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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. **2169**

02/09/2012 Authored by Beard, Nelson, Hoppe, Gunther, Vogel and others

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

02/29/2012 Adoption of Report: Pass as Amended and re-referred to the Committee on State Government Finance

1.1 A bill for an act
1.2 relating to state government; providing methods for certain review of, and
1.3 reporting on, agency rules; amending Minnesota Statutes 2010, sections 3.842,
1.4 subdivision 4a; 14.05, subdivision 1; 14.116; 14.131; 14.388, subdivision 2;
1.5 14.389, subdivision 2; Minnesota Statutes 2011 Supplement, sections 3D.06;
1.6 3D.10; 3D.11.

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

1.8 Section 1. Minnesota Statutes 2010, section 3.842, subdivision 4a, is amended to read:

1.9 Subd. 4a. **Objections to rules or proposed rules.** (a) For purposes of this
1.10 subdivision, "committee" means the house of representatives policy committee or senate
1.11 policy committee with primary jurisdiction over state governmental operations. The
1.12 commission or a committee may object to a rule or proposed rule as provided in this
1.13 subdivision. ~~If the commission or a committee objects to all or some portion of a rule~~
1.14 ~~because the commission or committee considers it to be~~ on the grounds that the rule or
1.15 proposed rule: (1) is beyond the procedural or substantive authority delegated to the
1.16 agency, including a proposed rule submitted under section 14.15, subdivision 4, or 14.26,
1.17 subdivision 3, paragraph (c); (2) is inconsistent with the enabling statute; (3) is unnecessary
1.18 or redundant; or (4) fails to meet the requirements of section 14.131. If the commission or
1.19 a committee objects to all or some portion of a rule or proposed rule, the commission or
1.20 committee may shall file that objection in the Office of the Secretary of State. The filed
1.21 objection must contain a concise statement of the commission's or committee's reasons for
1.22 its action. An objection to a proposed rule submitted by the commission or a committee
1.23 under section 14.15, subdivision 4, or 14.26, subdivision 3, paragraph (c), may not be filed
1.24 before the rule is adopted For a proposed rule, the objection must be filed within 30 days
1.25 of receipt of the notice under section 14.116, 14.388, or 14.389.

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

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

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

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

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

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

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

3.1 Sec. 2. Minnesota Statutes 2011 Supplement, section 3D.06, is amended to read:

3.2 **3D.06 AGENCY REPORT TO COMMISSION.**

3.3 Before September 1 of the odd-numbered year before the year in which a state agency
3.4 is subject to sunset review, the agency commissioner shall report to the commission:

3.5 (1) information regarding the application to the agency of the criteria in section
3.6 3D.10;

3.7 (2) a priority-based budget for the agency;

3.8 (3) an inventory of all boards, commissions, committees, and other entities related
3.9 to the agency; ~~and~~

3.10 (4) a list of all rules promulgated by the state agency, and the following information
3.11 for each rule: (i) the statutory authority; (ii) the statement of need and reasonableness of
3.12 the rule; (iii) whether there has been any change in circumstance requiring the rule to
3.13 be amended or repealed; (iv) an assessment of the cumulative effect of the rule with
3.14 all other federal and state regulations and local ordinances or regulations related to the
3.15 specific purpose of the rule being proposed; (v) an assessment of any differences between
3.16 the proposed rule and existing federal regulations and a specific analysis of the need and
3.17 reasonableness of each difference; and (vi) a summary of the means to better coordinate
3.18 rulemaking between state agencies and other local, state, and federal agencies and a
3.19 strategy and schedule to repeal or amend agency rules so as to achieve intended outcomes
3.20 of the rules more effectively and efficiently; and

3.21 (5) any other information that the agency commissioner considers appropriate or that
3.22 is requested by the commission.

3.23 ~~The September 1 deadline in this section does not apply in 2011.~~

3.24 Sec. 3. Minnesota Statutes 2011 Supplement, section 3D.10, is amended to read:

3.25 **3D.10 CRITERIA FOR REVIEW.**

3.26 The commission and its staff shall consider the following criteria in determining
3.27 whether a public need exists for the continuation of a state agency or its advisory
3.28 committees or for the performance of the functions of the agency or its advisory
3.29 committees:

3.30 (1) the efficiency and effectiveness with which the agency or the advisory committee
3.31 operates;

3.32 (2) an identification of the mission, goals, and objectives intended for the agency or
3.33 advisory committee and of the problem or need that the agency or advisory committee
3.34 was intended to address and the extent to which the mission, goals, and objectives have
3.35 been achieved and the problem or need has been addressed;

4.1 (3) an identification of any activities of the agency in addition to those granted by
 4.2 statute and of the authority for those activities and the extent to which those activities
 4.3 are needed;

4.4 (4) an assessment of authority of the agency relating to fees, inspections,
 4.5 enforcement, and penalties;

4.6 (5) whether less restrictive or alternative methods of performing any function that
 4.7 the agency performs could adequately protect or provide service to the public;

4.8 (6) the extent to which the jurisdiction of the agency and the programs administered
 4.9 by the agency overlap or duplicate those of other agencies, the extent to which the agency
 4.10 coordinates with those agencies, and the extent to which the programs administered by the
 4.11 agency can be consolidated with the programs of other state agencies;

4.12 (7) the promptness and effectiveness with which the agency addresses complaints
 4.13 concerning entities or other persons affected by the agency, including an assessment of the
 4.14 agency's administrative hearings process;

4.15 (8) an assessment of the agency's rules and rulemaking process and the extent to
 4.16 which the agency has encouraged participation by the public in making its rules and
 4.17 decisions and the extent to which the public participation has resulted in rules that benefit
 4.18 the public;

4.19 (9) an assessment of whether any of the agency's rules:

4.20 (i) are beyond the procedural or substantive authority delegated to the agency;

4.21 (ii) are inconsistent with the enabling statute;

4.22 (iii) are unnecessary or redundant; or

4.23 (iv) fail to meet the requirements of section 14.131;

4.24 ~~(9)~~ (10) the extent to which the agency has complied with federal and state laws and
 4.25 applicable rules regarding equality of employment opportunity and the rights and privacy
 4.26 of individuals, and state law and applicable rules of any state agency regarding purchasing
 4.27 guidelines and programs for historically underutilized businesses;

4.28 ~~(10)~~ (11) the extent to which the agency issues and enforces rules relating to
 4.29 potential conflicts of interest of its employees;

4.30 ~~(11)~~ (12) the extent to which the agency complies with chapter 13 and follows
 4.31 records management practices that enable the agency to respond efficiently to requests for
 4.32 public information; and

4.33 ~~(12)~~ (13) the effect of federal intervention or loss of federal funds if the agency is
 4.34 abolished.

5.1 Sec. 4. Minnesota Statutes 2011 Supplement, section 3D.11, is amended to read:

5.2 **3D.11 RECOMMENDATIONS.**

5.3 (a) In its report on a state agency, the commission shall:

5.4 (1) make recommendations on the abolition, continuation, or reorganization of each
5.5 affected state agency and its advisory committees and on the need for the performance of
5.6 the functions of the agency and its advisory committees;

5.7 (2) make recommendations on the consolidation, transfer, or reorganization of
5.8 programs within state agencies not under review when the programs duplicate functions
5.9 performed in agencies under review; ~~and~~

5.10 (3) make recommendations to improve the operations of the agency, its policy body,
5.11 and its advisory committees, including management recommendations that do not require
5.12 a change in the agency's enabling statute; ~~and~~

5.13 (4) make recommendations for the repeal, consolidation, transfer, or amendment of
5.14 the rules promulgated by the affected state agency.

5.15 (b) The commission shall include the estimated fiscal impact of its recommendations
5.16 and may recommend appropriation levels for certain programs to improve the operations
5.17 of the state agency.

5.18 (c) The commission shall have drafts of legislation prepared to carry out the
5.19 commission's recommendations under this section, including legislation necessary
5.20 to continue the existence of agencies that would otherwise sunset if the commission
5.21 recommends continuation of an agency.

5.22 (d) After the legislature acts on the report under section 3D.09, the commission shall
5.23 present to the legislative auditor the commission's recommendations that do not require
5.24 a statutory change to be put into effect. Subject to the legislative audit commission's
5.25 approval, the legislative auditor may examine the recommendations and include as part
5.26 of the next audit of the agency a report on whether the agency has implemented the
5.27 recommendations and, if so, in what manner.

5.28 Sec. 5. Minnesota Statutes 2010, section 14.05, subdivision 1, is amended to read:

5.29 Subdivision 1. **Authority to adopt original rules restricted.** (a) Each agency shall
5.30 adopt, amend, suspend, or repeal its rules: (1) in accordance with the procedures specified
5.31 in sections 14.001 to 14.69; ~~and~~; (2) only pursuant to authority expressly delegated by
5.32 state or federal law; (3) only that are necessary to serve the public interest; and (4) in full
5.33 compliance with its duties and obligations.

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

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

6.6 Sec. 6. Minnesota Statutes 2010, section 14.116, is amended to read:

6.7 **14.116 NOTICE TO LEGISLATURE.**

6.8 When an agency mails notice of intent to adopt rules under section 14.14 or 14.22,
6.9 the agency must send a copy of the same notice and a copy of the statement of need and
6.10 reasonableness to the chairs and ranking minority party members of the legislative policy
6.11 and budget committees with jurisdiction over the subject matter of the proposed rules and
6.12 to the Legislative Coordinating Commission.

6.13 In addition, if the mailing of the notice is within two years of the effective date
6.14 of the law granting the agency authority to adopt the proposed rules, the agency shall
6.15 make reasonable efforts to send a copy of the notice and the statement to all sitting
6.16 legislators who were chief house of representatives and senate authors of the bill granting
6.17 the rulemaking authority. If the bill was amended to include this rulemaking authority,
6.18 the agency shall make reasonable efforts to send the notice and the statement to the chief
6.19 house of representatives and senate authors of the amendment granting rulemaking
6.20 authority, rather than to the chief authors of the bill.

6.21 Sec. 7. Minnesota Statutes 2010, section 14.131, is amended to read:

6.22 **14.131 STATEMENT OF NEED AND REASONABLENESS.**

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

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

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

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

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

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

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

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

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

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

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

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

7.23 The agency must consult with the commissioner of management and budget to
7.24 help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local
7.25 government. The agency must send a copy of the statement of need and reasonableness
7.26 to the Legislative Reference Library when the notice of hearing is mailed under section
7.27 14.14, subdivision 1a.

7.28 Sec. 8. Minnesota Statutes 2010, section 14.388, subdivision 2, is amended to read:

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

8.1 agency submits the proposed rule to the Office of Administrative Hearings for review
8.2 of its legality and must include:

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

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

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

8.8 Sec. 9. Minnesota Statutes 2010, section 14.389, subdivision 2, is amended to read:

8.9 Subd. 2. **Notice and comment.** The agency must publish notice of the proposed
8.10 rule in the State Register ~~and~~, must mail the notice by United States mail or electronic
8.11 mail to persons who have registered with the agency to receive mailed notices, and must
8.12 give notice to the chairs and ranking minority members of the legislative policy and
8.13 budget committees with jurisdiction over the subject matter of the proposed rules and to
8.14 the Legislative Coordinating Commission. The mailed notice and the notice to legislators
8.15 must include either a copy of the proposed rule or a description of the nature and effect
8.16 of the proposed rule and a statement that a free copy is available from the agency upon
8.17 request. The notice in the State Register must include the proposed rule or the amended
8.18 rule in the form required by the revisor under section 14.07, an easily readable and
8.19 understandable summary of the overall nature and effect of the proposed rule, and a
8.20 citation to the most specific statutory authority for the rule, including authority for the
8.21 rule to be adopted under the process in this section. The agency must allow 30 days after
8.22 publication in the State Register for comment on the rule.

8.23 Sec. 10. **REVIEW OF CERTAIN RULES; REPORT.**

8.24 By January 15, 2013, the Pollution Control Agency, Department of Natural
8.25 Resources, Board of Water and Soil Resources, Environmental Quality Board, and
8.26 Department of Agriculture must each submit to the governor, the Legislative Coordinating
8.27 Commission, and the policy and funding committees and divisions with jurisdiction over
8.28 the agency, a list of all rules promulgated by the agency. The submission must include
8.29 for each rule:

8.30 (1) the statutory authority;

8.31 (2) the statement of need and reasonableness of the rule;

8.32 (3) whether there has been any change in circumstance regarding the rule to be
8.33 amended or repealed;

9.1 (4) an assessment of the cumulative effect of the rule with all other federal and
9.2 state regulations and local ordinances or regulations related to the specific purpose of
9.3 the rule being proposed;

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

9.6 (6) a summary of the means to better coordinate rulemaking between state agencies
9.7 and other local, state, and federal agencies and a strategy and schedule to repeal or
9.8 amend agency rules so as to achieve intended outcomes of the rules more effectively
9.9 and efficiently.

9.10 A report submitted under this section must be signed by the person in the agency
9.11 who is responsible for identifying and initiating rules and the commissioner of the agency.