objection
2.5 must be filed within 30 days of receipt of the notice under section 14.116, 14.388, or 14.389.

2.6 (b) The secretary of state shall affix to each objection a certification of the date and
2.7 time of its filing and as soon after the objection is filed as practicable shall electronically
2.8 transmit a certified copy of it to the agency issuing the rule in question and to the revisor
2.9 of statutes. The secretary of state shall also maintain a permanent register open to public
2.10 inspection of all objections by the commission or committee.

2.11 (c) The commission or committee shall publish and index an objection filed under
2.12 this section in the next issue of the State Register. The revisor of statutes shall indicate
2.13 the existence of the objection adjacent to the rule in question when that rule is published
2.14 in Minnesota Rules.

2.15 (d) Within 14 days after the filing of an objection by the commission or committee to
2.16 a rule or proposed rule, the issuing agency shall respond in writing to the objecting entity.
2.17 After receipt of the response, the commission or committee may withdraw or modify its
2.18 objection. After the filing of an objection that is not subsequently withdrawn, the agency
2.19 may not adopt the rule until the legislature adjourns sine die. If the commission files an
2.20 objection that is not subsequently withdrawn, the commission must, as soon as practical,
2.21 make a recommendation on a bill that approves the proposed rule, prohibits adoption of
2.22 the proposed rule, or amends or repeals the law governing a previously adopted rule
2.23 for which an objection was filed.

2.24 (e) After the filing of an objection by the commission or committee that is not
2.25 subsequently withdrawn, the burden is upon the agency in any proceeding for judicial
2.26 review or for enforcement of the rule to establish by clear and convincing evidence that
2.27 the whole or portion of the rule objected to is valid and demonstrates that the objection
2.28 raised under paragraph (a) is not justified, based on the criteria for objecting to a rule
2.29 under paragraph (a).

2.30 (f) The failure of the commission or a committee to object to a rule is not an implied
2.31 legislative authorization of its validity.

2.32 (g) In accordance with sections 14.44 and 14.45, the commission or a committee
2.33 may petition for a declaratory judgment to determine the validity of a rule objected to
2.34 by the commission or committee. The action must be started within two years after an
2.35 objection is filed in the Office of the Secretary of State.

3.1 (h) The commission ~~or a committee~~ may intervene in litigation arising from agency
 3.2 action. For purposes of this paragraph, agency action means the whole or part of a rule, or
 3.3 the failure to issue a rule.

3.4 Sec. 2. Minnesota Statutes 2014, section 14.02, is amended by adding a subdivision to
 3.5 read:

3.6 Subd. 5. **Substantial economic impact.** A rule has a "substantial economic impact"
 3.7 if the rule would result in, or likely result in:

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

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

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

3.16 (4) compliance costs, in the first year after the rule takes effect, of more than \$25,000
 3.17 for any one business that has less than 50 full-time employees, or for any one statutory or
 3.18 home rule charter city that has less than ten full-time employees.

3.19 Sec. 3. Minnesota Statutes 2014, section 14.05, subdivision 1, is amended to read:

3.20 Subdivision 1. **Authority to adopt original rules restricted.** (a) Each agency shall
 3.21 adopt, amend, suspend, or repeal its rules: (1) in accordance with the procedures specified
 3.22 in sections 14.001 to 14.69, and; (2) only pursuant to authority expressly delegated by
 3.23 state or federal law; (3) only as necessary to serve the public interest; and (4) in full
 3.24 compliance with its duties and obligations.

3.25 (b) If a law authorizing rules is repealed, the rules adopted pursuant to that law are
 3.26 automatically repealed on the effective date of the law's repeal unless there is another
 3.27 law authorizing the rules.

3.28 (c) Except as provided in section 14.06, sections 14.001 to 14.69 shall not be
 3.29 authority for an agency to adopt, amend, suspend, or repeal rules.

3.30 Sec. 4. Minnesota Statutes 2014, section 14.05, is amended by adding a subdivision to
 3.31 read:

3.32 Subd. 1a. **Limitation regarding certain policies, guidelines, and other**
 3.33 **nonbinding interpretive statements.** An agency shall not seek to implement or enforce

4.1 against any person a policy, guideline, or other nonbinding interpretive statement that
4.2 meets the definition of a rule under this chapter if the policy, guideline, or other nonbinding
4.3 interpretive statement has not been adopted as a rule in accordance with this chapter.

4.4 Sec. 5. Minnesota Statutes 2014, section 14.116, is amended to read:

4.5 **14.116 NOTICE TO LEGISLATURE.**

4.6 (a) By January 15 each year, each agency must submit its rulemaking docket
4.7 maintained under section 14.366, and the official rulemaking record required under section
4.8 14.365 for any rule adopted during the preceding calendar year, to the chairs and ranking
4.9 minority members of the legislative policy and budget committees with jurisdiction over
4.10 the subject matter of the proposed rule and to the Legislative Coordinating Commission.

4.11 (b) When an agency mails notice of intent to adopt rules under section 14.14 or
4.12 14.22, the agency must send a copy of the same notice and a copy of the statement of need
4.13 and reasonableness to the chairs and ranking minority party members of the legislative
4.14 policy and budget committees with jurisdiction over the subject matter of the proposed
4.15 rules and to the Legislative Coordinating Commission.

4.16 (c) In addition, if the mailing of the notice is within two years of the effective date
4.17 of the law granting the agency authority to adopt the proposed rules, the agency shall
4.18 make reasonable efforts to send a copy of the notice and the statement to all sitting
4.19 legislators who were chief house of representatives and senate authors of the bill granting
4.20 the rulemaking authority. If the bill was amended to include this rulemaking authority,
4.21 the agency shall make reasonable efforts to send the notice and the statement to the chief
4.22 house of representatives and senate authors of the amendment granting rulemaking
4.23 authority, rather than to the chief authors of the bill.

4.24 Sec. 6. Minnesota Statutes 2014, section 14.131, is amended to read:

4.25 **14.131 STATEMENT OF NEED AND REASONABLENESS.**

4.26 By the date of the section 14.14, subdivision 1a, notice, the agency must
4.27 prepare, review, and make available for public review a statement of the need for and
4.28 reasonableness of the rule. The statement of need and reasonableness must be prepared
4.29 under rules adopted by the chief administrative law judge and must include the following
4.30 to the extent the agency, through reasonable effort, can ascertain this information:

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

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

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

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

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

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

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

5.16 (8) an assessment of the cumulative effect of ~~the rule with other federal and state~~
5.17 ~~regulations related to the specific purpose of the rule~~ all rules adopted by the agency or
5.18 any other agency, and all federal regulations and local ordinances or regulations, related to
5.19 the specific purpose for which the rule is being adopted; and

5.20 (9) the agency's findings and conclusions that support its determination that the
5.21 proposed rule does not have a substantial economic impact.

5.22 The statement must describe how the agency, in developing the rules, considered
5.23 and implemented the legislative policy supporting performance-based regulatory systems
5.24 set forth in section 14.002 in a cost-effective and timely manner.

5.25 For purposes of clause (8), "cumulative effect" means the impact that results from
5.26 incremental impact of the proposed rule in addition to other rules, regardless of what
5.27 state or federal agency has adopted the other rules. Cumulative effects can result from
5.28 individually minor but collectively significant rules adopted over a period of time.

5.29 The statement must describe, with reasonable particularity, the scientific, technical,
5.30 and economic information that supports the proposed rule.

5.31 The statement must also describe the agency's efforts to provide additional
5.32 notification under section 14.14, subdivision 1a, to persons or classes of persons who may
5.33 be affected by the proposed rule or must explain why these efforts were not made.

5.34 The agency must consult with the commissioner of management and budget to
5.35 help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local
5.36 government. The agency must send a copy of the statement of need and reasonableness

6.1 to the Legislative Reference Library when the notice of hearing is mailed under section
6.2 14.14, subdivision 1a.

6.3 Sec. 7. Minnesota Statutes 2014, section 14.19, is amended to read:

6.4 **14.19 DEADLINE TO COMPLETE RULEMAKING.**

6.5 Within 180 days after issuance of the administrative law judge's report or that of the
6.6 chief administrative law judge, the agency shall submit its notice of adoption, amendment,
6.7 or repeal to the State Register for publication. If the agency has not submitted its notice to
6.8 the State Register within 180 days, the rule is automatically withdrawn. The agency may
6.9 not adopt the withdrawn rules without again following the procedures of sections 14.05
6.10 to 14.28, with the exception of section 14.101, if the noncompliance is approved by the
6.11 chief administrative law judge. The agency shall report to the Legislative Coordinating
6.12 Commission, other appropriate committees of the legislature, and the governor its failure
6.13 to adopt rules and the reasons for that failure. The 180-day time limit of this section
6.14 does not include:

6.15 (1) any days used for review by the chief administrative law judge or the commission
6.16 if the review is required by law; or

6.17 (2) days during which the rule cannot be adopted, because of votes by legislative
6.18 committees under section 14.126; ~~or (3) days during which the rule cannot be adopted~~
6.19 ~~because approval of the legislature is required under section 14.127.~~

6.20 Sec. 8. Minnesota Statutes 2014, section 14.388, subdivision 2, is amended to read:

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

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

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

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

7.1 Sec. 9. Minnesota Statutes 2014, section 14.389, subdivision 2, is amended to read:

7.2 Subd. 2. **Notice and comment.** The agency must publish notice of the proposed
7.3 rule in the State Register and, must mail the notice by United States mail or electronic
7.4 mail to persons who have registered with the agency to receive mailed notices, and must
7.5 give notice to the chairs and ranking minority members of the legislative policy and
7.6 budget committees with jurisdiction over the subject matter of the proposed rules and to
7.7 the Legislative Coordinating Commission. The mailed notice and the notice to legislators
7.8 must include either a copy of the proposed rule or a description of the nature and effect
7.9 of the proposed rule and a statement that a free copy is available from the agency upon
7.10 request. The notice in the State Register must include the proposed rule or the amended
7.11 rule in the form required by the revisor under section 14.07, an easily readable and
7.12 understandable summary of the overall nature and effect of the proposed rule, and a
7.13 citation to the most specific statutory authority for the rule, including authority for the
7.14 rule to be adopted under the process in this section. The agency must allow 30 days after
7.15 publication in the State Register for comment on the rule.

7.16 Sec. 10. **REPEALER.**

7.17 Minnesota Statutes 2014, section 14.127, is repealed.

14.127 LEGISLATIVE APPROVAL REQUIRED.

Subdivision 1. **Cost thresholds.** An agency must determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for: (1) any one business that has less than 50 full-time employees; or (2) any one statutory or home rule charter city that has less than ten full-time employees. For purposes of this section, "business" means a business entity organized for profit or as a nonprofit, and includes an individual, partnership, corporation, joint venture, association, or cooperative.

Subd. 2. **Agency determination.** An agency must make the determination required by subdivision 1 before the close of the hearing record, or before the agency submits the record to the administrative law judge if there is no hearing. The administrative law judge must review and approve or disapprove the agency determination under this section.

Subd. 3. **Legislative approval required.** If the agency determines that the cost exceeds the threshold in subdivision 1, or if the administrative law judge disapproves the agency's determination that the cost does not exceed the threshold in subdivision 1, any business that has less than 50 full-time employees or any statutory or home rule charter city that has less than ten full-time employees may file a written statement with the agency claiming a temporary exemption from the rules. Upon filing of such a statement with the agency, the rules do not apply to that business or that city until the rules are approved by a law enacted after the agency determination or administrative law judge disapproval.

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

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

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

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

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

Subd. 5. **Severability.** If an administrative law judge determines that part of a proposed rule exceeds the threshold specified in subdivision 1, but that a severable portion of a proposed rule does not exceed the threshold in subdivision 1, the administrative law judge may provide that the severable portion of the rule that does not exceed the threshold may take effect without legislative approval.