

**SENATE
STATE OF MINNESOTA
NINETY-FOURTH SESSION**

S.F. No. 1438

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1.1 A bill for an act

1.2 relating to state government; requiring cost-benefit analysis for proposed

1.3 administrative rules; prohibiting the adoption of certain rules; requiring notice to

1.4 the legislature upon adoption of certain exempt rules; amending Minnesota Statutes

1.5 2024, sections 14.002; 14.02, by adding subdivisions; 14.131; 14.14, subdivision

1.6 2; 14.15, subdivisions 3, 4; 14.386; 14.388, subdivision 2; 14.389, subdivision 2;

1.7 14.44; 14.45; proposing coding for new law in Minnesota Statutes, chapter 14.

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

1.9 Section 1. Minnesota Statutes 2024, section 14.002, is amended to read:

1.10 **14.002 STATE REGULATORY POLICY.**

1.11 The legislature recognizes the important and sensitive role for administrative rules in

1.12 implementing policies and programs created by the legislature. However, the legislature

1.13 finds that some regulatory rules and programs have become overly prescriptive and inflexible,

1.14 thereby increasing costs to the state, local governments, and the regulated community and

1.15 decreasing the effectiveness of the regulatory program. Therefore, state agencies may only

1.16 adopt rules for which benefits exceed costs and, whenever feasible, state agencies must

1.17 develop rules and regulatory programs that emphasize superior achievement in meeting the

1.18 agency's regulatory objectives and maximum flexibility for the regulated party and the

1.19 agency in meeting those goals.

1.20 Sec. 2. Minnesota Statutes 2024, section 14.02, is amended by adding a subdivision to

1.21 read:

1.22 Subd. 2a. **Benefit.** "Benefit" means any direct or indirect value gain projected to result

1.23 from a rule, as expressed in dollars.

2.1 Sec. 3. Minnesota Statutes 2024, section 14.02, is amended by adding a subdivision to
2.2 read:

2.3 Subd. 2b. **Best practices.** "Best practices" means theoretically and empirically justified
2.4 methods that are state-of-the-art and widely used within a given scientific discipline such
2.5 as statistics or economics.

2.6 Sec. 4. Minnesota Statutes 2024, section 14.02, is amended by adding a subdivision to
2.7 read:

2.8 Subd. 3a. **Cost.** "Cost" means any direct or indirect value loss projected to result from
2.9 a rule, as expressed in dollars.

2.10 Sec. 5. Minnesota Statutes 2024, section 14.02, is amended by adding a subdivision to
2.11 read:

2.12 Subd. 5. **Stakeholder.** "Stakeholder" means an individual, group, or entity subject to a
2.13 rule, including but not limited to consumers, citizens, small businesses, and large businesses.

2.14 Sec. 6. **[14.051] COST-BENEFIT ANALYSIS REQUIRED.**

2.15 Subdivision 1. **Demonstration of net benefits required.** (a) Except as provided in
2.16 subdivision 4, an agency must not adopt or amend a rule under this chapter unless the agency
2.17 prepares a cost-benefit analysis that clearly demonstrates that total projected benefits of the
2.18 rule will exceed total projected costs. The analysis must identify projected costs and benefits
2.19 for all relevant parties, including but not limited to classes of stakeholders, local units of
2.20 government, and the state and its agencies. The agency must consult with the commissioner
2.21 of management and budget to identify projected costs and benefits for local units of
2.22 government.

2.23 (b) An agency must include a preliminary cost-benefit analysis when publishing a notice
2.24 of proposed rules and a final cost-benefit analysis when publishing a notice of adoption in
2.25 the State Register. The final cost-benefit analysis must explain:

2.26 (1) any significant difference between the preliminary and final cost-benefit analyses;
2.27 and

2.28 (2) any decision by the agency to modify or not modify the preliminary cost-benefit
2.29 analysis in response to public comments.

3.1 Subd. 2. **Methods; transparency.** (a) The agency must apply standardized analytic
 3.2 methods and metrics to all rules. The standards must be developed and updated by the Office
 3.3 of Administrative Hearings to conform with the latest best practices.

3.4 (b) The agency must determine projected costs and benefits for the five-year period
 3.5 beginning on the anticipated date of rule adoption, unless the agency justifies a longer period.
 3.6 If the agency incorporates discount rates in the cost-benefit analysis, the agency must justify
 3.7 its chosen rate and compare its results to those calculated with alternative reasonable rates.
 3.8 The agency must report and explain all significant uncertainties. The agency must not
 3.9 express unquantifiable, qualitative factors of life in dollar terms.

3.10 (c) The agency must publish all documentation, assumptions, methods, and data for the
 3.11 cost-benefit analysis on an easily accessible public website and, where relevant, in a
 3.12 machine-readable format, including sufficient supporting calculations, documents, and data
 3.13 for replication.

3.14 Subd. 3. **Deficient analysis.** A final cost-benefit analysis is significantly deficient if the
 3.15 agency's analysis:

3.16 (1) fails to consider a relevant and significant cost or benefit;

3.17 (2) significantly underestimates costs or significantly overestimates benefits in a manner
 3.18 that affects the outcome of the analysis; or

3.19 (3) fails to adequately justify any modification of the preliminary cost-benefit analysis.

3.20 Subd. 4. **Exemption.** This section does not apply to exempt rules under section 14.386,
 3.21 good cause rules under section 14.388, or expedited rules under section 14.389.

3.22 Sec. 7. Minnesota Statutes 2024, section 14.131, is amended to read:

3.23 **14.131 STATEMENT OF NEED AND REASONABLENESS.**

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

3.29 (1) a description of the classes of ~~persons~~ stakeholders who probably will be affected
 3.30 by the proposed rule, including classes that will bear the costs of the proposed rule and
 3.31 classes that will benefit from the proposed rule;

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

4.3 ~~(3)~~ (2) a determination of whether there are less costly methods or less intrusive methods
 4.4 for achieving the purpose of the proposed rule;

4.5 ~~(4)~~ (3) a description of any alternative methods for achieving the purpose of the proposed
 4.6 rule that were seriously considered by the agency and the reasons why they were rejected
 4.7 in favor of the proposed rule;

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

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

4.14 ~~(7)~~ (4) an assessment of any differences between the proposed rule and existing federal
 4.15 regulations and a specific analysis of the need for and reasonableness of each difference;
 4.16 and

4.17 ~~(8)~~ (5) an assessment of the cumulative effect of the rule with other federal and state
 4.18 regulations related to the specific purpose of the rule.

4.19 The statement must describe how the agency, in developing the rules, considered and
 4.20 implemented the legislative policy supporting performance-based regulatory systems set
 4.21 forth in section 14.002.

4.22 For purposes of clause ~~(8)~~ (5), "cumulative effect" means the impact that results from
 4.23 incremental impact of the proposed rule in addition to other rules, regardless of what state
 4.24 or federal agency has adopted the other rules. Cumulative effects can result from individually
 4.25 minor but collectively significant rules adopted over a period of time.

4.26 The statement must include the cost-benefit analysis required under section 14.051 and
 4.27 also describe the agency's efforts to provide additional notification under section 14.14,
 4.28 subdivision 1a, to persons or classes of ~~persons~~ stakeholders who may be affected by the
 4.29 proposed rule or must explain why these efforts were not made.

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

5.1 the Legislative Reference Library when the notice of hearing is mailed under section 14.14,
5.2 subdivision 1a.

5.3 Sec. 8. Minnesota Statutes 2024, section 14.14, subdivision 2, is amended to read:

5.4 Subd. 2. **Establishment of need and reasonableness of rule.** At the public hearing the
5.5 agency shall make an affirmative presentation of facts establishing the need for and
5.6 reasonableness of the proposed rule, including the cost-benefit analysis performed under
5.7 section 14.051, and fulfilling any relevant substantive or procedural requirements imposed
5.8 on the agency by law or rule. The agency may, in addition to its affirmative presentation,
5.9 rely upon facts presented by others on the record during the rule proceeding to support the
5.10 rule adopted.

5.11 Sec. 9. Minnesota Statutes 2024, section 14.15, subdivision 3, is amended to read:

5.12 Subd. 3. **Finding of substantial difference.** If the report contains a finding that a rule
5.13 has been modified in a way which makes it substantially different, as determined under
5.14 section 14.05, subdivision 2, from that which was originally proposed, or that the agency
5.15 has not met the requirements of ~~sections~~ section 14.051 or 14.131 to 14.18, it shall be
5.16 submitted to the chief administrative law judge for approval. If the chief administrative law
5.17 judge approves the finding of the administrative law judge, the chief administrative law
5.18 judge shall advise the agency and the revisor of statutes of actions which will correct the
5.19 defects. The agency shall not adopt the rule until the chief administrative law judge
5.20 determines that the defects have been corrected or, if applicable, that the agency has satisfied
5.21 the rule requirements for the adoption of a substantially different rule.

5.22 Sec. 10. Minnesota Statutes 2024, section 14.15, subdivision 4, is amended to read:

5.23 Subd. 4. **Need ~~or~~, reasonableness, or net benefits not established.** If the chief
5.24 administrative law judge determines that the need for or reasonableness of the rule has not
5.25 been established pursuant to section 14.14, subdivision 2, or net benefits have not been
5.26 adequately established pursuant to section 14.051, and if the agency does not elect to follow
5.27 the suggested actions of the chief administrative law judge to correct that defect, then the
5.28 agency shall submit the proposed rule to the Legislative Coordinating Commission and to
5.29 the house of representatives and senate policy committees with primary jurisdiction over
5.30 state governmental operations for advice and comment. The agency may not adopt the rule
5.31 until it has received and considered the advice of the commission and committees. However,
5.32 the agency is not required to wait for advice for more than 60 days after the commission
5.33 and committees have received the agency's submission.

6.1 Sec. 11. Minnesota Statutes 2024, section 14.386, is amended to read:

6.2 **14.386 PROCEDURE FOR ADOPTING EXEMPT RULES; DURATION.**

6.3 (a) A rule adopted, amended, or repealed by an agency, under a statute enacted after
6.4 January 1, 1997, authorizing or requiring rules to be adopted but excluded from the
6.5 rulemaking provisions of chapter 14 or from the definition of a rule, has the force and effect
6.6 of law only if:

6.7 (1) the revisor of statutes approves the form of the rule by certificate;

6.8 (2) the person authorized to adopt the rule on behalf of the agency signs an order adopting
6.9 the rule;

6.10 (3) the Office of Administrative Hearings approves the rule as to its legality within 14
6.11 days after the agency submits it for approval and files an electronic copy of the adopted
6.12 rule with the revisor's certificate in the Office of the Secretary of State; ~~and~~

6.13 (4) a copy is published by the agency in the State Register; and

6.14 (5) the agency notifies by email the chairs and ranking minority members of the legislative
6.15 committees with jurisdiction over the agency's operating budget.

6.16 The secretary of state shall forward one copy of the rule to the governor.

6.17 A statute enacted after January 1, 1997, authorizing or requiring rules to be adopted but
6.18 excluded from the rulemaking provisions of chapter 14 or from the definition of a rule does
6.19 not excuse compliance with this section unless it makes specific reference to this section.

6.20 (b) A rule adopted under this section is effective for a period of two years from the date
6.21 of publication of the rule in the State Register. The authority for the rule expires at the end
6.22 of this two-year period.

6.23 (c) The chief administrative law judge shall adopt rules relating to the rule approval
6.24 duties imposed by this section and section 14.388, including rules establishing standards
6.25 for review.

6.26 (d) This section does not apply to:

6.27 (1) any group or rule listed in section 14.03, subdivisions 1 and 3, except as otherwise
6.28 provided by law;

6.29 (2) game and fish rules of the commissioner of natural resources adopted under section
6.30 84.027, subdivision 13, or sections 97A.0451 to 97A.0459;

7.1 (3) experimental and special management waters designated by the commissioner of
7.2 natural resources under sections 97C.001 and 97C.005;

7.3 (4) game refuges designated by the commissioner of natural resources under section
7.4 97A.085; or

7.5 (5) transaction fees established by the commissioner of natural resources for electronic
7.6 or telephone sales of licenses, stamps, permits, registrations, or transfers under section
7.7 84.027, subdivision 15, paragraph (a), clause (2).

7.8 (e) If a statute provides that a rule is exempt from chapter 14, and section 14.386 does
7.9 not apply to the rule, the rule has the force of law unless the context of the statute delegating
7.10 the rulemaking authority makes clear that the rule does not have force of law.

7.11 Sec. 12. Minnesota Statutes 2024, section 14.388, subdivision 2, is amended to read:

7.12 Subd. 2. **Notice.** An agency proposing to adopt, amend, or repeal a rule under this section
7.13 must give electronic notice of its intent in accordance with section 16E.07, subdivision 3,
7.14 ~~and~~ notice by United States mail or ~~electronic mail~~ email to persons who have registered
7.15 their names with the agency under section 14.14, subdivision 1a, and notice by email to the
7.16 chairs and ranking minority members of the legislative committees with jurisdiction over
7.17 the agency's operating budget. The notice must be given no later than the date the agency
7.18 submits the proposed rule to the Office of Administrative Hearings for review of its legality
7.19 and must include:

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

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

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

7.25 Sec. 13. Minnesota Statutes 2024, section 14.389, subdivision 2, is amended to read:

7.26 Subd. 2. **Notice and comment.** The agency must publish notice of the proposed rule in
7.27 the State Register ~~and must~~ ₂ mail the notice by United States mail or ~~electronic mail~~ email
7.28 to persons who have registered with the agency to receive mailed notices, and provide notice
7.29 by email to the chairs and ranking minority members of the legislative committees with
7.30 jurisdiction over the agency's operating budget. The mailed notice must include either a
7.31 copy of the proposed rule or a description of the nature and effect of the proposed rule and
7.32 a statement that a free copy is available from the agency upon request. The notice in the

8.1 State Register and the notice to legislators must include the proposed rule or the amended
8.2 rule in the form required by the revisor under section 14.07, an easily readable and
8.3 understandable summary of the overall nature and effect of the proposed rule, and a citation
8.4 to the most specific statutory authority for the rule, including authority for the rule to be
8.5 adopted under the process in this section. The agency must allow 30 days after publication
8.6 in the State Register for comment on the rule.

8.7 Sec. 14. Minnesota Statutes 2024, section 14.44, is amended to read:

8.8 **14.44 DETERMINATION OF VALIDITY OF RULE.**

8.9 The validity of any rule may be determined upon the petition for a declaratory judgment
8.10 thereon, addressed to the court of appeals, when it appears that (1) the rule, or its threatened
8.11 application, interferes with or impairs, or threatens to interfere with or impair the legal rights
8.12 or privileges of the petitioner, or (2) the final cost-benefit analysis supporting the rule is
8.13 significantly deficient under section 14.051, subdivision 3. The agency shall be made a
8.14 party to the proceeding. The declaratory judgment may be rendered whether or not the
8.15 petitioner has first requested the agency to pass upon the validity of the rule in question,
8.16 and whether or not the agency has commenced an action against the petitioner to enforce
8.17 the rule.

8.18 Sec. 15. Minnesota Statutes 2024, section 14.45, is amended to read:

8.19 **14.45 RULE DECLARED INVALID.**

8.20 In proceedings under section 14.44, the court shall declare the rule invalid if it finds that
8.21 it violates constitutional provisions ~~or~~, exceeds the statutory authority of the agency ~~or~~, was
8.22 adopted without compliance with statutory rulemaking procedures, or is supported by a
8.23 significantly deficient final cost-benefit analysis. Any party to proceedings under section
8.24 14.44, including the agency, may appeal an adverse decision of the court of appeals to the
8.25 supreme court as in other civil cases.

8.26 Sec. 16. **EFFECTIVE DATE.**

8.27 This act is effective the day following final enactment and applies to rules adopted or
8.28 amended on or after that date.