

SENATE

STATE OF MINNESOTA

EIGHTY-NINTH SESSION

S.F. No. 1359

(SENATE AUTHORS: WIKLUND)

DATE	D-PG	OFFICIAL STATUS
03/04/2015	531	Introduction and first reading
		Referred to State and Local Government
03/16/2015	834	Comm report: To pass
	893	Second reading

1.1 A bill for an act

1.2 relating to state government; regulating agency rulemaking; permitting the use of

1.3 electronic notices and documents; amending Minnesota Statutes 2014, sections

1.4 14.05, by adding a subdivision; 14.07, subdivision 6; 14.08; 14.116; 14.131;

1.5 14.14, subdivision 1a; 14.16, subdivision 3; 14.22, subdivision 1; 14.23; 14.25,

1.6 subdivision 1; 14.26, subdivision 3, by adding a subdivision; 14.386; 14.389,

1.7 subdivision 2; 14.3895, subdivision 3.

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

1.9 Section 1. Minnesota Statutes 2014, section 14.05, is amended by adding a subdivision

1.10 to read:

1.11 Subd. 7. **Electronic notices and documents permitted.** If sections 14.05 to

1.12 14.389 require an agency to provide notice or documents to the public, the legislature,

1.13 or another state agency, the agency may send the notice or document, or a link to the

1.14 notice or document, using any reliable method of electronic transmission. An agency may

1.15 file rule-related documents with the Office of Administrative Hearings by electronic

1.16 transmission in the manner approved by that office and the Office of the Revisor of

1.17 Statutes by electronic transmission in the manner approved by that office.

1.18 Sec. 2. Minnesota Statutes 2014, section 14.07, subdivision 6, is amended to read:

1.19 Subd. 6. **Style and form revisions.** The revisor of statutes may periodically

1.20 prepare style and form revisions of rules to clarify, modernize, or simplify the text without

1.21 material change to the rules' substance or effect. Before beginning any revision, the

1.22 revisor shall consult the agency whose rules will be subject to the revision. After the

1.23 revision is prepared, the revisor shall present it to the agency and receive its consent to

1.24 proceed to seek adoption of the revision. Upon receiving consent, the revisor shall seek

adoption of the rules in accordance with sections 14.05 to 14.28. However, the need and reasonableness statement and any hearing shall be restricted to the issue of whether any material change in the substance and effect of the rule is proposed by the revisor. The revisor shall ~~mail~~ send notice by United States mail or electronic mail of any hearing to the persons registered with the agency whose rules are the subject of the revision. The revisor shall pay all costs to publish notices in the State Register and to replenish the agency's stock of rules which exist at the time the revisor adopts the revised rules.

Sec. 3. Minnesota Statutes 2014, section 14.08, is amended to read:

14.08 APPROVAL OF RULE AND RULE FORM; COSTS.

(a) One copy of a rule adopted under section 14.26 must be submitted by the agency to the chief administrative law judge. The chief administrative law judge shall request from the revisor certified copies of the rule when it is submitted by the agency under section 14.26. Within five days after the request for certification of the rule is received by the revisor, excluding weekends and holidays, the revisor shall either return the rule with a certificate of approval of the form of the rule to the chief administrative law judge or notify the chief administrative law judge and the agency that the form of the rule will not be approved.

If the chief administrative law judge disapproves a rule, the agency may modify it and the agency shall submit one copy of the modified rule, approved as to form by the revisor, to the chief administrative law judge.

(b) One copy of a rule adopted after a public hearing must be submitted by the agency to the chief administrative law judge. The chief administrative law judge shall request from the revisor certified copies of the rule when it is submitted by the agency. Within five working days after receipt of the request, the revisor shall either return the rule with a certificate of approval to the chief administrative law judge or notify the chief administrative law judge and the agency that the form of the rule will not be approved.

(c) If the revisor refuses to approve the form of the rule, the revisor's notice must revise the rule so it is in the correct form.

(d) After the agency has notified the chief administrative law judge that it has adopted the rule, the chief administrative law judge shall promptly file four paper copies or an electronic copy of the adopted rule in the Office of the Secretary of State. The secretary of state shall forward one copy of each rule filed to the agency, to the revisor of statutes, and to the governor.

~~(d)~~ (e) The chief administrative law judge shall assess an agency for the actual cost of processing rules under this section. Each agency shall include in its budget money to

pay the assessments. Receipts from the assessment must be deposited in the administrative hearings account established in section 14.54.

Sec. 4. Minnesota Statutes 2014, 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, to the chairs and ranking minority members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule.

(b) When an agency ~~mails~~ sends notice of intent to adopt rules under section 14.14 or 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~~ sending 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. 5. Minnesota Statutes 2014, section 14.131, is amended to read:

14.131 STATEMENT OF NEED AND REASONABLENESS.

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

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

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

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

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

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

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

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

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

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

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

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

The agency must consult with the commissioner of management and budget to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government. The agency must send a copy of the statement of need and reasonableness to the Legislative Reference Library when the notice of hearing is ~~mailed~~ sent under section 14.14, subdivision 1a.

Sec. 6. Minnesota Statutes 2014, section 14.14, subdivision 1a, is amended to read:

Subd. 1a. **Notice of rule hearing.** (a) Each agency shall maintain a list of all persons who have registered with the agency for the purpose of receiving notice of rule proceedings. Persons may register to receive notice of rule proceedings by submitting to the agency:

(1) their electronic mail address; or

5.1 (2) their name and United States mail address.

5.2 The agency may inquire as to whether those persons on the list wish to remain on it and
5.3 may remove persons for whom there is a negative reply or no reply within 60 days. The
5.4 agency shall, at least 30 days before the date set for the hearing, give notice of its intention
5.5 to adopt rules by United States mail or electronic mail to all persons on its list, and by
5.6 publication in the State Register. The ~~mailed~~ notice must include either a copy of the
5.7 proposed rule or an easily readable and understandable description of its nature and effect
5.8 and an announcement that a free copy of the proposed rule is available on request from
5.9 the agency. In addition, each agency shall make reasonable efforts to notify persons or
5.10 classes of persons who may be significantly affected by the rule being proposed by giving
5.11 notice of its intention in newsletters, newspapers, or other publications, or through other
5.12 means of communication. The notice in the State Register must include the proposed rule
5.13 or an amended rule in the form required by the revisor under section 14.07, together with
5.14 an easily readable and understandable summary of the overall nature and effect of the
5.15 proposed rule, a citation to the most specific statutory authority for the proposed rule, a
5.16 statement of the place, date, and time of the public hearing, a statement that persons may
5.17 register with the agency for the purpose of receiving notice of rule proceedings and notice
5.18 that the agency intends to adopt a rule and other information required by law or rule.
5.19 When an entire rule is proposed to be repealed, the agency need only publish that fact,
5.20 along with an easily readable and understandable summary of the overall nature of the
5.21 rules proposed for repeal, and a citation to the rule to be repealed.

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

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

5.26 (2) the notice of rule hearing states that a free copy of the entire rule is available
5.27 upon request to the agency; and

5.28 (3) the notice of rule hearing states in detail the specific subject matter of the omitted
5.29 rule, cites the statutory authority for the proposed rule, and details the proposed rule's
5.30 purpose and motivation.

5.31 Sec. 7. Minnesota Statutes 2014, section 14.16, subdivision 3, is amended to read:

5.32 Subd. 3. **Filing.** After the agency has ~~adopted~~ provided the chief administrative law
5.33 judge with a signed order adopting the rule, the agency chief administrative law judge
5.34 shall promptly file three four paper copies or an electronic copy of it the adopted rule in

the Office of the Secretary of State. The secretary of state shall forward one copy of each rule filed to the agency, to the revisor of statutes, and to the governor.

Sec. 8. Minnesota Statutes 2014, section 14.22, subdivision 1, is amended to read:

Subdivision 1. **Contents.** (a) Unless an agency proceeds directly to a public hearing on a proposed rule and gives the notice prescribed in section 14.14, subdivision 1a, the agency shall give notice of its intention to adopt a rule without public hearing. The notice must be given by publication in the State Register and by United States mail or electronic mail to persons who have registered their names with the agency under section 14.14, subdivision 1a. The ~~mailed~~ notice must include either a copy of the proposed rule or an easily readable and understandable description of its nature and effect and an announcement that a free copy of the proposed rule is available on request from the agency. In addition, each agency shall make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication. The notice in the State Register must include the proposed rule or the amended rule in the form required by the revisor under section 14.07, an easily readable and understandable summary of the overall nature and effect of the proposed rule, a citation to the most specific statutory authority for the proposed rule, a statement that persons may register with the agency for the purpose of receiving notice of rule proceedings and notice that a rule has been submitted to the chief administrative law judge, and other information required by law or rule. When an entire rule 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 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 and that comment is encouraged;

(2) that each comment should identify the portion of the proposed rule 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;

(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 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, the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient if:

(1) knowledge of the rule 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 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, and details the proposed rule's purpose and motivation.

Sec. 9. Minnesota Statutes 2014, section 14.23, is amended to read:

14.23 STATEMENT OF NEED AND REASONABLENESS.

By the date of the section 14.22 notice, the agency shall prepare a statement of need and reasonableness, which must be available to the public. The statement of need and reasonableness must include the analysis required in section 14.131. The statement must also describe the agency's efforts to provide additional notification under section 14.22 to persons or classes of persons who may be affected by the proposed rules or must explain why these efforts were not made. For at least 30 days following the notice, the agency shall afford the public an opportunity to request a public hearing and to submit data and views on the proposed rule in writing.

The agency shall send a copy of the statement of need and reasonableness to the Legislative Reference Library when the notice of intent to adopt is ~~mailed~~ sent.

Sec. 10. Minnesota Statutes 2014, section 14.25, subdivision 1, is amended to read:

Subdivision 1. **Requests for hearing.** If, during the 30-day period allowed for comment, 25 or more persons submit to the agency a written request for a public hearing of the proposed rule, the agency shall proceed under the provisions of sections 14.14 to 14.20. The written request must include: (1) the name and address of the person requesting the public hearing; and (2) the portion or portions of the rule to which the person objects or a statement that the person opposes the entire rule. If not previously published under section 14.22, subdivision 2, a notice of the public hearing must be published in the State Register

and ~~mailed~~ sent to those persons who submitted a written request for the public hearing. Unless the agency has modified the proposed rule, the notice need not include the text of the proposed rule but only a citation to the State Register pages where the text appears.

A written request for a public hearing that does not comply with the requirements of this section is invalid and may not be counted by the agency for purposes of determining whether a public hearing must be held.

Sec. 11. Minnesota Statutes 2014, section 14.26, subdivision 3, is amended to read:

Subd. 3. **Review.** (a) Within 14 days, the administrative law judge shall approve or disapprove the rule as to its legality and its form to the extent that the form relates to legality, including the issues of whether the rule if modified is substantially different, as determined under section 14.05, subdivision 2, from the rule as originally proposed, whether the agency has the authority to adopt the rule, and whether the record demonstrates a rational basis for the need for and reasonableness of the proposed rule. If the rule is approved, the administrative law judge shall promptly file four paper copies or an electronic copy of it the adopted rule in the Office of the Secretary of State. The secretary of state shall forward one copy of each rule to the revisor of statutes, ~~one~~ to the agency, and ~~one~~ to the governor. If the rule is disapproved, the administrative law judge shall state in writing the reasons for the disapproval and make recommendations to overcome the defects.

(b) The written disapproval must be submitted to the chief administrative law judge for approval. If the chief administrative law judge approves of the findings of the administrative law judge, the chief administrative law judge shall send the statement of the reasons for disapproval of the rule to the agency, the Legislative Coordinating Commission, the house of representatives and senate policy committees with primary jurisdiction over state governmental operations, and the revisor of statutes and advise the agency and the revisor of statutes of actions that will correct the defects. The rule may not be filed in the Office of the Secretary of State, nor be published, until the chief administrative law judge determines that the defects have been corrected or, if applicable, that the agency has satisfied the rule requirements for the adoption of a substantially different rule.

(c) If the chief administrative law judge determines that the need for or reasonableness of the rule has not been established, and if the agency does not elect to follow the suggested actions of the chief administrative law judge to correct that defect, then the agency shall submit the proposed rule to the Legislative Coordinating Commission and to the house of representatives and senate policy committees with primary jurisdiction over state governmental operations for advice and comment. The agency may not adopt the rule until it has received and considered the advice of the

commission and committees. However, the agency need not wait for advice for more than 60 days after the commission and committees have received the agency's submission.

(d) The administrative law judge shall disregard any error or defect in the proceeding due to the agency's failure to satisfy any procedural requirements imposed by law or rule if the administrative law judge finds:

(1) that the failure did not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process; or

(2) that the agency has taken corrective action to cure the error or defect so that the failure did not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process.

Sec. 12. Minnesota Statutes 2014, section 14.26, is amended by adding a subdivision to read:

Subd. 3a. **Filing.** If the rule is approved, the administrative law judge shall promptly file four paper copies or an electronic copy of the adopted rule in the Office of the Secretary of State. The secretary of state shall forward one copy of each rule to the revisor of statutes, to the agency, and to the governor.

Sec. 13. Minnesota Statutes 2014, section 14.386, is amended to read:

14.386 PROCEDURE FOR ADOPTING EXEMPT RULES; DURATION.

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

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

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

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

(4) a copy is published by the agency in the State Register.

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

A statute enacted after January 1, 1997, authorizing or requiring rules to be adopted but excluded from the rulemaking provisions of chapter 14 or from the definition of a

10.1 rule does not excuse compliance with this section unless it makes specific reference to
10.2 this section.

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

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

10.9 (d) This section does not apply to:

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

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

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

10.16 (4) game refuges designated by the commissioner of natural resources under section
10.17 97A.085; or

10.18 (5) transaction fees established by the commissioner of natural resources for
10.19 electronic or telephone sales of licenses, stamps, permits, registrations, or transfers under
10.20 section 84.027, subdivision 15, paragraph (a), clause (3).

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

10.24 Sec. 14. Minnesota Statutes 2014, section 14.389, subdivision 2, is amended to read:

10.25 Subd. 2. **Notice and comment.** The agency must publish notice of the proposed
10.26 rule in the State Register and must ~~mail~~ send the notice by United States mail or electronic
10.27 mail to persons who have registered with the agency to receive ~~mailed~~ notices. The ~~mailed~~
10.28 notice must include either a copy of the proposed rule or a description of the nature and
10.29 effect of the proposed rule and a statement that a free copy is available from the agency
10.30 upon request. The notice in the State Register must include the proposed rule or the
10.31 amended rule in the form required by the revisor under section 14.07, an easily readable
10.32 and understandable summary of the overall nature and effect of the proposed rule, and a
10.33 citation to the most specific statutory authority for the rule, including authority for the
10.34 rule to be adopted under the process in this section. The agency must allow 30 days after
10.35 publication in the State Register for comment on the rule.

11.1 Sec. 15. Minnesota Statutes 2014, section 14.3895, subdivision 3, is amended to read:

11.2 Subd. 3. **Notice and comment.** The agency shall publish notice of the proposed rule
11.3 repeal in the State Register. The agency shall also ~~mail~~ send the notice by United States
11.4 mail or electronic mail to persons who have registered with the agency to receive ~~mailed~~
11.5 notices and to the chairs and ranking minority party members of the legislative policy and
11.6 budget committees with jurisdiction over the subject matter of the proposed rule repeal.
11.7 The agency shall also give notice according to the notice plan approved under subdivision
11.8 2. The ~~mailed~~ notice must include either a copy of the rule proposed for repeal or a
11.9 description of the nature and effect of the proposed rule repeal and a statement that a free
11.10 copy is available from the agency upon request. The notice must include a statement that, if
11.11 25 or more people submit a written request, the agency will have to meet the requirements
11.12 of sections 14.131 to 14.20 for rules adopted after a hearing or the requirements of sections
11.13 14.22 to 14.28 for rules adopted without a hearing, including the preparation of a statement
11.14 of need and reasonableness and the opportunity for a hearing. The agency shall allow 60
11.15 days after publication in the State Register for comment on the proposed rule repeal.

11.16 Sec. 16. **EFFECTIVE DATE; APPLICATION.**

11.17 This act is effective August 1, 2015, and applies to: (1) a rule for which a notice
11.18 of intent to adopt a rule without a public hearing, a notice of hearing, a dual notice, or a
11.19 notice of the proposed rule repeal is published in the State Register on or after that date; or
11.20 (2) an exempt rule adopted on or after that date.