

CHAPTER 179—S.F.No. 555

An act relating to state government; modifying certain procedures relating to administrative rules; appropriating money; amending Minnesota Statutes 2000, sections 14.05, subdivision 6; 14.116; 14.18, subdivision 1; 14.19; proposing coding for new law in Minnesota Statutes, chapter 14; repealing Laws 1999, chapter 129, section 6.

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

Section 1. Minnesota Statutes 2000, section 14.05, subdivision 6, is amended to read:

Subd. 6. **VETO OF ADOPTED RULES.** The governor may veto all or a severable portion of a rule of an agency as defined in section 14.02, subdivisions 2 and 4, by publishing submitting notice of the veto ~~in~~ to the State Register within 14 days of receiving a copy of the rule from the secretary of state under section 14.16, subdivision 3, 14.26, subdivision 3, or 14.386 or the agency under section 14.389, subdivision 3, or section 14.3895. The veto is effective when the veto notice is submitted to the State Register. This authority applies only to the extent that the agency itself would have authority, through rulemaking, to take such action. If the governor vetoes a rule or portion of a rule under this section, the governor shall notify the chairs of the legislative committees having jurisdiction over the agency whose rule was vetoed.

Sec. 2. [14.055] RULE VARIANCES; STANDARDS.

Subdivision 1. **AUTHORITY.** A person or entity may petition an agency for a variance from a rule adopted by the agency, as it applies to the circumstances of the petitioner.

Subd. 2. **GENERAL TERMS.** The following general terms apply to variances granted pursuant to this section:

(1) the agency may attach any conditions to the granting of a variance that the agency determines are needed to protect public health, safety, or the environment;

(2) a variance has prospective effect only;

(3) conditions attached to the granting of a variance are an enforceable part of the rule to which the variance applies; and

(4) the agency may not grant a variance from a statute or court order.

Subd. 3. **MANDATORY VARIANCES.** An agency shall grant a variance from a rule as applied to the particular circumstances of the petitioner, if the agency finds that the application of the rule, as applied to the circumstances of that petitioner, would not serve any of the purposes of the rule.

Subd. 4. **DISCRETIONARY VARIANCES.** An agency may grant a variance if the agency finds that:

(1) application of the rule to the petitioner would result in hardship or injustice;

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(2) variance from the rule would be consistent with the public interest; and

(3) variance from the rule would not prejudice the substantial legal or economic rights of any person or entity.

Subd. 5. RULES. An agency may adopt rules under section 14.389 establishing general standards for granting mandatory or discretionary variances from its rules. Section 14.389, subdivision 5, applies to these rules. An agency also may grant variances based on standards specified in other law.

Subd. 6. WHEN NOT APPLICABLE. This section and section 14.056 do not apply if another state or federal law or rule authorizes or requires the granting of variances by an agency or in certain circumstances.

Sec. 3. [14.056] RULE VARIANCES; PROCEDURES.

Subdivision 1. CONTENTS OF VARIANCE PETITION. A petition for a variance under section 14.055 must include the following information:

(1) the name and address of the person or entity for whom a variance is being requested;

(2) a description of and, if known, a citation to the specific rule for which a variance is requested;

(3) the variance requested, including the scope and duration of the variance;

(4) the reasons that the petitioner believes justify a variance, including a signed statement attesting to the accuracy of the facts asserted in the petition;

(5) a history of the agency's action relative to the petitioner, as relates to the variance request;

(6) information regarding the agency's treatment of similar cases, if known; and

(7) the name, address, and telephone number of any person the petitioner knows would be adversely affected by the grant of the petition.

Subd. 2. FEES. (a) An agency may charge a petitioner a variance fee. The fee is:

(1) \$10, which must be submitted with the petition, and is not refundable; or

(2) the estimated cost for the agency to process the variance petition, if the agency estimates that the cost will be more than \$20.

(b) If an agency intends to charge costs to the petitioner under paragraph (a), clause (2):

(1) the agency and the petitioner must agree on the costs and the timing and manner of payment;

(2) for purposes of the 60-day limit in subdivision 5, the petition is not complete until there is agreement with the petitioner on the costs and timing and manner of payment; and

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(3) if the payment made by the petitioner exceeds the agency's actual costs, the agency must refund the overpayment to the petitioner. The payment is not otherwise refundable.

(c) Proceeds from fees charged under this subdivision are appropriated to the commissioner of finance. The commissioner of finance may transfer amounts to the fund and agency that supports the program that is the subject of the variance petition when the agency makes a request for the fee proceeds and the commissioner of finance determines the agency needs the fee proceeds to implement this section. Annually, the commissioner of finance must transfer proceeds from fees that are not transferred to agencies to the general fund.

Subd. 3. NOTICE. In addition to any notice required by other law, an agency shall make reasonable efforts to ensure that persons or entities who may be affected by the variance have timely notice of the request for a variance. The agency may require the petitioner to serve notice on any other person or entity in the manner specified by the agency.

Subd. 4. ADDITIONAL INFORMATION. Before granting or denying a variance petition, an agency may request additional information from the petitioner.

Subd. 5. ORDER; TIMING. An agency must issue a written order granting or denying a variance and specifying the scope and period of any variance granted. The order must contain an agency statement of the relevant facts and the reasons for the agency's action. The agency shall grant or deny a variance petition as soon as practicable, and within 60 days of receipt of the completed petition, unless the petitioner agrees to a later date. Failure of the agency to act on a petition within 60 days constitutes approval of the petition.

Subd. 6. ORDER; DELIVERY. Within five days of issuing a variance order, the agency shall send the order to the petitioner and to any other person entitled to notice under other law.

Subd. 7. RECORD. An agency shall maintain a record of all orders granting and denying variances under section 14.055. The records must be indexed by rule and be available for public inspection to the extent provided in chapter 13.

Sec. 4. Minnesota Statutes 2000, section 14.116, is amended to read:

14.116 NOTICE TO LEGISLATURE.

When an agency mails notice of intent to adopt rules under section 14.14 or 14.22, the agency must make reasonable efforts to send a copy of the same notice and a copy of the statement of need and reasonableness to the following:

(1) all people who are still legislators and who were main authors, or supporting authors, of the law granting the agency the statutory authority the agency relies upon as authority to adopt the proposed rule; and

(2) the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rules.

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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 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 and senate authors of the amendment granting rulemaking authority, rather than to the chief authors of the bill.

Sec. 5. [14.126] COMMITTEE AUTHORITY OVER RULE ADOPTION.

Subdivision 1. DELAY ACTION. 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 as proposed, the agency may not adopt the rule until the legislature adjourns the annual legislative session that began after the vote of the committees. The speaker of the house of representatives and the president of the senate shall determine if a standing committee has jurisdiction over a rule before a committee may act under this section.

Subd. 2. VOTE. A committee vote under this section must be by a majority of the committee. 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 committee voting under this section shall notify the agency, the revisor of statutes, and the chief administrative law judge of the vote as soon as possible. The committee shall publish notice of the vote in the State Register as soon as possible.

Sec. 6. Minnesota Statutes 2000, section 14.18, subdivision 1, is amended to read:

Subdivision 1. **GENERALLY.** A rule is effective after it has been subjected to all requirements described in sections 14.131 to 14.20 and five working days after the notice of adoption is published in the State Register unless a later date is required by section 14.126 or other law or specified in the rule. If the rule adopted is the same as the proposed rule, publication may be made by publishing notice in the State Register that the rule has been adopted as proposed and by citing the prior publication. If the rule adopted differs from the proposed rule, the portions of the adopted rule that differ from the proposed rule must be included in the notice of adoption together with a citation to the prior State Register publication of the remainder of the proposed rule. The nature of the modifications must be clear to a reasonable person when the notice of adoption is considered together with the State Register publication of the proposed rule, except that modifications may also be made that comply with the form requirements of section 14.07, subdivision 7.

If the agency omitted from the notice of proposed rule adoption the text of the proposed rule, as permitted by section 14.14, subdivision 1a, paragraph (b), the chief administrative law judge may provide that the notice of the adopted rule need not include the text of any changes from the proposed rule. However, the notice of

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adoption must state in detail the substance of the changes made from the proposed rule, and must state that a free copy of the portion of the adopted rule that was the subject of the rulemaking proceeding, not including any material adopted by reference as permitted by section 14.07, is available upon request to the agency.

Sec. 7. Minnesota Statutes 2000, section 14.19, is amended to read:

14.19 DEADLINE TO COMPLETE RULEMAKING.

Within 180 days after issuance of the administrative law judge's report, the agency shall submit its notice of adoption, amendment, or repeal to the State Register for publication. If the agency has not submitted its notice to the State Register within 180 days, the rule is automatically withdrawn. The agency may not adopt the withdrawn rules without again following the procedures of sections 14.05 to 14.28. It shall report to the legislative coordinating commission, other appropriate committees of the legislature, and the governor its failure to adopt rules and the reasons for that failure. The 180-day time limit of this section does not include: (1) any days used for review by the chief administrative law judge or the commission if the review is required by law; or (2) days during which the rule cannot be adopted, because of votes by legislative committees under section 14.126.

Sec. 8. [14.381] UNADOPTED RULES.

Subdivision 1. PETITION. (a) A person may petition the office of administrative hearings seeking an order of an administrative law judge determining that an agency is enforcing or attempting to enforce a policy, guideline, bulletin, criterion, manual standard, or similar pronouncement as though it were a duly adopted rule. The petition must be supported by affidavit and must be served upon the agency. The agency shall respond in writing to the petition within ten working days. The administrative law judge may order oral argument on the petition, but only if necessary to a decision.

(b) An agency determination is not considered an unadopted rule when the agency enforces a law or rule by applying the law or rule to specific facts on a case-by-case basis.

Subd. 2. ORDER. The order of the administrative law judge must direct the agency to cease enforcement of the unadopted rule that is the subject of the petition. The order must be served upon the parties and the legislative coordinating commission by first class mail and must be published by the agency in the State Register. The decision of the administrative law judge may be appealed under sections 14.44 and 14.45.

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

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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. [14.3895] PROCESS FOR REPEALING OBSOLETE RULES.

Subdivision 1. APPLICATION. An agency may use this section to repeal rules identified in the agency's annual obsolete rules report under section 14.05, subdivision 5, unless a law specifically requires another process or unless 25 requests are received under subdivision 4. Sections 14.19, 14.20, 14.365, and 14.366 apply to rules repealed under this section.

Subd. 2. NOTICE PLAN; PRIOR APPROVAL. The agency shall draft a notice plan under which the agency will make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule repeal by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication. Before publishing the notice in the State Register and implementing the notice plan, the agency shall obtain prior approval of the notice plan by the chief administrative law judge.

Subd. 3. NOTICE AND COMMENT. The agency shall publish notice of the proposed rule repeal in the State Register. The agency shall also mail the notice to persons who have registered with the agency to receive mailed notices and to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule repeal. The agency shall also give notice according to the notice plan approved under subdivision 2. The mailed notice must include either a copy of the rule proposed for repeal or a description of the nature and effect of the proposed rule repeal and a statement that a free copy is available from the agency upon request. The notice must include a statement that, if 25 or more people submit a written request, the agency will have to meet the requirements of sections 14.131 to 14.20 for rules adopted after a hearing or the requirements of sections 14.22 to 14.28 for rules adopted without a hearing, including the preparation of a statement of need and reasonableness and the opportunity for a hearing. The agency shall allow 60 days after publication in the State Register for comment on the proposed rule repeal.

Subd. 4. REQUESTS. If 25 or more people submit a written request, the agency may repeal the rule only after complying with sections 14.131 to 14.20 or the requirements of sections 14.22 to 14.28. The requests must be in the manner specified in section 14.25.

Subd. 5. ADOPTION. If the final repeal is identical to the action originally published in the State Register, the agency shall publish a notice of repealers in the State Register. If the final action is different from the action originally published in the State Register, the agency shall publish a copy of the changes in the State Register. The agency shall also file a copy of the repealed rule with the governor. The repeal is effective after it has been subjected to all requirements described in this section or sections 14.131 to 14.20 or 14.22 to 14.28 and five working days after the notice of

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repeal is published in the State Register unless a later date is required by law or specified in the rule repeal proposal.

Subd. 6. LEGAL REVIEW. Before publication of the final rule in the State Register, the agency shall submit the rule to the chief administrative law judge in the office of administrative hearings. The chief administrative law judge shall within 14 days approve or disapprove the rule as to its legality and its form to the extent the form relates to legality.

Sec. 10. EXPIRATION.

Minnesota Statutes 2000, section 14.05, subdivision 4, expires July 1, 2002. Variances granted and rules adopted under Minnesota Statutes, section 14.05, subdivision 4, remain in effect after that date, however, and the rules may be amended.

Sec. 11. REPEALER.

Laws 1999, chapter 129, section 6, is repealed.

Sec. 12. EFFECTIVE DATES.

Sections 1 and 4 to 11 are effective July 1, 2001. Sections 2 and 3 are effective July 1, 2002, except that the authority to adopt rules under Minnesota Statutes, section 14.055, subdivision 5, is effective the day following final enactment.

Presented to the governor May 23, 2001

Signed by the governor May 25, 2001, 12:04 p.m.

CHAPTER 180—H.F.No. 1340

An act relating to Wright county; permitting the appointment of the county recorder.

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

Section 1. RECORDER MAY BE APPOINTED.

Notwithstanding Minnesota Statutes, section 382.01, upon adoption of a resolution by the Wright county board of commissioners, the office of county recorder in the county is not elective but must be filled by appointment by the county board as provided in the resolution. Before the county board may adopt a resolution under this section, the board must hold a public hearing on the proposal to appoint the county recorder.

Sec. 2. BOARD CONTROLS, MAY CHANGE AS LONG AS DUTIES DONE.

Upon adoption of a resolution by the Wright county board of commissioners and subject to sections 3 and 4, the duties of the elected official required by statute whose office is made appointive as authorized by this act must be discharged by the board of

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