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State of Minnesota  
HOUSE OF REPRESENTATIVES  
NINETIETH SESSION

H. F. No. 702 / SF 695

02/01/2017 Authored by O'Driscoll, Urdahl, Pelowski, Poston, Marquart and others  
The bill was read for the first time and referred to the Committee on Environment and Natural Resources Policy and Finance

1.1 A bill for an act  
1.2 relating to environment; providing for review of agency actions; prohibiting use  
1.3 of unadopted rules; amending Minnesota Statutes 2016, sections 115.05; 116.07,  
1.4 by adding a subdivision.

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

1.6 Section 1. Minnesota Statutes 2016, section 115.05, is amended to read:

1.7 **115.05 JUDICIAL REVIEW REVIEWING AGENCY ACTIONS.**

1.8 Subd. 11. **Judicial review.** Any person aggrieved by any final decision of the agency  
1.9 ~~or of the commissioner of the Pollution Control Agency~~ may obtain judicial review thereof  
1.10 pursuant to sections 14.63 to 14.69 if the final decision is made pursuant to the ~~agency's or~~  
1.11 ~~the commissioner's~~ authority under section 115A.914, this chapter, chapter 114D or 116,  
1.12 or the rules adopted thereunder, and if the decision is a final decision pertaining to:

1.13 ~~(1) issuance, amendment, or denial of issuing, amending, or denying a total maximum~~  
1.14 ~~daily load (TMDL) allocation, watershed restoration and protection strategy (WRAPS),~~  
1.15 permit, license, or certification;

1.16 ~~(2) issuing, amending, or modifying a water-quality standard according to section 115.44;~~

1.17 ~~(3) identifying or listing impaired waters according to section 114D.25;~~

1.18 ~~(2) (4) granting or denial of denying a variance or a site-specific water-quality standard;~~

1.19 ~~(3) issuance of (5) issuing an administrative order, except for an administrative penalty~~  
1.20 order issued pursuant ~~according~~ to section 116.072; ~~or~~

1.21 ~~(4) denial of (6) denying a contested case hearing on any of the matters listed in clauses~~  
1.22 (1) to ~~(3) (5);~~ or

- 2.1 (7) denying a request for reconsideration in any action identified in clauses (1) to (6).
- 2.2 Subd. 12. Review of actions concerning water quality. (a) This subdivision applies to  
2.3 final decisions of the commissioner of the Pollution Control Agency that are related to water  
2.4 quality.
- 2.5 (b) In any proceeding to review a final decision of the commissioner under subdivision  
2.6 11 or in any proceeding under chapter 14, the reviewing authority must examine the  
2.7 administrative record and, without deference to the commissioner, must independently  
2.8 determine from the record whether:
- 2.9 (1) the commissioner's action is based on reliable, scientific data and analyses, as  
2.10 confirmed by available peer-reviewed literature that the commissioner made publicly  
2.11 available for review before any applicable public comment period;
- 2.12 (2) the commissioner explained the action and substantively answered relevant and  
2.13 significant public comments in writing before taking the action;
- 2.14 (3) any test, measurement, or model the commissioner relied on in support of the action  
2.15 was used by the commissioner for the purpose for which the test, measurement, or model  
2.16 was designed, consistent with generally accepted and peer-reviewed scientific practice;
- 2.17 (4) the action is consistent with the findings of any external peer review panel the  
2.18 commissioner convened according to section 115.035; and
- 2.19 (5) the action is based on a demonstrated, significant causal relationship between the  
2.20 parameters of concern and the water-quality objective at issue, not correlation alone. When  
2.21 a causal relationship may be confounded by other factors, the reviewing authority must  
2.22 determine whether the relevance and effect of those factors were assessed to ensure the  
2.23 predicted causal relationship is valid.
- 2.24 (c) Upon determining that a challenged action does not meet one or more of the  
2.25 requirements of this subdivision, the reviewing authority must invalidate the action and, if  
2.26 appropriate, remand the matter to the commissioner for further proceedings consistent with  
2.27 this section.
- 2.28 Subd. 13. Expert review. (a) In a review required under subdivision 12, whenever the  
2.29 reviewing authority finds that there is expert opinion, expressed through testimony or written  
2.30 submission, that specifically contradicts the scientific validity of the commissioner's approach,  
2.31 including cases in which an external peer review was conducted according to section 115.035,  
2.32 the scientific evidence and the adequacy of the commissioner's response to the evidence

3.1 must be reviewed with the assistance of qualified independent experts according to this  
3.2 subdivision.

3.3 (b) The reviewing authority must establish by order an expert review panel of three  
3.4 independent experts with qualifications in the subject matter of the scientific dispute who  
3.5 are employed neither by the agency nor by any adverse parties to the proceeding and who  
3.6 are not directly or indirectly involved with the work conducted or contracted by the agency.  
3.7 The composition of the panel is determined as follows:

3.8 (1) the commissioner must select one expert satisfying the requirements of this paragraph;

3.9 (2) the adverse party or parties to the proceeding must select one expert satisfying the  
3.10 requirements of this paragraph;

3.11 (3) the two experts selected under clauses (1) and (2) must mutually agree to a third  
3.12 expert satisfying the requirements of this paragraph; and

3.13 (4) if the two experts selected under clauses (1) and (2) are unable to mutually agree on  
3.14 a third expert, the reviewing authority must make the appointment.

3.15 (c) In the order establishing the expert review panel, the reviewing authority must include  
3.16 a statement of the specific scientific issues or questions in dispute to be submitted for review.  
3.17 The parties must mutually agree to the issues or questions, except that if the parties cannot  
3.18 agree on one or more issues or questions, the reviewing authority must determine the issue  
3.19 or question to be submitted.

3.20 (d) The expert review panel established by the reviewing authority must review the  
3.21 scientific evidence relevant to the issues or questions listed in the reviewing authority's  
3.22 order, including the results of any external peer review conducted according to section  
3.23 115.035, in general accordance with the guidance in the United States Environmental  
3.24 Protection Agency's Peer Review Handbook and must make written findings supported by  
3.25 at least two of the panel members. For each issue or question submitted, the panel must  
3.26 make a finding that:

3.27 (1) the commissioner's approach with respect to the issue or question submitted is  
3.28 scientifically defensible;

3.29 (2) the commissioner's approach with respect to the issue or question submitted is not  
3.30 scientifically defensible; or

3.31 (3) the commissioner's approach with respect to the issue or question submitted is  
3.32 scientifically defensible with conditions developed by the expert review panel.

4.1 (e) For each scientific issue or question submitted to the expert review panel, the  
4.2 reviewing authority must consider the panel's written findings together with the record  
4.3 evidence and arguments of the parties and finally determine the scientific issues or questions  
4.4 submitted by applying a preponderance of the evidence standard.

4.5 (f) The reviewing authority must assess the cost of the expert review panel against the  
4.6 parties to the proceeding on an equitable basis, except that no costs may be assessed against  
4.7 a party that is a local government.

4.8 Sec. 2. Minnesota Statutes 2016, section 116.07, is amended by adding a subdivision to  
4.9 read:

4.10 Subd. 13. Unadopted rules. (a) The commissioner of the Pollution Control Agency  
4.11 must not enforce or attempt to enforce an unadopted rule. For the purposes of this subdivision,  
4.12 "unadopted rule" means a guideline, bulletin, criterion, manual standard, interpretive  
4.13 statement, or similar pronouncement, if the guideline, bulletin, criterion, manual standard,  
4.14 interpretive statement, or similar pronouncement meets the definition of a rule as defined  
4.15 under section 14.02, subdivision 4, but has not been adopted according to the rulemaking  
4.16 process provided under chapter 14. If an unadopted rule is challenged under section 14.381,  
4.17 the commissioner must demonstrate the following to overcome a presumption against the  
4.18 unadopted rule:

4.19 (1) the challenged unadopted rule is an agency interpretation of a statute or agency rule  
4.20 properly adopted under chapter 14 that is consistent with the plain meaning of the statute  
4.21 or rule the agency seeks to interpret; or

4.22 (2) the challenged unadopted rule is a long-standing interpretation of an ambiguous  
4.23 statute or agency rule properly adopted under chapter 14.

4.24 (b) If the commissioner incorporates by reference an internal guideline, bulletin, criterion,  
4.25 manual standard, interpretive statement, or similar pronouncement into a statute, rule, or  
4.26 standard, the commissioner must follow the rulemaking process provided under chapter 14  
4.27 to amend or revise any such guideline, bulletin, criterion, manual standard, interpretive  
4.28 statement, or similar pronouncement.

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State of Minnesota  
**HOUSE OF REPRESENTATIVES**  
NINETIETH SESSION

H. F. No. **1058** / SF 1516

02/09/2017 Authored by Hamilton, Marquart and O'Driscoll  
The bill was read for the first time and referred to the Committee on Environment and Natural Resources Policy and Finance

- 1.1 A bill for an act
- 1.2 relating to environment; providing for review of certain agency actions;
- 1.3 appropriating money; amending Minnesota Statutes 2016, sections 3.886,
- 1.4 subdivision 4; 115.05.
- 1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.6 Section 1. Minnesota Statutes 2016, section 3.886, subdivision 4, is amended to read:
- 1.7 Subd. 4. **Powers and duties.** (a) The Legislative Water Commission shall review water
- 1.8 policy reports and recommendations of the Environmental Quality Board, the Board of
- 1.9 Water and Soil Resources, the Pollution Control Agency, the Department of Natural
- 1.10 Resources, the Metropolitan Council, and other water-related reports as may be required
- 1.11 by law or the legislature.
- 1.12 (b) The commission may conduct public hearings and otherwise secure data and
- 1.13 comments.
- 1.14 (c) The commission shall make recommendations as it deems proper to assist the
- 1.15 legislature in formulating legislation.
- 1.16 (d) The commission may convene an independent scientific review according to section
- 1.17 115.05, subdivision 12.
- 1.18 ~~(d)~~ (e) Data or information compiled by the Legislative Water Commission or its
- 1.19 subcommittees shall be made available to the Legislative-Citizen Commission on Minnesota
- 1.20 Resources, the Clean Water Council, and standing and interim committees of the legislature
- 1.21 on request of the chair of the respective commission, council, or committee.
- 1.22 ~~(e)~~ (f) The commission shall coordinate with the Clean Water Council.

2.1 Sec. 2. Minnesota Statutes 2016, section 115.05, is amended to read:

2.2 **115.05 JUDICIAL REVIEW REVIEWING AGENCY ACTIONS.**

2.3 Subd. 11. **Judicial review.** Any person aggrieved by any final decision of the ~~agency~~  
2.4 ~~or of the commissioner of the Pollution Control Agency~~ may obtain judicial review thereof  
2.5 pursuant to sections 14.63 to 14.69 if the final decision is made pursuant to the ~~agency's or~~  
2.6 ~~the commissioner's~~ authority under section 115A.914, this chapter, chapter 116, or the rules  
2.7 adopted thereunder, and if the decision is a final decision pertaining to:

2.8 (1) issuance, amendment, or denial of a permit, license, or certification;

2.9 (2) granting or denial of a variance;

2.10 (3) issuance of an administrative order, except for an administrative penalty order issued  
2.11 pursuant to section 116.072; or

2.12 (4) denial of a contested case hearing on any of the matters listed in clauses (1) to (3).

2.13 **Subd. 12. Independent scientific review. (a) Upon petition of five or more cities, towns,**  
2.14 **counties, local public utilities commissions, or sanitary districts, the Legislative Water**  
2.15 **Commission may convene an independent scientific review of the following actions or final**  
2.16 **decisions of the commissioner of the Pollution Control Agency:**

2.17 **(1) adopting or amending a water-quality standard under section 115.44;**

2.18 **(2) issuing, amending, or denying an impairment designation, a total maximum daily**  
2.19 **load (TMDL) allocation, a watershed restoration and protection strategy (WRAPS), or a**  
2.20 **water-related permit, license, or certification;**

2.21 **(3) identifying or listing impaired waters under section 114D.25;**

2.22 **(4) granting or denying a site-specific water-quality standard or a variance to a**  
2.23 **water-quality standard;**

2.24 **(5) issuing a water-related administrative order, except for an administrative penalty**  
2.25 **order issued under section 116.072;**

2.26 **(6) denying a contested case hearing on any of the matters listed in clauses (1) to (5);**

2.27 **or**

2.28 **(7) denying a request for reconsideration in an action identified in clauses (1) to (6).**

2.29 **(b) The petition must be submitted in writing to the Legislative Water Commission and**  
2.30 **must describe the need for the independent scientific review. The petition may include**  
2.31 **supporting expert opinion.**

3.1 (c) Upon receipt of a petition complying with paragraph (b), the Legislative Water  
3.2 Commission may convene an independent scientific review regardless of whether an external  
3.3 peer review was conducted under section 115.035. If the commission decides to convene a  
3.4 review, the commission must establish by order an expert review panel of three independent  
3.5 experts with qualifications in the subject matter of the scientific dispute who are employed  
3.6 neither by the agency nor by any adverse parties to the proceeding and who are not directly  
3.7 or indirectly involved with the work conducted or contracted by the agency. The composition  
3.8 of the panel must be determined as follows:

3.9 (1) the commissioner of the Pollution Control Agency must select one expert satisfying  
3.10 the requirements of this paragraph;

3.11 (2) the petitioner must select one expert satisfying the requirements of this paragraph;

3.12 (3) the two experts selected under clauses (1) and (2) must mutually agree to a third  
3.13 expert satisfying the requirements of this paragraph; and

3.14 (4) if the two experts selected under clauses (1) and (2) are unable to mutually agree on  
3.15 a third expert, the Legislative Water Commission must make the appointment.

3.16 (d) In its order establishing the expert review panel, the Legislative Water Commission  
3.17 must include a statement of the specific scientific issues or questions in dispute to be  
3.18 submitted for review. The commissioner and petitioners must mutually agree to the issues  
3.19 or questions, except that if the parties cannot agree on one or more issues or questions, the  
3.20 Legislative Water Commission must determine the issue or question to be submitted. If the  
3.21 Legislative Water Commission determines the issue or question to be submitted, the  
3.22 commission must hold a public hearing on the issue or question.

3.23 (e) The expert review panel established by the Legislative Water Commission must  
3.24 review the scientific evidence relevant to the issues or questions listed in the commission's  
3.25 order, including the results of any external peer review conducted according to section  
3.26 115.035, in general accordance with the guidance in the United States Environmental  
3.27 Protection Agency's Peer Review Handbook. The panel must submit a written opinion on  
3.28 the scientific validity of the commissioner's approach at issue. If the panel finds deficiencies,  
3.29 the panel must recommend how the deficiencies can be corrected. The written opinion must  
3.30 be submitted to the commissioner of the Pollution Control Agency, the petitioners, and the  
3.31 chairs of the house of representatives and senate committees having jurisdiction over  
3.32 environment and natural resources policy and finance.

4.1 **Sec. 3. APPROPRIATION.**

4.2 \$100,000 in fiscal year 2018 is appropriated from the general fund to the Legislative  
4.3 Water Commission to conduct independent scientific reviews according to section 2. The  
4.4 appropriation is available until expended.

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State of Minnesota  
**HOUSE OF REPRESENTATIVES**

NINETIETH SESSION

H. F. No. **1433**

02/20/2017 Authored by Kresha, Fabian, Ecklund, Heintzman, Newberger and others  
The bill was read for the first time and referred to the Committee on Government Operations and Elections Policy  
03/23/2017 Adoption of Report: Amended and re-referred to the Committee on State Government Finance  
Pursuant to Joint Rule 2.03, re-referred to the Committee on Rules and Legislative Administration

*No companion bill*

- 1.1 A bill for an act
- 1.2 relating to state government; regulating rulemaking; providing for the review and
- 1.3 repeal of environmental assessment worksheets and impact statements; restricting
- 1.4 the implementation and enforcement of certain policies, guidelines, and statements;
- 1.5 increasing oversight of certain rules; modifying notice requirements; requiring an
- 1.6 impact analysis of certain rules; modifying SONAR requirements; establishing a
- 1.7 rulemaking reform task force; requiring a report; amending Minnesota Statutes
- 1.8 2016, sections 3.842, subdivision 4a; 14.002; 14.02, by adding a subdivision;
- 1.9 14.05, subdivisions 1, 2, 6, 7, by adding subdivisions; 14.101, subdivision 1;
- 1.10 14.116; 14.125; 14.127; 14.131; 14.14, subdivisions 1a, 2a; 14.19; 14.22,
- 1.11 subdivision 1; 14.23; 14.25, subdivision 1; 14.26; 14.365; 14.381, subdivision 3;
- 1.12 14.388, subdivisions 1, 2; 14.44; 14.45; 14.51; proposing coding for new law in
- 1.13 Minnesota Statutes, chapter 14; repealing Minnesota Statutes 2016, section 14.05,
- 1.14 subdivision 5.
- 1.15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.16 Section 1. Minnesota Statutes 2016, section 3.842, subdivision 4a, is amended to read:
- 1.17 Subd. 4a. **Objections to rules or proposed rules.** (a) For purposes of this subdivision,
- 1.18 "committee" means the house of representatives policy committee or senate policy committee
- 1.19 with primary jurisdiction over state governmental operations. The commission or a committee
- 1.20 may object to a rule or proposed rule as provided in this subdivision. ~~If the commission or~~
- 1.21 ~~a committee objects to all or some portion of a rule because the commission or committee~~
- 1.22 ~~considers it to be on the grounds that the rule or proposed rule: (1) is beyond the procedural~~
- 1.23 ~~or substantive authority delegated to the agency, including a proposed rule submitted under~~
- 1.24 ~~section 14.15, subdivision 4, or 14.26, subdivision 3, paragraph (e); (2) is inconsistent with~~
- 1.25 ~~the enabling statute; (3) is unnecessary or redundant; (4) has a substantial economic impact~~
- 1.26 ~~as defined in section 14.02, subdivision 5; (5) is not based on sound, reasonably available~~
- 1.27 ~~scientific, technical, economic, or other information; (6) is not cost effective; (7) is unduly~~
- 1.28 ~~burdensome; or (8) is more restrictive than the standard, limitation, or requirement imposed~~

2.1 by federal law or rule pertaining to the same subject matter. If the commission or committee  
2.2 objects to all or some portion of a rule or proposed rule, the commission or committee may  
2.3 shall file that objection in the Office of the Secretary of State. The filed objection must  
2.4 contain a concise statement of the commission's or committee's reasons for its action. An  
2.5 objection to a proposed rule submitted by the commission or a committee under section  
2.6 14.15, subdivision 4, or 14.26, subdivision 3, paragraph (c), may not be filed before the rule  
2.7 is adopted For a proposed rule, the objection must be filed within 30 days of receipt of the  
2.8 notice under section 14.14, 14.22, 14.386, 14.388, 14.389, or 14.3895.

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

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

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

2.27 (e) After the filing of an objection by the commission or committee that is not  
2.28 subsequently withdrawn, the burden is upon the agency in any proceeding for judicial review  
2.29 or for enforcement of the rule to establish that the whole or portion of the rule objected to  
2.30 is valid and demonstrates that the objection raised under paragraph (a) is not justified, based  
2.31 on the criteria for objecting to a rule under paragraph (a).

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

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

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

3.8 Sec. 2. Minnesota Statutes 2016, section 14.002, is amended to read:

3.9 **14.002 STATE REGULATORY POLICY.**

3.10 The legislature recognizes the important and sensitive role for administrative rules in  
3.11 implementing policies and programs created by the legislature. However, the legislature  
3.12 finds that some regulatory rules and programs have become overly prescriptive and inflexible,  
3.13 thereby increasing costs to the state, local governments, and the regulated community and  
3.14 decreasing the effectiveness of the regulatory program. Therefore, ~~whenever feasible~~, state  
3.15 agencies must develop rules and regulatory programs that emphasize superior achievement  
3.16 in meeting the agency's regulatory objectives and maximum flexibility for the regulated  
3.17 party and the agency in meeting those goals.

3.18 Sec. 3. Minnesota Statutes 2016, section 14.02, is amended by adding a subdivision to  
3.19 read:

3.20 **Subd. 5. Substantial economic impact. A rule has a "substantial economic impact" if**  
3.21 **the rule would result in, or likely result in:**

3.22 **(1) an adverse effect or impact on the private-sector economy of the state of Minnesota**  
3.23 **of \$5,000,000 or more in a single year;**

3.24 **(2) a significant increase in costs or prices for consumers, individual private-sector**  
3.25 **industries, state agencies, local governments, individuals, or private-sector enterprises within**  
3.26 **certain geographic regions inside the state of Minnesota;**

3.27 **(3) significant adverse impacts on the competitiveness of private-sector Minnesota-based**  
3.28 **enterprises, or on private-sector employment, investment, productivity, or innovation within**  
3.29 **the state of Minnesota; or**

3.30 **(4) compliance costs, in the first year after the rule takes effect, of more than \$25,000**  
3.31 **for any one business that has fewer than 50 full-time employees, or for any one statutory**  
3.32 **or home rule charter city that has fewer than ten full-time employees.**

4.1 Sec. 4. Minnesota Statutes 2016, section 14.05, subdivision 1, is amended to read:

4.2 Subdivision 1. **Authority to adopt original rules restricted.** (a) Each agency shall  
4.3 adopt, amend, suspend, or repeal its rules: (1) in accordance with the procedures specified  
4.4 in sections 14.001 to 14.69, ~~and;~~ (2) only pursuant to authority delegated by law; and (3)  
4.5 in full compliance with its duties and obligations.

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

4.9 (c) Except as provided in ~~section~~ sections 14.055, 14.06, 14.388, 14.389, and 14.3895,  
4.10 sections 14.001 to 14.69 shall not be authority for an agency to adopt, amend, suspend, or  
4.11 repeal rules.

4.12 Sec. 5. Minnesota Statutes 2016, section 14.05, is amended by adding a subdivision to  
4.13 read:

4.14 **Subd. 1a. Limitation regarding certain policies, guidelines, and other interpretive**  
4.15 **statements. An agency shall not seek to implement or enforce against any person a policy,**  
4.16 **guideline, or other interpretive statement that meets the definition of a rule under this chapter**  
4.17 **if the policy, guideline, or other interpretive statement has not been adopted as a rule in**  
4.18 **accordance with this chapter including but not limited to solid waste policy plan revisions**  
4.19 **authorized by other law. In any proceeding under chapter 14 challenging an agency action**  
4.20 **prohibited by this subdivision, the reviewing authority must independently and without**  
4.21 **reference to the agency determine if the agency has violated this subdivision. The agency**  
4.22 **must overcome the presumption that its action may not be enforced as a rule.**

4.23 Sec. 6. Minnesota Statutes 2016, section 14.05, subdivision 2, is amended to read:

4.24 Subd. 2. **Authority to modify proposed rule.** (a) An agency may modify a proposed  
4.25 rule in accordance with the procedures of the Administrative Procedure Act. However, an  
4.26 agency may not modify a proposed rule so that it is substantially different from the proposed  
4.27 rule in the notice of intent to adopt rules or notice of hearing.

4.28 (b) A modification does not make a proposed rule substantially different if:

4.29 (1) the differences are within the scope of the matter announced in the notice of intent  
4.30 to adopt or notice of hearing and are in character with the issues raised in that notice;

4.31 (2) the differences are a logical outgrowth of the contents of the notice of intent to adopt  
4.32 or notice of hearing and the comments submitted in response to the notice; and

5.1 (3) the notice of intent to adopt or notice of hearing provided fair warning that the  
5.2 outcome of that rulemaking proceeding could be the rule in question.

5.3 (c) In determining whether the notice of intent to adopt or notice of hearing provided  
5.4 fair warning that the outcome of that rulemaking proceeding could be the rule in question  
5.5 the following factors must be considered:

5.6 (1) the extent to which persons who will be affected by the rule should have understood  
5.7 that the rulemaking proceeding on which it is based could affect their interests;

5.8 (2) the extent to which the subject matter of the rule or issues determined by the rule are  
5.9 different from the subject matter or issues contained in the notice of intent to adopt or notice  
5.10 of hearing; and

5.11 (3) the extent to which the effects of the rule differ from the effects of the proposed rule  
5.12 contained in the notice of intent to adopt or notice of hearing.

5.13 (d) A modification makes a proposed rule substantially different if the modification  
5.14 causes a rule that did not previously have a substantial economic impact to have a substantial  
5.15 economic impact.

5.16 Sec. 7. Minnesota Statutes 2016, section 14.05, is amended by adding a subdivision to  
5.17 read:

5.18 Subd. 5a. Review and repeal of rules. By December 1 of each odd-numbered year,  
5.19 beginning December 1, 2017, an agency must submit to the governor, the Legislative  
5.20 Coordinating Commission, the policy and funding committees and divisions with jurisdiction  
5.21 over the agency, and the revisor of statutes, a list of any rules or portions of rules that are  
5.22 obsolete, unnecessary, or duplicative of other state or federal statutes or rules. The list must  
5.23 also include an explanation of why the rule or portion of the rule is obsolete, unnecessary,  
5.24 or duplicative of other state or federal statutes or rules. The agency must either report a  
5.25 timetable for repeal of the rule or portion of the rule, or must develop a bill for submission  
5.26 to the appropriate policy committee to repeal the obsolete, unnecessary, or duplicative rule.  
5.27 A report submitted under this subdivision must be signed by the person in the agency who  
5.28 is responsible for identifying and initiating repeal of obsolete rules. The report also must  
5.29 identify the status of any rules identified in the prior report as obsolete, unnecessary, or  
5.30 duplicative. If none of an agency's rules are obsolete, unnecessary, or duplicative, an agency's  
5.31 report must state that conclusion.

6.1 Sec. 8. Minnesota Statutes 2016, section 14.05, is amended by adding a subdivision to  
6.2 read:

6.3 Subd. 5b. Review and repeal of environmental assessment worksheets and impact  
6.4 statements. By December 1, 2017, and each odd-numbered year thereafter, the  
6.5 Environmental Quality Board, Pollution Control Agency, Department of Natural Resources,  
6.6 and Department of Transportation, after consultation with political subdivisions, shall submit  
6.7 to the governor; the Legislative Coordinating Commission; the chairs of the house of  
6.8 representatives and senate committees having jurisdiction over environment and natural  
6.9 resources; and the revisor of statutes a list of mandatory environmental assessment worksheets  
6.10 or mandatory environmental impact statements for which the agency or a political subdivision  
6.11 is designated as the responsible government unit, and for each worksheet or statement, a  
6.12 document including:

6.13 (1) intended outcomes of the specific worksheet or statement;

6.14 (2) the cost to state and local government and the private sector;

6.15 (3) the relationship of the worksheet or statement to other local, state, and federal permits;

6.16 and

6.17 (4) a justification for why the mandatory worksheet or statement should not be eliminated  
6.18 and its intended outcomes achieved through an existing permit or other federal, state, or  
6.19 local law.

6.20 Sec. 9. Minnesota Statutes 2016, section 14.05, subdivision 6, is amended to read:

6.21 Subd. 6. **Veto of adopted rules.** The governor may veto all or a severable portion of a  
6.22 rule of an agency as defined in section 14.02, subdivisions 2 and 4, by submitting notice of  
6.23 the veto to the State Register within 14 days of receiving a copy of the rule from the secretary  
6.24 of state under section 14.16, subdivision 3, 14.26, subdivision 3 ~~7~~, or 14.386~~2~~, or the agency  
6.25 under section 14.389, subdivision 3, or section 14.3895. The veto is effective when the veto  
6.26 notice is submitted to the State Register. This authority applies only to the extent that the  
6.27 agency itself would have authority, through rulemaking, to take such action. If the governor  
6.28 vetoes a rule or portion of a rule under this section, the governor shall notify the chairs of  
6.29 the legislative committees having jurisdiction over the agency whose rule was vetoed.

6.30 Sec. 10. Minnesota Statutes 2016, section 14.05, subdivision 7, is amended to read:

6.31 Subd. 7. **Electronic documents permitted.** (a) If sections 14.05 to 14.3895 require an  
6.32 agency to provide notice or documents to the public, the legislature, or other state agency,

7.1 the agency may send the notice or document, or a link to the notice or document, using any  
7.2 reliable method of electronic transmission.

7.3 (b) The agency must also send a paper copy of the notice or document if requested to  
7.4 do so by a member of the public, legislature, or other state agency.

7.5 (c) An agency may file rule-related documents with the Office of Administrative Hearings  
7.6 by electronic transmission in the manner approved by that office and the Office of the  
7.7 Revisor of Statutes by electronic transmission in the manner approved by that office.

7.8 Sec. 11. Minnesota Statutes 2016, section 14.101, subdivision 1, is amended to read:

7.9 Subdivision 1. **Required notice.** In addition to seeking information by other methods  
7.10 designed to reach persons or ~~classes~~ categories of persons who might be affected by the  
7.11 proposal, an agency, at least 60 days before publication of a notice of intent to adopt or a  
7.12 notice of hearing, shall solicit comments from the public on the subject matter of a possible  
7.13 rulemaking proposal under active consideration within the agency by causing notice to be  
7.14 published in the State Register. The notice must include a description of the subject matter  
7.15 of the proposal and the types of groups and individuals likely to be affected, and must  
7.16 indicate where, when, and how persons may comment on the proposal and whether and  
7.17 how drafts of any proposal may be obtained from the agency.

7.18 This notice must be published within 60 days of the effective date of any new or  
7.19 amendatory law requiring rules to be adopted, amended, or repealed.

7.20 An agency intending to adopt an expedited rule under section 14.389 is exempt from  
7.21 the requirements of this section.

7.22 Sec. 12. **[14.105] RULE NOTIFICATION.**

7.23 Subdivision 1. Rule notification list. (a) Each agency shall maintain a list of all persons  
7.24 who have registered with the agency for the purpose of receiving notice of rule proceedings.  
7.25 A person may register to receive notice of rule proceedings by submitting to the agency:

7.26 (1) the person's electronic mail address; or

7.27 (2) the person's name and United States mail address, along with a request to receive  
7.28 copies of the notices by mail.

7.29 (b) The agency shall post information on its Web site describing the registration process.

8.1 (c) The agency may inquire as to whether those persons on the list in paragraph (a) wish  
8.2 to remain on it and may remove persons for whom there is a negative reply or no reply  
8.3 within 60 days.

8.4 Subd. 2. Additional notice. (a) Each agency shall make reasonable efforts to notify  
8.5 persons or categories of persons who may be significantly affected by the rule being proposed  
8.6 by giving notice of its rule proceedings in newsletters, newspapers, or other publications,  
8.7 or through other means of communication.

8.8 (b) For each rulemaking, the agency shall develop an additional notice plan describing  
8.9 its efforts to provide additional notification to persons or categories of persons who may be  
8.10 affected by the proposed rule or must explain why these efforts were not made. The additional  
8.11 notice plan must be submitted to the administrative law judge with the other submissions  
8.12 required by section 14.14, subdivision 2a, or 14.26. The agency also may seek prior approval  
8.13 of the additional notice plan under the rules of the Office of Administrative Hearings.

8.14 Sec. 13. Minnesota Statutes 2016, section 14.116, is amended to read:

8.15 **14.116 NOTICE TO LEGISLATURE.**

8.16 (a) By January 15 each year, each agency must submit its current rulemaking docket  
8.17 maintained under section 14.366, ~~and the official rulemaking record required under section~~  
8.18 ~~14.365 for any rule adopted during the preceding calendar year,~~ to the chairs and ranking  
8.19 minority members of the legislative policy and budget committees with jurisdiction over  
8.20 the subject matter of the proposed rule and to the Legislative Coordinating Commission.  
8.21 Each agency must post a link to its rulemaking docket on the agency Web site home page.

8.22 (b) When an agency ~~mails~~ sends a notice of intent to adopt rules ~~hearing~~ under section  
8.23 14.14 or a notice of intent to adopt rules or dual notice under section 14.22, the agency must  
8.24 send a copy of the same notice ~~and a copy of the statement of need and reasonableness~~ to  
8.25 the chairs and ranking minority party members of the legislative policy and budget  
8.26 committees with jurisdiction over the subject matter of the proposed rules and to the  
8.27 Legislative Coordinating Commission.

8.28 (c) ~~In addition, if the mailing of the notice is within two years of the effective date of~~  
8.29 ~~the law granting the agency authority to adopt the proposed rules, the agency shall make~~  
8.30 ~~reasonable efforts to send a copy of the notice and the statement to all sitting legislators~~  
8.31 ~~who were chief house of representatives and senate authors of the bill granting the rulemaking~~  
8.32 ~~authority. If the bill was amended to include this rulemaking authority, the agency shall~~  
8.33 ~~make reasonable efforts to send the notice and the statement to the chief house of~~

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

9.3 Sec. 14. Minnesota Statutes 2016, section 14.125, is amended to read:

9.4 **14.125 TIME LIMIT ON AUTHORITY TO ADOPT, AMEND, OR REPEAL**  
9.5 **RULES.**

9.6 An agency shall publish a ~~notice of intent to adopt rules or a notice of hearing under~~  
9.7 section 14.14, or a notice of intent to adopt rules or dual notice under section 14.22, within  
9.8 18 months of the effective date of the law authorizing or requiring rules to be adopted,  
9.9 amended, or repealed. If the notice is not published within the time limit imposed by this  
9.10 section, the ~~authority for the rules expires. The agency shall not use other law in existence~~  
9.11 ~~at the time of the expiration of rulemaking authority under this section as authority to adopt,~~  
9.12 ~~amend, or repeal these rules~~ agency shall report to the Legislative Coordinating Commission,  
9.13 other appropriate committees of the legislature, and the governor its failure to publish a  
9.14 notice and the reasons for that failure.

9.15 ~~An agency that publishes a notice of intent to adopt rules or a notice of hearing within~~  
9.16 ~~the time limit specified in this section may subsequently amend or repeal the rules without~~  
9.17 ~~additional legislative authorization.~~

9.18 Sec. 15. Minnesota Statutes 2016, section 14.127, is amended to read:

9.19 **14.127 LEGISLATIVE APPROVAL REQUIRED.**

9.20 Subdivision 1. ~~Cost thresholds~~ Substantial economic impact. An agency must  
9.21 determine if the ~~cost of complying with a proposed rule in the first year after the rule takes~~  
9.22 ~~effect will exceed \$25,000 for: (1) any one business that has less than 50 full-time employees;~~  
9.23 ~~or (2) any one statutory or home rule charter city that has less than ten full-time employees.~~  
9.24 For purposes of this section, "business" means a business entity organized for profit or as  
9.25 a nonprofit, and includes an individual, partnership, corporation, joint venture, association,  
9.26 or cooperative has a substantial economic impact, as defined in section 14.02, subdivision  
9.27 5.

9.28 Subd. 2. **Agency determination.** An agency must make the determination required by  
9.29 subdivision 1 before the ~~close of the hearing record, or before the agency submits the record~~  
9.30 ~~to the administrative law judge if there is no hearing. The administrative law judge must~~  
9.31 ~~review and approve or disapprove the agency determination under this section~~ agency gives  
9.32 notice under section 14.14, 14.22, 14.225, or 14.389.

10.1 Subd. 3. **Legislative approval required.** (a) If the agency determines that a proposed  
10.2 rule has a substantial economic impact, the agency must request the legislative auditor to  
10.3 convene a five-person peer review advisory panel to conduct an impact analysis of the  
10.4 proposed rule. Within 30 days of receipt of the agency's request, the legislative auditor shall  
10.5 convene a peer review advisory panel. The advisory panel must be made up of individuals  
10.6 who have not directly or indirectly been involved in the work conducted or contracted by  
10.7 the agency and who are not employed by the agency. The agency must pay each panel  
10.8 member for the costs of the person's service on the panel, as determined by the legislative  
10.9 auditor. The agency shall transfer an amount from the agency's operating budget to the  
10.10 legislative auditor to pay for costs for convening the peer review advisory panel process.  
10.11 The panel may receive written and oral comments from the public during its review. The  
10.12 panel must submit its report within 60 days of being convened. The agency must receive a  
10.13 final report from the panel before the agency conducts a public hearing on a proposed rule  
10.14 or, if no hearing is held, before the rule is submitted to the administrative law judge. The  
10.15 panel's report must include its conclusions on the extent to which the proposed rule:

10.16 (1) is based on sound, reasonably available scientific, technical, economic, or other  
10.17 information or rationale; and

10.18 (2) is more restrictive than a standard, limitation, or requirement imposed by federal law  
10.19 or rule pertaining to the same subject matter, and a justification based on sound, reasonably  
10.20 available scientific, technical, economic, or other information and rationale that the more  
10.21 stringent standard is necessary to protect the public's health, safety, or welfare.

10.22 (b) If the agency determines that a rule does not have a substantial economic impact,  
10.23 the administrative law judge must review this determination. If the administrative law judge  
10.24 determines that a rule may have a substantial economic impact, the agency must have the  
10.25 legislative auditor arrange for the analysis required by paragraph (a), and the agency must  
10.26 give new notice of intent to adopt the proposed rule after receiving this analysis. The  
10.27 administrative law judge may make this determination as part of the administrative law  
10.28 judge's report on the proposed rule, or at any earlier time after the administrative law judge  
10.29 is assigned to the rule proceeding.

10.30 (c) If the agency determines that the cost exceeds the threshold in subdivision 1, proposed  
10.31 rule has a substantial economic impact, or if the administrative law judge disapproves the  
10.32 agency's determination that the cost rule does not exceed the threshold in subdivision 1,  
10.33 any business that has less than 50 full-time employees or any statutory or home rule charter  
10.34 city that has less than ten full-time employees may file a written statement with the agency  
10.35 claiming a temporary exemption from the rules. Upon filing of such a statement with the

11.1 ~~agency, the rules do not apply to that business or that city until the rules are~~ have a substantial  
 11.2 economic impact, the agency or the administrative law judge shall deliver the determination  
 11.3 and peer review advisory panel report to the Legislative Coordinating Commission and to  
 11.4 the chairs and ranking minority members of the house of representatives and senate  
 11.5 committees and divisions with jurisdiction over the subject matter of the rule, and the  
 11.6 proposed rule does not take effect until the rule is approved by a law enacted after the agency  
 11.7 determination or administrative law judge disapproval.

11.8 Subd. 4. **Exceptions.** ~~(a) Subdivision 3 does not apply if the administrative law judge~~  
 11.9 ~~approves an agency's determination that the legislature has appropriated money to sufficiently~~  
 11.10 ~~fund the expected cost of the rule upon the business or city proposed to be regulated by the~~  
 11.11 ~~rule.~~

11.12 ~~(b)~~ (a) Subdivision 3 does not apply if the administrative law judge approves an agency's  
 11.13 determination that the rule has been proposed pursuant to a specific federal statutory or  
 11.14 regulatory mandate.

11.15 ~~(e)~~ (b) This section does not apply if the rule is adopted under section 14.388 or under  
 11.16 another law specifying that the rulemaking procedures of this chapter do not apply.

11.17 ~~(d)~~ (c) This section does not apply to a rule adopted by the Public Utilities Commission.

11.18 ~~(e) Subdivision 3 does not apply if the governor waives application of subdivision 3.~~  
 11.19 ~~The governor may issue a waiver at any time, either before or after the rule would take~~  
 11.20 ~~effect, but for the requirement of legislative approval. As soon as possible after issuing a~~  
 11.21 ~~waiver under this paragraph, the governor must send notice of the waiver to the speaker of~~  
 11.22 ~~the house and the president of the senate and must publish notice of this determination in~~  
 11.23 ~~the State Register.~~

11.24 Subd. 5. **Severability.** If an administrative law judge determines that part of a proposed  
 11.25 rule ~~exceeds the threshold specified in subdivision 1~~ has a substantial economic impact, but  
 11.26 that a severable portion of a proposed rule does not ~~exceed the threshold in subdivision 1~~  
 11.27 have a substantial economic impact, the administrative law judge may provide that the  
 11.28 severable portion of the rule that does not ~~exceed the threshold~~ have a substantial economic  
 11.29 impact may take effect without legislative approval.

11.30 Sec. 16. **[14.129] IMPACT ANALYSIS OF PROPOSED RULE.**

11.31 (a) Within 30 days of receipt of the notice required under section 14.116, paragraph (b),  
 11.32 a standing committee with jurisdiction over the subject matter of a proposed rule may request  
 11.33 the legislative auditor to conduct an impact analysis of the proposed rule. The request must

12.1 be sent in writing to the legislative auditor and the agency. Upon receipt of the request, the  
12.2 agency may not proceed to adopt the proposed rule until it has received a positive declaration  
12.3 from the requesting standing committee. Within 60 days of receipt of a request, the legislative  
12.4 auditor shall convene a five-person peer review panel to review the proposed rule. The  
12.5 advisory panel must be made up of individuals who have not directly or indirectly been  
12.6 involved in work conducted or contracted by the agency and who are not employed by the  
12.7 agency. The panel may receive written and oral comments from the public during its review  
12.8 of the proposed rule. The panel must prepare a report that includes a conclusion on whether  
12.9 the proposed rule:

12.10 (1) is based on sound, reasonably available scientific, technical, economic, and other  
12.11 information and rationale; and

12.12 (2) if the proposed rule is more restrictive than a standard, limitation, or requirement  
12.13 imposed by federal law or rule pertaining to the same subject matter, a justification based  
12.14 on sound, reasonably available scientific, technical, economic, or other information and  
12.15 rationale that the more stringent standard is necessary to protect the public's health, safety,  
12.16 or welfare.

12.17 (b) Within 150 days of being convened, the panel must submit its report to the chairs  
12.18 and ranking minority members of the requesting committee and the legislative auditor.  
12.19 Within five days of receipt of the panel's report, the requesting standing committee shall  
12.20 send the report to the agency along with either:

12.21 (1) a positive declaration that the agency may proceed with the proposed rule; or

12.22 (2) a negative declaration that the agency may not proceed with the proposed rule in its  
12.23 current form.

12.24 (c) If the requesting standing committee issues a negative declaration to an agency under  
12.25 paragraph (b), clause (2), the agency may not adopt the rule until the legislature adjourns  
12.26 the annual legislative session that began after the issuance of the negative declaration.

12.27 Sec. 17. Minnesota Statutes 2016, section 14.131, is amended to read:

12.28 **14.131 STATEMENT OF NEED AND REASONABLENESS.**

12.29 By the date of the section 14.14, subdivision 1a, notice, the agency must prepare, review,  
12.30 and make available for public review a statement of the need for and reasonableness of the  
12.31 rule. The statement of need and reasonableness must be prepared under rules adopted by  
12.32 the chief administrative law judge and must include a citation to the most specific statutory

13.1 authority for the rule and the following to the extent the agency, through reasonable effort,  
13.2 can ascertain this information:

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

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

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

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

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

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

13.19 (1) a description of the persons or classifications of persons who will probably be affected  
13.20 by the proposed rule;

13.21 (2) the probable costs of the rule to affected persons and the agency, including those  
13.22 costs or consequences borne by identifiable categories of affected parties, such as separate  
13.23 classes of government units, businesses, or individuals, and the probable benefits of adopting  
13.24 the rule;

13.25 ~~(7)~~ (3) an assessment of any differences between the proposed rule and existing or  
13.26 proposed federal regulations standards and similar standards in relevant states bordering  
13.27 Minnesota or within Environmental Protection Agency Region 5 and a specific analysis of  
13.28 the need for and reasonableness of each difference; and

13.29 ~~(8)~~ (4) an assessment of the cumulative effect of the rule with other federal and state  
13.30 regulations related to the specific purpose of the rule. all rules adopted by the agency or any  
13.31 other agency, and all federal regulations and local ordinances or regulations, related to the  
13.32 specific purpose for which the rule is being adopted; and

14.1 (5) the agency's findings and conclusions that support its determination that the proposed  
14.2 rule is based on sound, reasonably available scientific, technical, economic, or other  
14.3 information and rationale; and if the proposed rule is more restrictive than a standard,  
14.4 limitation, or requirement imposed by federal law or rule pertaining to the same subject  
14.5 matter, a justification based on sound, reasonably available scientific, technical, economic,  
14.6 or other information and rationale that the more stringent standard is necessary to protect  
14.7 the public's health, safety, or welfare.

14.8 The statement must describe how the agency, in developing the rules, considered and  
14.9 implemented the legislative policy supporting performance-based regulatory systems set  
14.10 forth in section 14.002 in a cost-effective and timely manner.

14.11 For purposes of clause ~~(8)~~ (4), "cumulative effect" means the impact that results from  
14.12 incremental impact of the proposed rule in addition to other rules, regardless of what state  
14.13 or federal agency has adopted the other rules. Cumulative effects can result from individually  
14.14 minor but collectively significant rules adopted over a period of time.

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

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

14.20 The agency must consult with the commissioner of management and budget to help  
14.21 evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local  
14.22 government. The agency must send a copy of the statement of need and reasonableness to  
14.23 the Legislative Reference Library no later than when the notice of hearing is ~~mailed under~~  
14.24 ~~section 14.14, subdivision 1a sent.~~

14.25 Sec. 18. Minnesota Statutes 2016, section 14.14, subdivision 1a, is amended to read:

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

14.29 ~~(1) their electronic mail address; or~~

14.30 ~~(2) their name and United States mail address.~~

14.31 ~~The agency may inquire as to whether those persons on the list wish to remain on it and~~  
14.32 ~~may remove persons for whom there is a negative reply or no reply within 60 days. The~~

15.1 agency shall, at least 30 days before the date set for the hearing, give notice of its intention  
15.2 to ~~adopt~~ hold a hearing on the proposed rules by United States mail or electronic mail to all  
15.3 persons ~~on its list~~ who have registered with the agency under section 14.105, and by  
15.4 publication in the State Register.

15.5 ~~The mailed notice must include either a copy of the proposed rule or an easily readable~~  
15.6 ~~and understandable description of its nature and effect and an announcement that a free~~  
15.7 ~~copy of the proposed rule is available on request from the agency. In addition, each agency~~  
15.8 ~~shall make reasonable efforts to notify persons or classes of persons who may be significantly~~  
15.9 ~~affected by the rule being proposed by giving notice of its intention in newsletters,~~  
15.10 ~~newspapers, or other publications, or through other means of communication. The notice~~  
15.11 ~~in the State Register must include the proposed rule or an amended rule in the form required~~  
15.12 ~~by the revisor under section 14.07, together with an easily readable and understandable~~  
15.13 ~~summary of the overall nature and effect of the proposed rule, a citation to the most specific~~  
15.14 ~~statutory authority for the proposed rule, a statement of the place, date, and time of the~~  
15.15 ~~public hearing, a statement that a free copy of the proposed rule and the statement of need~~  
15.16 ~~and reasonableness may be requested from the agency, a statement that persons may register~~  
15.17 ~~with the agency for the purpose of receiving notice of rule proceedings and notice that the~~  
15.18 ~~agency intends to adopt a rule and other information required by law or rule. When an entire~~  
15.19 ~~rule is proposed to be repealed, the agency need only publish that fact, along with an easily~~  
15.20 ~~readable and understandable summary of the overall nature of the rules proposed for repeal,~~  
15.21 ~~and a citation to the rule to be repealed.~~

15.22 The mailed notice of hearing must be the same as the notice published in the State  
15.23 Register, except that the mailed notice may omit the text of the proposed rule if it includes  
15.24 an announcement of where a copy of the proposed rule may be obtained.

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

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

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

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

16.1 Sec. 19. Minnesota Statutes 2016, section 14.14, subdivision 2a, is amended to read:

16.2 Subd. 2a. **Hearing procedure.** When a hearing is held on a proposed rule, it shall be  
16.3 conducted by an administrative law judge assigned by the chief administrative law judge.  
16.4 The administrative law judge shall ensure that all persons involved in the rule hearing are  
16.5 treated fairly and impartially. The agency shall submit into the record the jurisdictional  
16.6 documents, including the statement of need and reasonableness, comments and hearing  
16.7 requests received, and any written exhibits in support of the proposed rule. The agency may  
16.8 also present additional oral evidence. Interested persons may present written and oral  
16.9 evidence. The administrative law judge shall allow questioning of agency representatives  
16.10 or witnesses, or of interested persons making oral statements, in order to explain the purpose  
16.11 or intended operation of a proposed rule, or a suggested modification, or for other purposes  
16.12 if material to the evaluation or formulation of the proposed rule. The administrative law  
16.13 judge may limit repetitive or immaterial oral statements and questioning.

16.14 Sec. 20. Minnesota Statutes 2016, section 14.19, is amended to read:

16.15 **14.19 DEADLINE TO COMPLETE RULEMAKING.**

16.16 Within 180 days after issuance of the administrative law judge's report or that of the  
16.17 chief administrative law judge, the agency shall submit its notice of adoption, amendment,  
16.18 or repeal to the State Register for publication. If the agency has not submitted its notice to  
16.19 the State Register within 180 days, the rule is automatically withdrawn. The agency may  
16.20 not adopt the withdrawn rules without again following the procedures of sections 14.05 to  
16.21 14.28, with the exception of section 14.101, if the noncompliance is approved by the chief  
16.22 administrative law judge. The agency shall report to the Legislative Coordinating  
16.23 Commission, other appropriate committees of the legislature, and the governor its failure  
16.24 to adopt rules and the reasons for that failure. The 180-day time limit of this section does  
16.25 not include:

16.26 (1) any days used for review by the chief administrative law judge or the commission  
16.27 if the review is required by law; or

16.28 (2) days during which the rule cannot be adopted, because of votes by legislative  
16.29 committees under section 14.126; ~~or~~

16.30 ~~(3) days during which the rule cannot be adopted because approval of the legislature is~~  
16.31 ~~required under section 14.127.~~

17.1 Sec. 21. Minnesota Statutes 2016, section 14.22, subdivision 1, is amended to read:

17.2 Subdivision 1. **Contents.** (a) ~~Unless an agency proceeds directly to a public hearing on~~  
17.3 ~~a proposed rule and gives the notice prescribed in section 14.14, subdivision 1a, the agency~~  
17.4 ~~shall give notice of its intention to adopt a rule without public hearing. The agency shall~~  
17.5 ~~give the notice required by this section, unless the agency gives notice of a hearing under~~  
17.6 ~~section 14.14 or a notice under section 14.389, subdivision 2. The agency shall give notice~~  
17.7 ~~must be given of its intention to adopt a rule by publication in the State Register and by~~  
17.8 United States mail or electronic mail to persons who have registered their names with the  
17.9 agency under section ~~14.14, subdivision 1a~~ 14.105. ~~The mailed notice must include either~~  
17.10 ~~a copy of the proposed rule or an easily readable and understandable description of its nature~~  
17.11 ~~and effect and an announcement that a free copy of the proposed rule is available on request~~  
17.12 ~~from the agency. In addition, each agency shall make reasonable efforts to notify persons~~  
17.13 ~~or classes of persons who may be significantly affected by the rule by giving notice of its~~  
17.14 ~~intention in newsletters, newspapers, or other publications, or through other means of~~  
17.15 ~~communication. The notice in the State Register must include the proposed rule or the~~  
17.16 amended rule in the form required by the revisor under section 14.07<sub>2</sub>; an easily readable  
17.17 and understandable summary of the overall nature and effect of the proposed rule<sub>2</sub>; a citation  
17.18 to the most specific statutory authority for the proposed rule<sub>2</sub>; a statement that a free copy  
17.19 of the statement of need and reasonableness may be requested from the agency; a statement  
17.20 that persons may register with the agency for the ~~purpose of receiving~~ to receive notice of  
17.21 rule proceedings and ~~notice that a rule has been submitted to the chief administrative law~~  
17.22 ~~judge<sub>2</sub>~~; and other information required by law or rule. When an entire rule is proposed to  
17.23 be repealed, the notice need only state that fact, along with an easily readable and  
17.24 understandable summary of the overall nature of the ~~rules~~ rule proposed for repeal, and a  
17.25 citation to the rule to be repealed. The notice must include a statement advising the public:

17.26 (1) that the public has at least 30 days in which to submit comment in support of or in  
17.27 opposition to the proposed rule and that comment is encouraged;

17.28 (2) that each comment should identify the ~~portion~~ part and subpart, if any, of the proposed  
17.29 rule addressed, the reason for the comment, and any change proposed;

17.30 (3) that the requester is encouraged to propose any change desired;

17.31 (3) ~~(4)~~ (4) that if 25 or more persons submit a written request for a public hearing within  
17.32 the ~~30-day~~ comment period, a public hearing will be held and the agency will use the process  
17.33 under section 14.14;

18.1 ~~(4)~~ (5) of the manner in which persons must request a public hearing on the proposed  
18.2 rule, including the requirements contained in section 14.25 relating to a written request for  
18.3 a public hearing; and

18.4 ~~(5) of the requirements contained in section 14.25 relating to a written request for a~~  
18.5 ~~public hearing, and that the requester is encouraged to propose any change desired;~~

18.6 (6) that the agency may modify the proposed rule ~~may be modified~~ if the modifications  
18.7 are supported by the data and views submitted; ~~and.~~

18.8 ~~(7) that if a hearing is not required, notice of the date of submission of the proposed rule~~  
18.9 ~~to the chief administrative law judge for review will be mailed to any person requesting to~~  
18.10 ~~receive the notice.~~

18.11 In connection with the statements required in clauses (1) and ~~(3)~~ (4), the notice must  
18.12 also include the date on which the ~~30-day~~ comment period ends. The mailed notice of intent  
18.13 to adopt a rule must be the same as the notice published in the State Register, except that  
18.14 the mailed notice may omit the text of the proposed rule if it includes an announcement of  
18.15 where a copy of the proposed rule may be obtained.

18.16 (b) The chief administrative law judge may authorize an agency to omit from the notice  
18.17 of intent to adopt the text of any proposed rule, the publication of which would be unduly  
18.18 cumbersome, expensive, or otherwise inexpedient if:

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

18.20 (2) the notice of intent to adopt states that a free copy of the entire rule is available upon  
18.21 request to the agency; and

18.22 (3) the notice of intent to adopt states in detail the specific subject matter of the omitted  
18.23 rule, cites the statutory authority for the proposed rule, and details the proposed rule's purpose  
18.24 and motivation.

18.25 Sec. 22. Minnesota Statutes 2016, section 14.23, is amended to read:

18.26 **14.23 STATEMENT OF NEED AND REASONABLENESS.**

18.27 By the date of the section 14.22 notice, the agency shall prepare a statement of need and  
18.28 reasonableness, which must be available to the public. The statement of need and  
18.29 reasonableness must include the analysis information required in section 14.131. ~~The~~  
18.30 ~~statement must also describe the agency's efforts to provide additional notification under~~  
18.31 ~~section 14.22 to persons or classes of persons who may be affected by the proposed rules~~  
18.32 ~~or must explain why these efforts were not made. For at least 30 days following the notice,~~

19.1 ~~the agency shall afford the public an opportunity to request a public hearing and to submit~~  
19.2 ~~data and views on the proposed rule in writing.~~

19.3 The agency shall send a copy of the statement of need and reasonableness to the  
19.4 Legislative Reference Library no later than when the notice of intent to adopt is mailed sent.

19.5 Sec. 23. Minnesota Statutes 2016, section 14.25, subdivision 1, is amended to read:

19.6 Subdivision 1. **Requests for hearing.** If, during the ~~30-day~~ period allowed for comment  
19.7 under section 14.22, 25 or more persons submit to the agency a written request for a public  
19.8 hearing of the proposed rule, the agency shall proceed under the provisions of sections 14.14  
19.9 to 14.20. The written request must include: (1) the name and address of the person requesting  
19.10 the public hearing; and (2) ~~the portion or portions~~ part or subpart, if any, of the rule to which  
19.11 the person objects ~~or a statement that the person opposes the entire rule. If not previously~~  
19.12 ~~published under section 14.22, subdivision 2, a notice of the public hearing must be published~~  
19.13 ~~in the State Register and mailed to those persons who submitted a written request for the~~  
19.14 ~~public hearing. Unless the agency has modified the proposed rule, the notice need not include~~  
19.15 ~~the text of the proposed rule but only a citation to the State Register pages where the text~~  
19.16 ~~appears; and (3) the reasons for the objection to each portion of the rule identified.~~

19.17 A written request for a public hearing that does not comply with the requirements of  
19.18 this section is invalid and may not be counted by the agency for purposes of determining  
19.19 whether a public hearing must be held. A written request for a public hearing is not invalid  
19.20 due to failure of the request to correctly identify the portion of the rule to which the person  
19.21 objects if the agency reasonably can determine which portion of the rule is the basis for the  
19.22 objection.

19.23 Sec. 24. Minnesota Statutes 2016, section 14.26, is amended to read:

19.24 **14.26 ADOPTION OF PROPOSED RULE; SUBMISSION TO ADMINISTRATIVE**  
19.25 **LAW JUDGE.**

19.26 Subdivision 1. **Submission.** If no hearing is required, the agency shall submit to an  
19.27 administrative law judge assigned by the chief administrative law judge the proposed rule  
19.28 and notice as published, the rule as adopted, any written comments received by the agency,  
19.29 and a statement of need and reasonableness for the rule. The agency shall give notice to all  
19.30 persons who requested to be informed that these materials have been submitted to the  
19.31 administrative law judge. This notice must be given on the same day that the record is  
19.32 submitted. If the proposed rule has been modified, the notice must state that fact, and must  
19.33 also state that a free copy of the proposed rule, as modified, is available upon request from

20.1 the agency. The rule and these materials must be submitted to the administrative law judge  
20.2 within 180 days of the day that the comment period for the rule is over or the rule is  
20.3 automatically withdrawn. The agency may not adopt the withdrawn rules without again  
20.4 following the procedures of sections 14.05 to 14.28, with the exception of section 14.101,  
20.5 if the noncompliance is approved by the chief administrative law judge. The agency shall  
20.6 report its failure to adopt the rules and the reasons for that failure to the Legislative  
20.7 Coordinating Commission, other appropriate legislative committees, and the governor.

20.8 ~~Subd. 2. Resubmission. Even if the 180-day period expires while the administrative~~  
20.9 ~~law judge reviews the rule, if the administrative law judge rejects the rule, the agency may~~  
20.10 ~~resubmit it after taking corrective action. The resubmission must occur within 30 days of~~  
20.11 ~~when the agency receives written notice of the disapproval. If the rule is again disapproved,~~  
20.12 ~~the rule is withdrawn. An agency may resubmit at any time before the expiration of the~~  
20.13 ~~180-day period. If the agency withholds some of the proposed rule, it may not adopt the~~  
20.14 ~~withhold portion without again following the procedures of sections 14.14 to 14.28.~~

20.15 Subd. 3. Review. (a) Within 14 days of receiving a submission under subdivision 1, the  
20.16 administrative law judge shall approve or disapprove the rule as to its legality and its form  
20.17 to the extent that the form relates to legality, including the issues of whether the rule if  
20.18 modified is substantially different, as determined under section 14.05, subdivision 2, from  
20.19 the rule as originally proposed, whether the agency has the authority to adopt the rule, and  
20.20 whether the record demonstrates a rational basis for the need for and reasonableness of the  
20.21 proposed rule. ~~If the rule is approved, the administrative law judge shall promptly file four~~  
20.22 ~~paper copies or an electronic copy of the adopted rule in the Office of the Secretary of State.~~  
20.23 ~~The secretary of state shall forward one copy of each rule to the revisor of statutes, to the~~  
20.24 ~~agency, and to the governor.~~ If the rule is disapproved, the administrative law judge shall  
20.25 state in writing the reasons for the disapproval and make recommendations to overcome  
20.26 the defects.

20.27 Subd. 4. Harmless error. The administrative law judge shall disregard any error or  
20.28 defect in the proceeding due to the agency's failure to satisfy any procedural requirements  
20.29 imposed by law or rule if the administrative law judge finds:

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

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

21.1 Subd. 5. Correction of defects. ~~(b)~~ (a) The written disapproval must be submitted to  
21.2 the chief administrative law judge for approval. If the chief administrative law judge approves  
21.3 of the findings of the administrative law judge, the chief administrative law judge shall send  
21.4 the statement of the reasons for disapproval of the rule to the agency, the Legislative  
21.5 Coordinating Commission, the house of representatives and senate policy committees with  
21.6 primary jurisdiction over state governmental operations, and the revisor of statutes and  
21.7 advise the agency and the revisor of statutes of actions that will correct the defects. The rule  
21.8 may not be filed in the Office of the Secretary of State, nor be published, until the chief  
21.9 administrative law judge determines that the defects have been corrected or, if applicable,  
21.10 that the agency has satisfied the rule requirements for the adoption of a substantially different  
21.11 rule.

21.12 (b) The agency may resubmit the disapproved rule under paragraph (a) to the chief  
21.13 administrative law judge after correcting the defects. If the 180-day period expires while  
21.14 the chief administrative law judge is reviewing the rule, the agency may resubmit the rule  
21.15 within 30 days of the date the agency received written notice of disapproval. In all other  
21.16 cases, the agency may resubmit the rule at any time before the expiration of the 180-day  
21.17 period in subdivision 1. If the resubmitted rule is disapproved by the chief administrative  
21.18 law judge, the rule is withdrawn. If the agency does not resubmit a portion of the rule, it  
21.19 may not adopt that portion of the rule without again following the procedures of sections  
21.20 14.14 to 14.28.

21.21 Subd. 6. Need or reasonableness not established. (e) If the chief administrative law  
21.22 judge determines that the need for or reasonableness of the rule has not been established,  
21.23 and if the agency does not elect to follow the suggested actions of the chief administrative  
21.24 law judge to correct that defect, then the agency shall submit the proposed rule to the  
21.25 Legislative Coordinating Commission and to the house of representatives and senate policy  
21.26 committees with primary jurisdiction over state governmental operations for advice and  
21.27 comment. The agency may not adopt the rule until it has received and considered the advice  
21.28 of the commission and committees. However, the agency need not wait for advice for more  
21.29 than 60 days after the commission and committees have received the agency's submission.

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

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

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

22.4 Subd. 7. Filing. If the rule is approved, the chief administrative law judge shall promptly  
 22.5 file four paper copies or an electronic copy of it in the Office of the Secretary of State. The  
 22.6 secretary of state shall forward one copy of the rule to the revisor of statutes, one copy to  
 22.7 the agency, and one copy to the governor.

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

22.12 Subd. 4: 8. Costs. The Office of Administrative Hearings shall assess an agency for the  
 22.13 actual cost of processing rules under this section. Each agency shall include in its budget  
 22.14 money to pay the assessment. Receipts from the assessment must be deposited in the  
 22.15 administrative hearings account created in section 14.54.

22.16 Sec. 25. Minnesota Statutes 2016, section 14.365, is amended to read:

22.17 **14.365 OFFICIAL RULEMAKING RECORD.**

22.18 The agency shall maintain the official rulemaking record for every rule adopted under  
 22.19 sections 14.05 to ~~14.389~~ 14.3895. The record must be available for public inspection. The  
 22.20 record required by this section constitutes the official and exclusive agency rulemaking  
 22.21 record with respect to agency action on or judicial review of the rule. The record must  
 22.22 contain:

22.23 (1) copies of all publications in the State Register pertaining to the rule;

22.24 (2) all written petitions, and all requests, submissions, or comments received by the  
 22.25 agency or the administrative law judge after publication of the notice of intent to adopt or  
 22.26 the notice of hearing in the State Register pertaining to the rule;

22.27 (3) the statement of need and reasonableness for the rule;

22.28 (4) any report prepared by the peer review panel pursuant to section 14.129;

22.29 ~~(4)~~ (5) the official transcript of the hearing if one was held, or the tape recording of the  
 22.30 hearing if a transcript was not prepared;

22.31 ~~(5)~~ (6) the report of the administrative law judge, if any;

23.1 ~~(6)~~ (7) the rule in the form last submitted to the administrative law judge under sections  
23.2 14.14 to 14.20 or first submitted to the administrative law judge under sections 14.22 to  
23.3 14.28;

23.4 ~~(7)~~ (8) the administrative law judge's written statement of required modifications and  
23.5 of approval or disapproval by the chief administrative law judge, if any;

23.6 ~~(8)~~ (9) any documents required by applicable rules of the Office of Administrative  
23.7 Hearings;

23.8 ~~(9)~~ (10) the agency's order adopting the rule;

23.9 ~~(10)~~ (11) the revisor's certificate approving the form of the rule; and

23.10 ~~(11)~~ (12) a copy of the adopted rule as filed with the secretary of state.

23.11 Sec. 26. Minnesota Statutes 2016, section 14.381, subdivision 3, is amended to read:

23.12 Subd. 3. **Costs.** The agency is liable for all Office of Administrative Hearings costs  
23.13 associated with review of the petition. If the administrative law judge rules in favor of the  
23.14 agency, the agency may recover all or a portion of the costs from the petitioner unless the  
23.15 petitioner is entitled to proceed in forma pauperis under section 563.01 or the administrative  
23.16 law judge determines that the petition was brought in good faith and that an assessment of  
23.17 the costs would constitute an undue hardship for the petitioner. ~~If an agency has reason to  
23.18 believe it will prevail in the consideration of a petition, and that an effort to recover costs  
23.19 from the petitioner will be unsuccessful, it may request the chief administrative law judge  
23.20 to require the petitioner to provide bond or a deposit to the agency in an amount the chief  
23.21 administrative law judge estimates will be the cost to the Office of Administrative Hearings  
23.22 to review the petition.~~

23.23 Sec. 27. Minnesota Statutes 2016, section 14.388, subdivision 1, is amended to read:

23.24 Subdivision 1. **Requirements.** If an agency for good cause finds that the rulemaking  
23.25 provisions of this chapter are unnecessary, impracticable, or contrary to the public interest  
23.26 when adopting, amending, or repealing a rule to:

23.27 (1) address a serious and immediate threat to the public health, safety, or welfare;

23.28 (2) comply with a court order or a requirement in federal law in a manner that does not  
23.29 allow for compliance with sections 14.14 to 14.28;

23.30 (3) incorporate specific changes set forth in applicable statutes when no interpretation  
23.31 of law is required; or

24.1 (4) make changes that do not alter the sense, meaning, or effect of a rule,  
24.2 the agency may adopt, amend, or repeal the rule after satisfying the requirements of  
24.3 subdivision 2 and section 14.386, paragraph (a), clauses (1) to (4). The agency shall  
24.4 incorporate its findings and a brief statement of its supporting reasons in its order adopting,  
24.5 amending, or repealing the rule.

24.6 After considering the agency's statement and any comments received, the Office of  
24.7 Administrative Hearings shall determine whether the agency has provided adequate  
24.8 justification for its use of this section.

24.9 Rules adopted, amended, or repealed under ~~clauses~~ clause (1) and (2) are effective for  
24.10 a period of two years from the date of publication of the rule in the State Register.

24.11 Rules adopted, amended, or repealed under clause (2), (3), or (4) are effective upon  
24.12 publication in the State Register.

24.13 Sec. 28. Minnesota Statutes 2016, section 14.388, subdivision 2, is amended to read:

24.14 Subd. 2. **Notice.** An agency proposing to adopt, amend, or repeal a rule under this section  
24.15 must give notice to the chairs and ranking minority members of the legislative policy and  
24.16 budget committees with jurisdiction over the subject matter of the proposed rules and to  
24.17 the Legislative Coordinating Commission, must give electronic notice of its intent in  
24.18 accordance with section 16E.07, subdivision 3, and must give notice by United States mail  
24.19 or electronic mail to persons who have registered their names with the agency under section  
24.20 14.14, subdivision 1a. The notice must be given no later than the date the agency submits  
24.21 the proposed rule to the Office of Administrative Hearings for review of its legality and  
24.22 must include:

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

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

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

24.28 Sec. 29. Minnesota Statutes 2016, section 14.44, is amended to read:

24.29 **14.44 DETERMINATION OF VALIDITY OF RULE.**

24.30 (a) The validity of any rule, or the validity of any agency policy, guideline, bulletin,  
24.31 criterion, manual standard, or similar pronouncement that the petitioner believes is a rule

25.1 as defined in section 14.02, subdivision 4, may be determined upon the petition for a  
25.2 declaratory judgment thereon, addressed to the Court of Appeals, when it appears that the  
25.3 rule or pronouncement, or its threatened application, interferes with or impairs, or threatens  
25.4 to interfere with or impair the legal rights or privileges of the petitioner. The agency shall  
25.5 be made a party to the proceeding. The declaratory judgment may be rendered whether or  
25.6 not the petitioner has first requested the agency to pass upon the validity of the rule in  
25.7 question, whether or not the petitioner has petitioned the Office of Administrative Hearings  
25.8 under section 14.381, and whether or not the agency has commenced an action against the  
25.9 petitioner to enforce the rule.

25.10 (b) If the subject of the petition is an agency policy, guideline, bulletin, criterion, manual  
25.11 standard, or similar pronouncement, the agency must cease enforcement of the  
25.12 pronouncement upon filing of the petition until the Court of Appeals rules on the matter.  
25.13 The agency is liable for all costs associated with review of the petition. If the Court of  
25.14 Appeals rules in favor of the agency, the agency may recover all or a portion of the cost  
25.15 from the petitioner unless the petitioner is entitled to proceed in a forma pauperis under  
25.16 section 563.01, or the court determines that the petition was brought in good faith or the  
25.17 assessment of the costs would constitute an undue hardship for the petitioner.

25.18 Sec. 30. Minnesota Statutes 2016, section 14.45, is amended to read:

25.19 **14.45 RULE DECLARED INVALID.**

25.20 In proceedings under section 14.44, the court shall declare the rule or agency policy,  
25.21 guideline, bulletin, criterion, manual standard, or similar pronouncement invalid if it finds  
25.22 that it violates constitutional provisions or exceeds the statutory authority of the agency or  
25.23 if the rule was adopted or the policy, guideline, bulletin, criterion, manual standard, or  
25.24 similar pronouncement was improperly implemented without compliance with statutory  
25.25 rulemaking procedures. Any party to proceedings under section 14.44, including the agency,  
25.26 may appeal an adverse decision of the Court of Appeals to the Supreme Court as in other  
25.27 civil cases.

25.28 Sec. 31. Minnesota Statutes 2016, section 14.51, is amended to read:

25.29 **14.51 PROCEDURAL RULES.**

25.30 The chief administrative law judge shall adopt rules to govern: (1) the procedural conduct  
25.31 of all hearings, relating to both rule adoption, amendment, suspension or repeal hearings,  
25.32 contested case hearings, and workers' compensation hearings, and to govern the conduct of  
25.33 voluntary mediation sessions for rulemaking and contested cases other than those within

26.1 the jurisdiction of the Bureau of Mediation Services; and (2) the review of rules adopted  
26.2 without a public hearing. The chief administrative law judge may adopt rules to govern the  
26.3 procedural conduct of other hearings conducted by the Office of Administrative Hearings.  
26.4 The procedural rules shall be binding upon all agencies and shall supersede any other agency  
26.5 procedural rules with which they may be in conflict. The procedural rules shall include in  
26.6 addition to normal procedural matters provisions relating to the procedure to be followed  
26.7 when the proposed final rule of an agency is substantially different, as determined under  
26.8 section 14.05, subdivision 2, from that which was proposed. The procedural rules shall  
26.9 establish a procedure whereby the proposed final rule of an agency shall be reviewed by  
26.10 the chief administrative law judge on the issue of whether the proposed final rule of the  
26.11 agency is substantially different than that which was proposed or failure of the agency to  
26.12 meet the requirements of chapter 14. The rules must also provide: (1) an expedited procedure,  
26.13 consistent with section 14.001, clauses (1) to (5), for the adoption of substantially different  
26.14 rules by agencies; and (2) a procedure to allow an agency to receive prior binding approval  
26.15 of its plan regarding the additional notice contemplated under sections 14.101, 14.131,  
26.16 14.14, 14.22, and 14.23, and 14.389. Upon the chief administrative law judge's own initiative  
26.17 or upon written request of an interested party, the chief administrative law judge may issue  
26.18 a subpoena for the attendance of a witness or the production of books, papers, records or  
26.19 other documents as are material to any matter being heard by the Office of Administrative  
26.20 Hearings. The subpoenas shall be enforceable through the district court in the district in  
26.21 which the subpoena is issued.

26.22 **Sec. 32. STATE ADMINISTRATIVE RULEMAKING REFORM TASK FORCE.**

26.23 **Subdivision 1. Membership.** (a) **The State Administrative Rulemaking Reform Task**  
26.24 **Force is established. The task force consists of the following members:**

- 26.25 **(1) one representative appointed by the speaker of the house;**  
26.26 **(2) one representative appointed by the minority leader of the house of representatives;**  
26.27 **(3) one senator appointed by the Subcommittee on Committees of the senate Committee**  
26.28 **on Rules and Administration;**  
26.29 **(4) one senator appointed by the minority leader of the senate;**  
26.30 **(5) four members appointed by the governor;**  
26.31 **(6) one member appointed by the chief administrative law judge;**  
26.32 **(7) one member appointed by the League of Minnesota Cities;**

- 27.1 (8) one member appointed by the Association of Minnesota Counties;  
27.2 (9) one member appointed by the Minnesota Townships Association; and  
27.3 (10) one member appointed by the Minnesota Chamber of Commerce.
- 27.4 (b) Any vacancy shall be filled by appointment of the appointing authority for the vacating  
27.5 member.
- 27.6 (c) Members shall be appointed no later than July 1, 2017. Members of the task force  
27.7 may be reimbursed for expenses as provided in Minnesota Statutes, section 15.059,  
27.8 subdivision 6.
- 27.9 Subd. 2. Duties. (a) The task force must review existing rulemaking procedures,  
27.10 prioritizing a thorough examination of the safeguards currently in place to ensure an agency's  
27.11 administrative rules do not exceed the statutory authority granted to the agency. If necessary,  
27.12 proposals for reform that improve the efficiency and transparency of Minnesota's  
27.13 administrative rulemaking processes may be developed by the task force and recommended  
27.14 for legislative consideration. The task force is not required to develop a reform proposal if,  
27.15 after its review of existing rulemaking procedures and receipt of public input, it determines  
27.16 that reform is not necessary.
- 27.17 (b) If a reform proposal is developed, it must provide for a system that is accessible to  
27.18 local governments, businesses, and individuals who are directly impacted by administrative  
27.19 rules, and must include:
- 27.20 (1) a process to be used by state agencies, the governor, and the legislature to identify  
27.21 and prioritize rules, and related laws and programs, requiring legislative review;
- 27.22 (2) a process for the legislature to actively review rules and related laws and programs  
27.23 identified under clause (1);
- 27.24 (3) an estimate of the agency and legislative time and resources required for review of  
27.25 rules and related laws and programs under the processes recommended under clauses (1)  
27.26 and (2);
- 27.27 (4) the expected impact to the state budget and to the benefits to citizens of the state  
27.28 resulting from the repeal of rules;
- 27.29 (5) recommendations on the need for amendments to statutory rulemaking procedures  
27.30 given increased legislative review of rules; and
- 27.31 (6) an analysis of strategies to ensure or encourage compliance with state policies and  
27.32 goals using methods other than rulemaking, such as administrative penalty orders, descriptive

28.1 guidelines, best management practices, compliance incentives, technical assistance, training,  
28.2 and procedural templates.

28.3 (c) In conducting the review and developing reform proposals, the task force must consult  
28.4 with interested parties, and must consider relevant state and federal laws and commitments.  
28.5 An opportunity for interested parties to give general input on the need for reform and describe  
28.6 their experience with existing rulemaking procedures must be provided during at least two  
28.7 public meetings of the task force.

28.8 Subd. 3. First meeting; chair. The member appointed by the speaker of the house shall  
28.9 convene the initial meeting of the task force no later than July 21, 2017. The members of  
28.10 the task force must elect a chair and vice-chair from the members of the task force at the  
28.11 first meeting.

28.12 Subd. 4. Open meetings. Meetings of the task force are subject to Minnesota Statutes,  
28.13 chapter 13D.

28.14 Subd. 5. Staff. The Legislative Coordinating Commission, in collaboration with  
28.15 appropriate staff of the house of representatives and the senate, shall provide administrative  
28.16 and research support to the task force. The Pollution Control Agency, the Department of  
28.17 Labor and Industry, and the Department of Transportation must provide additional assistance  
28.18 at the task force's request.

28.19 Subd. 6. Report. No later than February 15, 2018, the task force must submit a report  
28.20 describing its activities and findings to the chairs and ranking minority members of the  
28.21 committees in the senate and house of representatives with primary jurisdiction over  
28.22 administrative rulemaking. If applicable, the report must describe, in detail, any reform  
28.23 proposal recommended to the legislature under subdivision 2.

28.24 Subd. 7. Sunset. The task force shall sunset the day following the submission of the  
28.25 report as required by subdivision 6.

28.26 EFFECTIVE DATE. This section is effective the day following final enactment.

28.27 Sec. 33. REPEALER.

28.28 Minnesota Statutes 2016, section 14.05, subdivision 5, is repealed.

28.29 Sec. 34. EFFECTIVE DATE; APPLICATION.

28.30 This act is effective August 1, 2017, and applies to rules for which a notice of hearing  
28.31 under Minnesota Statutes, section 14.14; a notice of intent to adopt under Minnesota Statutes,

- 29.1 section 14.22; or a dual notice under Minnesota Statutes, section 14.225, is published in the
- 29.2 State Register on or after that date.

APPENDIX  
Repealed Minnesota Statutes: H1433-1

**14.05 GENERAL AUTHORITY.**

**Subd. 5. Review and repeal of rules.** By December 1 of each year, an agency must submit to the governor, the Legislative Coordinating Commission, the policy and funding committees and divisions with jurisdiction over the agency, and the revisor of statutes, a list of any rules or portions of rules that are obsolete, unnecessary, or duplicative of other state or federal statutes or rules. The list must also include an explanation of why the rule or portion of the rule is obsolete, unnecessary, or duplicative of other state or federal statutes or rules. By December 1, the agency must either report a timetable for repeal of the rule or portion of the rule, or must develop a bill for submission to the appropriate policy committee to repeal the obsolete, unnecessary, or duplicative rule. Such a bill must include proposed authorization to use the expedited procedures of section 14.389 to repeal or amend the obsolete, unnecessary, or duplicative rule. A report submitted under this subdivision must be signed by the person in the agency who is responsible for identifying and initiating repeal of obsolete rules. The report also must identify the status of any rules identified in the prior year's report as obsolete, unnecessary, or duplicative. If none of an agency's rules are obsolete, unnecessary, or duplicative, an agency's December 1 report must state that conclusion.

# HOUSE RESEARCH

## Bill Summary

**File Number:** H.F. 1433  
**Version:** First engrossment

**Date:** March 21, 2017

**Authors:** Kresha and others

**Subject:** Administrative Rulemaking

**Analyst:** Matt Gehring, 651-296-5052

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### Overview

This bill provides a number of miscellaneous and technical modifications to the Administrative Procedures Act.

Among the more substantial changes is an expanded authorization for legislative objection to rules, and increased opportunities to analyze the potential impact of rules, including a review of rules for a substantial economic impact. It also prohibits agencies from enforcing certain documents that meet the definition of a rule, if those documents were not adopted in the rulemaking process.

### Section

**1** **Objections to rules or proposed rules.** Modifies an existing authorization for the Legislative Coordinating Commission or the government operations committees in each body to object to rules, including expansion of the conditions under which an objection may be made (for either an adopted rule or proposed rule).

Current law authorizes the LCC and government operations committees to object if a rule is beyond the procedural or substantive authority delegated to an agency. With this section, the LCC or government operations committee may object if a rule:

- (1) is beyond the procedural or substantive authority delegated to an agency;
- (2) is inconsistent with the enabling statute;
- (3) is unnecessary or redundant;
- (4) has a substantial economic impact (defined later in the bill);

**Section**

(5) is not based on sound, reasonably available scientific, technical, economic, or other information;

(6) is not cost effective;

(7) is unduly burdensome; or

(8) is more restrictive than the standard, limitation, or requirement imposed by federal law on the same subject.

This section additionally prohibits agencies from adopting a proposed rule until after the legislative session that began after an objection is filed, if the legislature's objection is not withdrawn.

Other technical and procedural requirements related to the objection process are also included in this section.

- 2 **State regulatory policy.** Eliminates a "feasibility" test for determining whether a state agency must develop rules and regulatory programs that emphasize superior achievement in achieving an agency's objectives and maximum flexibility for the regulated party and the agency in meeting those goals. Instead, this requirement would apply at all times.
- 3 **Substantial economic impact.** Defines when a rule has a "substantial economic impact". This definition is used elsewhere in the bill, including a section which requires a panel review of proposed rules with substantial economic impact, and which provides that rules with substantial economic impact do not take effect until approved by law.
- 4 **Authority to adopt original rules restricted.** Updates cross-references related to the general authority for an agency to adopt rules in specific circumstances, which are contained elsewhere in chapter 14 (rulemaking to allow variances for rules; rulemaking using the good cause exemption; rulemaking using the expedited process; and rulemaking to repeal obsolete rules)
- 5 **Limitation regarding certain policies, guidelines, and other interpretive statements.** Prohibits agencies from implementing or enforcing a policy, guideline, or interpretive statement that meets the definition of a rule, if it has not been adopted as a rule. Solid waste policy plan revisions are explicitly cited as an example of these types of statements.  
Procedures for review of an agency's compliance with this section are provided.
- 6 **Authority to modify proposed rule.** Current law prohibits agencies from modifying a proposed rule in a way that makes it substantially different from the proposed rule as contained in the notice of intent to adopt rules.  
This section provides that a proposed rule becomes substantially different if a modification causes the rule to have a substantial economic impact.
- 7 **Review and repeal of rules.** Recodifies an existing mandatory agency report related to obsolete rules. Instead of an annual report, agencies would be required to submit the report biannually.
- 8 **Review and repeal of environmental assessment worksheets and impact statements.** Establishes a new biennial report, requiring the Environmental Quality Board, the Pollution Control Agency, the Department of Natural Resources, and the Department of Transportation

**Section**

to submit a list, in consultation with political subdivisions, of mandatory environmental assessment worksheets or mandatory environmental impact statements. Certain details related to the use, cost, and justification for these documents is required to be included in the report.

- 9**      **Veto of adopted rules.** Updates a cross-reference to reflect organizational changes made later in the bill.
- 10**     **Electronic documents permitted.** Permits agencies to send notices and other required rulemaking documents electronically, provided that a paper copy must be provided if requested.
- 11**     **Required notice.** Exempts the expedited rulemaking process from an existing requirement related to solicitation of general public comments on the subject matter of a possible rulemaking proceeding.
- 12**     **Rule notification.** Requires agencies to maintain a list of all persons who have registered their interest in receiving notice of rulemaking proceedings. Standards for how a person may register are provided.

In addition to notifying registrants, this section also requires agencies to make reasonable efforts to notify other persons who may be significantly affected by a rule. An agency's efforts to notify these additional persons must be documented and submitted to the administrative law judge overseeing the rulemaking proceeding.

- 13**     **Notice to legislature.** Requires that each agency annually must submit its rulemaking docket to the Legislative Coordinating Commission, in addition to the other legislative officials specified in current law. Requires each agency to post a link to its rulemaking docket on the agency Web site home page.

This section eliminates an existing requirement that the agency attempt to notify all sitting legislators who were chief authors of the bill or amendment granting the agency's rulemaking authority.

- 14**     **Time limit on authority to adopt, amend, or repeal rules.** Modifies what happens when an agency's time limit for rulemaking runs out. Instead of an automatic expiration of a rulemaking authority after 18 months of the effective date of the law granting the authority, the agency would instead be required to report to the LCC, relevant legislative committees, and the governor about its failure to meet that time limit.

- 15**     **Legislative approval required.** Provides that before giving notice of intent to adopt a rule, the agency must determine if the proposed rule has a substantial economic impact.

If the agency determines that the rule has a substantial economic impact, it must request the legislative auditor to convene a five-person advisory panel to conduct an impact analysis of the proposed rule. The Legislative Auditor must convene a panel within 30 days, and requires the panel to report within 60 days of being convened. The agency must receive the panel's report before it conducts a public hearing (or if no hearing is required, before the rule is submitted to the administrative law judge). The panel's report must include findings on the extent to which the proposed rule: (1) is based on sound, reasonably available

## Section

information or rationale; and (2) is more restrictive than federal law on the same subject matter.

This section also requires the administrative law judge to review the agency's determination that a rule does not have a substantial economic impact. If the judge determines that a rule may have a substantial economic impact, the agency must go through the review panel process and must give new notice of intent to adopt the rule after receiving the advisory panel report.

Finally, this section provides that a rule that has a substantial economic impact does not take effect until approved by law.

Language in current law relating to the effect of a rule on small businesses or small cities is stricken, but the small business and small city concepts are incorporated into the definition of "substantial economic impact". Language that gives the governor authority to waive application of this section is eliminated.

- 16 Impact analysis of proposed rule.** Permits a standing committee with jurisdiction over the subject matter of a proposed rule to request the legislative auditor to conduct an impact analysis of the proposed rule. The procedures are somewhat similar to those described for review of a proposed rule for a substantial economic impact, and include review of the proposed rule by a five-person panel. After receipt of the panel's report, the legislative committee must make either a positive or negative declaration on the rule. If it issues a negative declaration, the agency may not adopt the rule until the legislature adjourns its annual session that began after the issuance of the declaration.
- 17 Statement of need and reasonableness.** Reorganizes and modifies the content required in an agency's statement of need and reasonableness on a proposed rule. Among other items, the statement must include a description, with reasonable particularity, of the scientific, technical, and economic information that supports the proposed rule.
- 18 Notice of rule hearing.** Modifies various standards relating to providing public notice when a hearing will be held on a proposed rule. Portions of this section are recodified into a new section contained earlier in the bill.
- 19 Hearing procedure.** When a hearing is held on a proposed rule, requires an agency to submit to the administrative law judge all public comments and requests for hearing received. These documents become part of the official rulemaking record.
- 20 Deadline to complete rulemaking.** Eliminates language related to the legislative approval of rules, to reflect changes made earlier in the bill.
- 21 Contents.** Provides miscellaneous modifications to the content and organization of an agency's notice that it intends to adopt rules without a public hearing.
- 22 Statement of need and reasonableness.** Provides miscellaneous technical modifications related to statements of need and reasonableness when rules are adopted without a public hearing. These changes largely reflect substantive changes made elsewhere in the bill.
- 23 Requests for hearing.** Provides modifications to the content standards in a member of the public's request for a public hearing on a proposed rule, if the agency does not otherwise schedule one.

**Section**

- 24**      **Adoption of proposed rule; submission to administrative law judge.** Reorganizes the existing law related to the procedure for review of a proposed rule by the administrative law judge (ALJ), including a new requirement that the ALJ disregard “harmless errors” in the process.
- 25**      **Official rulemaking record.** Updates a cross-reference and provides other conforming changes to the list of items included in the official rulemaking record, to reflect changes made elsewhere in the bill.
- 26**      **Costs.** Eliminates an authorization for an ALJ to require a petitioner to submit a bond or deposit in a challenge alleging an agency is enforcing unadopted rules.
- 27**      **Requirements.** Provides that rules adopted under the good cause exemption do not automatically expire after two years, if the rules were adopted to conform to the requirements of a court order.
- 28**      **Notice.** Requires agencies to give notice to the legislature when proposing a rulemaking proceeding using the good cause exemption.
- 29**      **Determination of validity of rule.** Authorizes judicial review of agency documents a petitioner believes should be a rule, even if the agency has not adopted the document as such. The process would be similar to the judicial review of rules.
- 30**      **Rule declared invalid.** Provides conforming changes related to the expanded judicial review allowance contained earlier in the bill.
- 31**      **Procedural rules.** Updates a list of cross-references to include a reference to expedited rulemaking, in the section requiring the office of administrative hearings to adopt its own procedural rules to govern the rulemaking process.
- 32**      **State administrative rulemaking task force.** Establishes a task force to review existing rulemaking procedures. The task force may develop proposals for rulemaking reform, with certain limitations. A task force report is due February 15, 2018.
- 33**      **Repealer.** Repeals an existing subdivision related to agency obsolete rules reports. This subdivision is recodified, with modifications, earlier in the bill.
- 34**      **Effective date; application.** Provides an effective date for the bill and clarifies its applicability.



SENATE  
STATE OF MINNESOTA  
NINETIETH SESSION

S.F. No. 1516

HF 1258

(SENATE AUTHORS: EKEN and Dahms)

DATE  
02/27/2017

D-PG

797

Introduction and first reading

Referred to Environment and Natural Resources Policy and Legacy Finance

OFFICIAL STATUS

- 1.1 A bill for an act
- 1.2 relating to environment; providing for review of certain agency actions;
- 1.3 appropriating money; amending Minnesota Statutes 2016, sections 3.886,
- 1.4 subdivision 4; 115.05.
- 1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.6 Section 1. Minnesota Statutes 2016, section 3.886, subdivision 4, is amended to read:
- 1.7 Subd. 4. **Powers and duties.** (a) The Legislative Water Commission shall review water
- 1.8 policy reports and recommendations of the Environmental Quality Board, the Board of
- 1.9 Water and Soil Resources, the Pollution Control Agency, the Department of Natural
- 1.10 Resources, the Metropolitan Council, and other water-related reports as may be required
- 1.11 by law or the legislature.
- 1.12 (b) The commission may conduct public hearings and otherwise secure data and
- 1.13 comments.
- 1.14 (c) The commission shall make recommendations as it deems proper to assist the
- 1.15 legislature in formulating legislation.
- 1.16 (d) The commission may convene an independent scientific review according to section
- 1.17 115.05, subdivision 12.
- 1.18 (d) (e) Data or information compiled by the Legislative Water Commission or its
- 1.19 subcommittees shall be made available to the Legislative-Citizen Commission on Minnesota
- 1.20 Resources, the Clean Water Council, and standing and interim committees of the legislature
- 1.21 on request of the chair of the respective commission, council, or committee.
- 1.22 (e) (f) The commission shall coordinate with the Clean Water Council.

2.1 Sec. 2. Minnesota Statutes 2016, section 115.05, is amended to read:

2.2 **115.05 JUDICIAL REVIEW REVIEWING AGENCY ACTIONS.**

2.3 Subd. 11. **Judicial review.** Any person aggrieved by any final decision of the ~~agency~~  
2.4 ~~or of the commissioner of the Pollution Control Agency~~ may obtain judicial review thereof  
2.5 pursuant to sections 14.63 to 14.69 if the final decision is made pursuant to the ~~agency's or~~  
2.6 ~~the commissioner's~~ authority under section 115A.914, this chapter, chapter 116, or the rules  
2.7 adopted thereunder, and if the decision is a final decision pertaining to:

2.8 (1) issuance, amendment, or denial of a permit, license, or certification;

2.9 (2) granting or denial of a variance;

2.10 (3) issuance of an administrative order, except for an administrative penalty order issued  
2.11 pursuant to section 116.072; or

2.12 (4) denial of a contested case hearing on any of the matters listed in clauses (1) to (3).

2.13 **Subd. 12. Independent scientific review.** (a) Upon petition of five or more cities, towns,  
2.14 counties, local public utilities commissions, or sanitary districts, the Legislative Water  
2.15 Commission may convene an independent scientific review of the following actions or final  
2.16 decisions of the commissioner of the Pollution Control Agency:

2.17 (1) adopting or amending a water-quality standard under section 115.44;

2.18 (2) issuing, amending, or denying an impairment designation, a total maximum daily  
2.19 load (TMDL) allocation, a watershed restoration and protection strategy (WRAPS), or a  
2.20 water-related permit, license, or certification;

2.21 (3) identifying or listing impaired waters under section 114D.25;

2.22 (4) granting or denying a site-specific water-quality standard or a variance to a  
2.23 water-quality standard;

2.24 (5) issuing a water-related administrative order, except for an administrative penalty  
2.25 order issued under section 116.072;

2.26 (6) denying a contested case hearing on any of the matters listed in clauses (1) to (5);

2.27 or

2.28 (7) denying a request for reconsideration in an action identified in clauses (1) to (6).

2.29 (b) The petition must be submitted in writing to the Legislative Water Commission and  
2.30 must describe the need for the independent scientific review. The petition may include  
2.31 supporting expert opinion.

3.1 (c) Upon receipt of a petition complying with paragraph (b), the Legislative Water  
3.2 Commission may convene an independent scientific review regardless of whether an external  
3.3 peer review was conducted under section 115.035. If the commission decides to convene a  
3.4 review, the commission must establish by order an expert review panel of three independent  
3.5 experts with qualifications in the subject matter of the scientific dispute who are employed  
3.6 neither by the agency nor by any adverse parties to the proceeding and who are not directly  
3.7 or indirectly involved with the work conducted or contracted by the agency. The composition  
3.8 of the panel must be determined as follows:

3.9 (1) the commissioner of the Pollution Control Agency must select one expert satisfying  
3.10 the requirements of this paragraph;

3.11 (2) the petitioner must select one expert satisfying the requirements of this paragraph;

3.12 (3) the two experts selected under clauses (1) and (2) must mutually agree to a third  
3.13 expert satisfying the requirements of this paragraph; and

3.14 (4) if the two experts selected under clauses (1) and (2) are unable to mutually agree on  
3.15 a third expert, the Legislative Water Commission must make the appointment.

3.16 (d) In its order establishing the expert review panel, the Legislative Water Commission  
3.17 must include a statement of the specific scientific issues or questions in dispute to be  
3.18 submitted for review. The commissioner and petitioners must mutually agree to the issues  
3.19 or questions, except that if the parties cannot agree on one or more issues or questions, the  
3.20 Legislative Water Commission must determine the issue or question to be submitted. If the  
3.21 Legislative Water Commission determines the issue or question to be submitted, the  
3.22 commission must hold a public hearing on the issue or question.

3.23 (e) The expert review panel established by the Legislative Water Commission must  
3.24 review the scientific evidence relevant to the issues or questions listed in the commission's  
3.25 order, including the results of any external peer review conducted according to section  
3.26 115.035, in general accordance with the guidance in the United States Environmental  
3.27 Protection Agency's Peer Review Handbook. The panel must submit a written opinion on  
3.28 the scientific validity of the commissioner's approach at issue. If the panel finds deficiencies,  
3.29 the panel must recommend how the deficiencies can be corrected. The written opinion must  
3.30 be submitted to the commissioner of the Pollution Control Agency, the petitioners, and the  
3.31 chairs of the house of representatives and senate committees having jurisdiction over  
3.32 environment and natural resources policy and finance.

4.1 Sec. 3. APPROPRIATION.

4.2 \$100,000 in fiscal year 2018 is appropriated from the general fund to the Legislative

4.3 Water Commission to conduct independent scientific reviews according to section 2. The

4.4 appropriation is available until expended.

SF695 - 1CE - "Reviews of PCA Water Quality Decisions"

Chief Author: **Scott Newman**  
 Committee: **Environment and Natural Resources Finance**  
 Date Completed: **04/18/2017**  
 Lead Agency: **Pollution Control Agency**  
 Other Agencies:  
     Administrative Hearings

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings	X	
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings) Dollars in Thousands	Biennium			Biennium	
	FY2017	FY2018	FY2019	FY2020	FY2021
<b>Administrative Hearings</b>	-	-	-	-	-
Administrative Hearings	-	-	-	-	-
<b>Pollution Control Agency</b>					
Clean Water Fund	-	1,055	1,105	883	883
Environmental	-	2,617	2,667	2,099	2,099
<b>State Total</b>					
Administrative Hearings	-	-	-	-	-
Clean Water Fund	-	1,055	1,105	883	883
Environmental	-	2,617	2,667	2,099	2,099
<b>Total</b>	-	<b>3,672</b>	<b>3,772</b>	<b>2,982</b>	<b>2,982</b>
<b>Biennial Total</b>			<b>7,444</b>		<b>5,964</b>

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2017	FY2018	FY2019	FY2020	FY2021
<b>Administrative Hearings</b>	-	-	-	-	-
Administrative Hearings	-	-	-	-	-
<b>Pollution Control Agency</b>					
Clean Water Fund	-	2.5	2.5	1.75	1.75
Environmental	-	14.8	14.8	11.5	11.5
<b>Total</b>	-	<b>17.3</b>	<b>17.3</b>	<b>13.25</b>	<b>13.25</b>

**Lead Executive Budget Officer's Comment**

I have reviewed this fiscal note for reasonableness of content and consistency with MMB's Fiscal Note policies.

EBO Signature: Ashley Reisenauer      Date: 04/18/2017  
 Phone: 651 259-3603                      Email: Ashley.Reisenauer@state.mn.us

**State Cost (Savings) Calculation Details**

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

<b>State Cost (Savings) = 1-2</b>	<b>Biennium</b>		<b>Biennium</b>		
<b>Dollars in Thousands</b>	<b>FY2017</b>	<b>FY2018</b>	<b>FY2019</b>	<b>FY2020</b>	<b>FY2021</b>
Administrative Hearings	-	-	-	-	-
Administrative Hearings	-	-	-	-	-
Pollution Control Agency					
Clean Water Fund	-	1,055	1,105	883	883
Environmental	-	2,617	2,667	2,099	2,099
<b>Total</b>	<b>-</b>	<b>3,672</b>	<b>3,772</b>	<b>2,982</b>	<b>2,982</b>
<b>Biennial Total</b>			<b>7,444</b>		<b>5,964</b>
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>					
Administrative Hearings	-	-	-	-	-
Administrative Hearings	-	760	860	796	796
Pollution Control Agency					
Clean Water Fund	-	1,055	1,105	883	883
Environmental	-	2,617	2,667	2,099	2,099
<b>Total</b>	<b>-</b>	<b>4,432</b>	<b>4,632</b>	<b>3,778</b>	<b>3,778</b>
<b>Biennial Total</b>			<b>9,064</b>		<b>7,556</b>
<b>2 - Revenues, Transfers In*</b>					
Administrative Hearings	-	-	-	-	-
Administrative Hearings	-	760	860	796	796
Pollution Control Agency					
Clean Water Fund	-	-	-	-	-
Environmental	-	-	-	-	-
<b>Total</b>	<b>-</b>	<b>760</b>	<b>860</b>	<b>796</b>	<b>796</b>
<b>Biennial Total</b>			<b>1,620</b>		<b>1,592</b>

SF695 - 1CE - "Review of PCA Water Quality Decisions"

Chief Author: **Scott Newman**  
 Committee: **Environment and Natural Resources Finance**  
 Date Completed: **04/18/2017**  
 Agency: **Pollution Control Agency**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings) Dollars in Thousands	Biennium			Biennium	
	FY2017	FY2018	FY2019	FY2020	FY2021
Clean Water Fund	-	1,055	1,105	883	883
Environmental	-	2,617	2,667	2,099	2,099
<b>Total</b>	-	<b>3,672</b>	<b>3,772</b>	<b>2,982</b>	<b>2,982</b>
<b>Biennial Total</b>			<b>7,444</b>		<b>5,964</b>

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2017	FY2018	FY2019	FY2020	FY2021
Clean Water Fund	-	2.5	2.5	1.75	1.75
Environmental	-	14.8	14.8	11.5	11.5
<b>Total</b>	-	<b>17.3</b>	<b>17.3</b>	<b>13.25</b>	<b>13.25</b>

**Executive Budget Officer's Comment**

I have reviewed this fiscal note for reasonableness of content and consistency with MMB's Fiscal Note policies.

EBO Signature: Ashley Reisenauer      Date: 4/18/2017 3:24:14 PM  
 Phone: 651 259-3603                      Email: Ashley.Reisenauer@state.mn.us

**State Cost (Savings) Calculation Details**

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

<b>State Cost (Savings) = 1-2</b>		<b>Biennium</b>			<b>Biennium</b>	
<b>Dollars In Thousands</b>	<b>FY2017</b>	<b>FY2018</b>	<b>FY2019</b>	<b>FY2020</b>	<b>FY2021</b>	
Clean Water Fund	-	1,055	1,105	883	883	
Environmental	-	2,617	2,667	2,099	2,099	
<b>Total</b>	<b>-</b>	<b>3,672</b>	<b>3,772</b>	<b>2,982</b>	<b>2,982</b>	
<b>Biennial Total</b>			<b>7,444</b>		<b>5,964</b>	
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>						
Clean Water Fund	-	1,055	1,105	883	883	
Environmental	-	2,617	2,667	2,099	2,099	
<b>Total</b>	<b>-</b>	<b>3,672</b>	<b>3,772</b>	<b>2,982</b>	<b>2,982</b>	
<b>Biennial Total</b>			<b>7,444</b>		<b>5,964</b>	
<b>2 - Revenues, Transfers In*</b>						
Clean Water Fund	-	-	-	-	-	
Environmental	-	-	-	-	-	
<b>Total</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	
<b>Biennial Total</b>			<b>-</b>		<b>-</b>	

**Bill Description**

**Section 1:**

- provides definitions.
  - adds prescriptive requirements for administrative law judge review of mpca decisions on a wide variety of agency responsibilities, including industrial and mining and municipal permits, licenses, certifications, total maximum daily loads (tmdls), watershed restoration and protection strategies (wraps), water quality standards, rulemaking, administrative orders, etc.
  - the section also specifies requirements that would compel the administrative law judge, in a proceeding to review a rule under chapter 14, to find that the need for and reasonableness of the rule has not been established.
  - requires the office of administrative hearings to convene a three-person expert review panel if it receives petitions from five or more local units of government for a rulemaking, or one local unit of government for other water quality actions (such as permits, total maximum daily load studies, etc.) that demonstrate the existence of a material scientific dispute regarding the scientific validity of the proposed action.
  - provides procedures for selecting the expert panel members and identifying the scientific issues or questions of dispute, reporting on the results of the panel, and completing the rulemaking that was the subject of the panel review.
  - specifies the status of actions pending the expert panel review.
  - requires that chapter 14 requirements must be followed, and specifies the timing of the review petition submission.
- section 2 prohibits the mpca from enforcing "unadopted rules", and shifts the burden of proof from a petitioner claiming that an action is an unadopted rule to the agency. section 3 suspends until July 1, 2019 the water quality standards or other water quality review changes adopted on or after July 2, 2014, that require a local unit of government to upgrade, update, or construct a new wastewater treatment facility. this section further states that water quality standards and other water quality rules in effect on July 1, 2014, are in effect until July 1, 2019 and suspends until July 1, 2019 any pending actions by the commissioner to enforce water quality standards or other water quality rules adopted on or after July 2, 2014.

**Assumptions**

**Section 1**

- Subdivision 2, clause (4) requires a "demonstrated, significant causal relationship between the parameters of concern and the water-quality objective at issue, not correlation alone." Many water quality standards, particularly standards designed to protect human health, are based on statistically significant associations, or correlations, rather than a demonstrated, significant causal relationship. Therefore, any rulemaking that involves the adoption or implementation of human-health based standards would likely be invalidated under subdivision 3 for not meeting subd. 2, clause (4), leading to lawsuits and uncertainty. It is difficult to predict the costs of such legal proceedings so they are not quantified here, but have the potential to be very significant.
- Subdivision 4 will result in numerous petitions to the OAH to convene an expert review panel. The biennial estimates for the frequency of such petitions are as follows:

TMDLs/WRAPS = 35 for next biennium as TMDL/WRAPS work is peaking, declining to 25 per biennium after that.

Water quality standards rulemaking, site specific standards or variances = 4/biennium.

Impaired Waters list = 1 list/biennium (HOWEVER, if individual listings could be challenged individually, this would entail about 670 listings per new list. We assume all list challenges would be rolled into one petition. If not, costs would be exponential).

Municipal wastewater permits = 80/biennium.

Mining-related industrial wastewater permits = 4/biennium (we assume non-mining permits are not likely to be petitioned)

Total decisions per biennium that will be petitioned for a panel review = 124 in the first biennium, 114 in the second.

- OAH's estimate of their review costs are as follows (see OAH fiscal note for detailed assumptions):

Rulemaking Proceedings: Estimated 280 hours of ALJ time at \$170/hour = \$47,600 per matter

4 rulemaking proceedings per biennium x \$47,600 per matter = \$190,400/biennium or \$95,200/year.

Contested Case Proceedings:

1. estimated 75 hours of alj time at \$170/hour = \$12,750 per matter. 120 contested case proceedings for the 2018-2019 biennium x \$12,750 per matter = \$1,530,000 for the biennium or \$765,000 per year.

2. 110 contested case proceedings for the 2020-2021 biennium x \$12,750 per matter = \$1,402,500 for the biennium or \$701,250 per year.

- The OAH must convene an expert review panel if it determines that the petition(s) demonstrate the existence of a "material scientific dispute regarding the scientific validity of the commissioner's proposed action." Given that ALJs are expert in law, but not necessarily science, we anticipate that ALJs will be more likely to grant than deny petitions to err on the side of additional review.

- therefore, we assume 75% of petitions for tmdlwraps, water quality standards, impaired waters and mining permits will be granted a panel review.

- for municipal wastewater permits we anticipate that many of the petitions will address similar issues, so in that case we assume 50% of the petitions in the first year of the biennium, and 25% of the petitions in the second year and each subsequent year will be granted a panel review.

- total panel reviews for the biennium = 63 in the first biennium, 45 in the next biennium.- convening an expert scientific review panel would cost \$30,000, conservatively, per panel. it is not clear from the bill who would pay for the costs of the panel, so we assume those costs would be passed along to the mpca, as is the case with other oah costs.- the bill would create additional workload for the agency in the form of responding to oah questions and compiling and summarizing information for the panel reviews. the agency would address the needs created by this bill with existing staff to the extent possible, but additional workload would be created beyond staff capacity. we assume the additional workload would be 50% of the original workload to develop the action. therefore, the additional staff needed, rounded to the nearest fte would be: 2 fte/year for wraps/tmdl review work: \$114,000 x 4 fte originally needed x 50% = 24 fte/year for industrial/mining permitting: \$500,000/permit x 2 permits/year x 50% = \$500,000/\$114,000 = 4.4 = 45 fte/year for municipal permitting: \$30,000/permit x 40 permits/year x 50% = \$600,000/\$114,000 = 5.3 = 51 fte/year for standards/site-specific standards/variances: \$75,000 x 2/year x 50% = \$150,000/\$114,000 = 0.65 = 1.5 fte for impaired waters list review work: \$114,000 x 1 fte originally needed x 50% = .51 fte for legal counsel to provide review and advice for the above challenges: \$114,000 = 1

The agency calculated these estimates looking forward into the future, not backward on completed and/or issued actions.

Staffing needs in the second biennium would be 70% of those needed in the first biennium given the reduction in granted petitions.

- It is difficult to estimate the costs associated with Section 3 of the bill. Costs would depend on how many lawsuits were initiated by the failure of the MPCA to enforce lawfully adopted rules and permits that have been issued. Given the uncertainties in such estimations, those costs are not included in this fiscal note, but would be substantial. Significant costs would also be borne by any municipality or business that needs a permit to build or expand a facility to accommodate economic growth, but is unable to obtain one due to the suspension of the standards and rules adopted on or after July 2, 2014.

- Section 2 will result in more time needed to resolve issues individually with each permit that guidance used to resolve up front. Estimate 40 contentious permits per year with an additional 200 hours to negotiate policy.  $40 \times 200 = 8,000$  hours divided by 2088 hours per FTE = 3.8 FTEs of work.

#### Expenditure and/or Revenue Formula

FY17 assuming \$0 since the law would not take effect until after FY17 is over or nearly over.

#### **FY18-19:**

Amounts to be billed to MPCA and paid by MPCA to OAH:  $\$190,400 + \$1,530,000 = \$1,720,400$  minus \$100,000 (one-time appropriation in the bill) = \$760,200 in FY2018 and \$860,200 in FY2019\*\*\*

26 review panels for WRAPS/TMDLs x \$30,000/panel = \$780,000\*

37 review panels for permits, standards, impaired waters x \$30,000/panel = \$1,100,000\*\*

2 FTE/year for WRAPS/TMDL review:  $\$114,000 \times 2 \times 2$  years = \$456,000\*

4 FTE/year Industrial/mining permitting:  $\$114,000 \times 4 \times 2$  years = \$912,000\*\*

5 FTE/year Municipal permitting:  $\$114,000 \times 5 \times 2$  years = \$1,140,000\*\*

1 FTE/year Standards/Site-specific standards/variances:  $\$114,000 \times 1 \times 2$  years = \$228,000\*\*

.5 FTE for Impaired Waters List:  $\$114,000 \times .5 \times 2$  years = \$114,000\*

1 FTE for legal counsel:  $\$114,000 \times 2$  years = \$228,000\*\*

3.8 FTE for Additional permit negotiations associated with Sec. 2:  $\$114,000 \times 3.8 \times 2$  years = \$866,400\*\*

**FY18-19 TOTAL \$7,444,800**

#### **FY20-21:**

Amounts to be billed to MPCA and paid by MPCA to OAH:  $\$190,400 + \$1,402,500 = \$1,592,900$  (\$796,450/year) \*\*\*

19 review panels for WRAPS/TMDLs x \$30,000/panel = \$570,000\*

26 review panels for permits, standards, impaired waters x \$30,000/panel = \$780,000\*\*

FTE for WRAPS/TMDL review= 2 FTE/yr x 70% = 1.4 FTE:  $\$114,000 \times 1.4 \times 2$  years = \$319,200\*

FTE Industrial/mining permitting= 4 FTE/yr x 70% = 2.8:  $\$114,000 \times 2.8 \times 2$  years = \$638,400\*\*

FTE Municipal permitting=5 FTE/yr. x 70% = 3.5:  $\$114,000 \times 3.5 \times 2$  years = \$798,000\*\*

FTE Standards/Site-specific standards/variances= 1 FTE/yr x 70% = 0.7: \$114,000 x 0.7 x 2 years =\$159,600\*\*

FTE for Impaired Waters List = 0.5 FTE/yr x 70% = 0.35: \$114,000 x .35 x 2 years = \$79,800\*

FTE for legal counsel = 1 FTE/yr x 70% = 0.7: \$114,000 x 0.7 x 2 years = \$159,600\*\*

3.8 FTE for Additional permit negotiations associated with Sec. 2: \$114,000 x 3.8 x 2 years = \$866,400\*\*

**FY20-21 TOTAL \$5,963,900**

\* These costs are comprised of Clean Water Fund dollars

\*\* These costs are Environmental Fund dollars

\*\*\* These costs are half Clean Water Fund dollars, half Environmental Fund dollars

### Long-Term Fiscal Considerations

MPCA decisions and work impacted by this bill carries out indefinitely; thus so too do the fiscal impacts of this bill.

### Local Fiscal Impact

The provisions in this bill will also slow down the MPCA's permitting process, which could have cost implications for construction and expansion projects where a slowdown in permitting might translate into higher construction costs. Furthermore, local units of government with permit requirements based on the water quality rules suspended by Section 5 would be vulnerable to legal costs posed by third-party lawsuits if they did not comply with the requirements in their permit, or would face the inability to construct new or expanded facilities if MPCA is unable to issue permits while the rules are suspended (which is likely given that any permit issued would be in violation of federal requirements if it did not address the EPA-approved water quality standards adopted after July 2, 2016).

### References/Sources

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**Fiscal Note**

**2017-2018 Legislative Session**

**SF695 - 1CE - "Reviews of PCA Water Quality Decisions"**

Chief Author: **Scott Newman**  
 Committee: **Environment and Natural Resources Finance**  
 Date Completed: **04/18/2017**  
 Agency: **Administrative Hearings**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings	X	
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings) Dollars in Thousands	Biennium			Biennium	
	FY2017	FY2018	FY2019	FY2020	FY2021
Administrative Hearings	-	-	-	-	-
<b>Total</b>	-	-	-	-	-
<b>Biennial Total</b>			-		-

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2017	FY2018	FY2019	FY2020	FY2021
Administrative Hearings	-	-	-	-	-
<b>Total</b>	-	-	-	-	-

**Executive Budget Officer's Comment**

I have reviewed this fiscal note for reasonableness of content and consistency with MMB's Fiscal Note policies.

EBO Signature: Laura Logsdon Date: 4/17/2017 9:04:41 AM  
 Phone: 651 201-8020 Email: laura.logsdon@state.mn.us

**State Cost (Savings) Calculation Details**

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2 Dollars in Thousands	Biennium			Biennium	
	FY2017	FY2018	FY2019	FY2020	FY2021
Administrative Hearings	-	-	-	-	-
<b>Total</b>	-	-	-	-	-
<b>Biennial Total</b>			-		-
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>					
Administrative Hearings	-	760	860	796	796
<b>Total</b>	-	760	860	796	796
<b>Biennial Total</b>			1,620		1,592
<b>2 - Revenues, Transfers In*</b>					
Administrative Hearings	-	760	860	796	796
<b>Total</b>	-	760	860	796	796
<b>Biennial Total</b>			1,620		1,592

**Bill Description**

SF695-1CE, Section 1, expands opportunities for parties to challenge any final decision of the commissioner of the Minnesota Pollution Control Agency (MPCA) on a wide range of MPCA responsibilities, including final decisions which relate to water quality standards.

Subdivision 2 of Section 1 adds a requirement that the Office of Administrative Hearings (OAH) convene a three member expert review panel to review the scientific basis for the commissioner's actions in the following specifics: (1) if MPCA has issued a notice of intention to adopt a proposed rule concerning water quality standards and at least 5 local government units have petitioned for review; or (2) if any one petitioner requests a contested case proceeding to examine disputes related to a wide range of MPCA responsibilities, including final decisions which relate to water quality standards. Subdivision 4 of Section 1 defines how the members of the expert review panel are identified, and Subdivision 5 addresses how expert review panels are conducted.

Section 4 of this version of the bill makes a one-time appropriation of \$100,000 from the General Fund to OAH.

**Assumptions**

The Office of Administrative Hearings (OAH) provides judicial review of rulemaking proceedings and contested case proceedings involving state agencies. Pursuant to Minn. Stat. §§ 14.53 and 14.54, OAH operates as an enterprise fund. That is, OAH bills to state agencies the costs of its service provided, at hourly rates approved annually by MMB. State agencies are required by law to pay OAH for the costs of all services invoiced. These payments are used by OAH to cover all of its costs of operation.

SF695 requires that OAH review reports prepared by expert review panels in certain rulemaking and contested case proceedings involving the MPCA. As required by Minn. Stat. §§ 14.53 and 14.54, OAH will include the OAH-related costs of these requirements in its invoices to the MPCA, and the MPCA will pay these amounts back to OAH to cover OAH's costs of operation.

OAH relies upon the MPCA's estimates for the numbers of expert review panel petitions that will be filed. As contained in its fiscal note for SF695-1CE, MPCA estimates are as follows:

Type of proceeding	MPCA frequency
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	estimates
Rulemaking proceedings related to water quality standards	4/biennium
Contested case proceedings related to agency action:	Totals:
- TMDLs/WRAPS - 35/FY18-19+ 25/FY20-21	120 in FY18-19
- Impaired Waters list - 1/biennium	110 in FY20-21
- Municipal wastewater permits 80/biennium	
- Mining-related Industrial wastewater permits 4/biennium	
<b>TOTALS</b>	124 in FY18-19 114 in FY20-21

OAH relies upon its own estimates for the amount of judicial time that each proceeding will require, as follows:

**Rulemaking Proceedings:** OAH assumes that each rulemaking proceeding that requires review by an expert panel would be complex and require multiple days of testimony, by the agency and all members of the public who wish to opine as to the agency's actions and the expert review panel's opinions, as well as review of a voluminous documentary record on a broad list of topics addressed by the proposed rule. OAH estimates that each rulemaking proceeding involving an expert review panel will require an estimated 280 hours of administrative law judge (ALJ) time for the necessary hearing, record review and writing of the final report. At OAH's current MMB-approved billable rate of \$170 per hour, OAH would invoice MPCA for each rulemaking proceeding at an estimated total of \$47,600 for each matter.

**Contested Case Proceedings:** OAH assumes that each contested case proceeding that requires review by an expert panel will also be complex, but notes that the documentary record would not likely approach the scope of a rulemaking proceeding in that the record would be limited to facts relevant to the specific action taken by the MPCA in each specific case. While these matters could require multiple days of testimony, only parties to the specific action would have standing to present testimony and, as such, the numbers of testifiers and the days of hearing would be more limited than in rulemaking cases. Given these facts, OAH assumes that each contested case proceeding involving an expert review panel report will require an estimated 75 hours of administrative law judge (ALJ) time for the necessary hearing, record review and writing of the final report. At OAH's current MMB-approved billable rate of \$170 per hour, OAH would invoice MPCA for each contested case proceeding at an estimated total of \$12,750 for each matter.

OAH's fiscal note is also based on three additional assumptions that appear relevant to determining the fiscal impact of this legislation, as follows:

1. while the bill is silent as to this issue, oah relies upon the assumptions made by the mPCA with regard to the payment of experts who serve on review panels.
2. any staff costs associated with providing administrative support (transcription, report generation and publication, etc.) is not intended to be borne by oah. the legislation is silent as to whether any state agency is charged with providing administrative support services, but the fact that oah is not directed to provide this service indicates that the agency's fiscal note should not account for any such service.
3. section 6 of the bill contains a one-time appropriation of \$100,000 from the general fund to oah. that \$100,000 has been included in the analysis below and functions to reduce the overall oah fiscal note by \$100,000.

### **Expenditure and/or Revenue Formula**

Rulemaking Proceedings:

Estimated 280 hours of ALJ time at \$170/hour = \$47,600 per matter

4 rulemaking proceedings per biennium x \$47,600 per matter = \$190,400/biennium or \$95,200/year.

Contested Case Proceedings:

1. estimated 75 hours of alj time at \$170/hour = \$12,750 per matter. 120 contested case proceedings for the 2018-2019 biennium x \$12,750 per matter = \$1,530,000 for the biennium or \$765,000 per year.

2. 110 contested case proceedings for the 2020-2021 biennium x \$12,750 per matter = \$1,402,500 for the biennium

or \$701,250 per year.

Totals estimates of amounts to be billed to MPCA and paid by MPCA to OAH:

1. 2018-2019 biennium:  $\$190,400 + \$1,530,000 = \$1,720,400$  minus \$100,000 (one-time appropriation in section 6 of the bill) = \$760,200 in fy2018 and \$860,200 in fy2019.
2. 2020-2021 biennium:  $\$190,400 + \$1,402,500 = \$1,592,900$  (\$796,450/year)

### **Long-Term Fiscal Considerations**

The estimated costs would continue in future years.

### **Local Fiscal Impact**

### **References/Sources**

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