

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN SERVICES

In the Matter of Proposed
Adoption of Department of Human
Services Rules Relating to
Licensing; Background Studies,
Minnesota Rules, Parts 9543.3000
to 9543.3090.

REPORT OF THE
CHIEF ADMINISTRATIVE LAW JUDGE

The above-entitled matter came on for review by the Chief Administrative Law Judge pursuant to the provisions of Minn. Stat. § 14.15, subs. 3 and 4, which provide:

Subd. 3. Finding of substantial change. If the [administrative law judge's] report contains a finding that a rule has been modified in a way which makes it substantially different from that which was originally proposed, or that the agency has not met the requirements of sections 14.131 to 14.18, it shall be submitted to the chief administrative law judge for approval. If the chief administrative law judge approves the finding of the administrative law judge, the chief administrative law judge shall advise the agency and the revisor of statutes of actions which will correct the defects. The agency shall not adopt the rule until the chief administrative law judge determines that the defects have been corrected.

Subd. 4. Need or reasonableness not established. If the chief administrative law judge determines that the need for or reasonableness of the rule has not been established pursuant to section 14.14, subdivision 2, 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 commission to review administrative rules for the commission's advice and comment. The agency shall not adopt the rule until it has received and considered the advice of the commission. However, the agency is not required to delay adoption longer than 30 days after the commission has received the agency's submission. Advice of the commission shall not be binding on the agency.

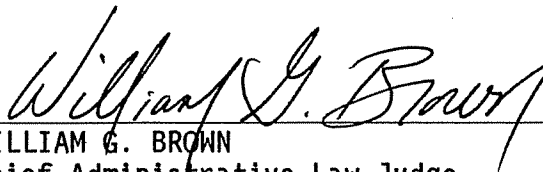
Based upon a review of the record in this proceeding, the Chief Administrative Law Judge hereby approves the Report of the Administrative Law Judge in all respects.

In order to correct the defects enumerated by the Administrative Law Judge, the agency shall either take the action recommended by the Administrative Law Judge or reconvene the rule hearing if appropriate. If the agency chooses to reconvene the rule hearing, it shall do so as if it is initiating a new rule hearing, complying with all substantive and procedural requirements imposed on the agency by law or rule.

If the agency chooses to take the action recommended by the Administrative Law Judge, it shall submit to the Chief Administrative Law Judge a copy of the rules as initially published in the State Register, a copy of the rules as proposed for final adoption in the form required by the State Register for final publication, and a copy of the agency's Findings of Fact and Order Adopting Rules. The Chief Administrative Law Judge will then make a determination as to whether the defects have been corrected and whether the modifications in the rules are substantial changes.

Should the agency make changes in the rules other than those recommended by the Administrative Law Judge, it shall also submit the complete record to the Chief Administrative Law Judge for a review on the issue of substantial change.

Dated: December 11th, 1990.



WILLIAM G. BROWN
Chief Administrative Law Judge

MEMORANDUM

In Finding of Fact 10, the Administrative Law Judge determined that the agency has not met the rulemaking notice requirements because the agency did not provide a statement estimating the cost of the rule to local public bodies. Minn. Stat. § 14.11 mandates such a statement when the adoption of a rule will require expenditures of public monies by local public bodies in excess of \$100,000 in either of the two years immediately following adoption of the rule.

In its Notice of Hearing the agency specifically indicated that the proposed rule would not result in additional spending by local public bodies in excess of \$100,000 per year for the first two years following adoption. The proposed rule, as written, does not indicate a direct fiscal impact. From the record and the manner in which the agency intends to implement the rule, however, the Administrative Law Judge has concluded that there would be costs to local public bodies significantly above \$100,000 per year. The Administrative Law Judge has suggested methods to hold the cost below \$100,000, and concluded that in the alternative the agency should re-notice the hearing and prepare the best estimate it can of local costs.

This defect is not one which goes to the rule itself or requires any change in the rule. Further, the finding of a defect is conditioned on the premise that there are in fact estimated additional costs of \$100,000 as referred to in Minn. Stat. § 14.11. If the department can implement this process, either in a manner suggested by the Administrative Law Judge or in an alternative manner which would not require the additional expenditure by local public bodies of \$100,000 per year in either of the two years immediately following adoption, there would be no defect in notice. In the alternative, if the department cannot implement the process without such additional estimated spending by local bodies, it should reconvene the hearing after new notice which complies with Minn. Stat. § 14.11.

W.G.B.