

Rules Task Force October 20, 2000, Meeting Minutes

Members Present:

Kathryn Eileen DeBoer, Citizen Member
Senator Don Betzold
John Knapp, Esq., Winthrop & Weinstine, P.A.
Representative Gene Pelowski
Laura Offerdahl, Governor's Office
Representative Marty Seifert
Dave Orren, Minnesota Department of Health (MDH)
Senator Dan Stevens

Also Present:

Adrienne Buske, Legislative Assistant to Rep. Seifert
Diane Gnotta, MDH

Introductions. Representative Marty Seifert, facilitator for the meeting, called the meeting to order at 1:47 p.m. There were about 40 to 50 people in attendance. Task force members introduced themselves.

Overview of the Current Administrative Rulemaking Process. Dave Orren, Rules Coordinator for the Minnesota Department of Health, presented an overview of the current rulemaking process. See Mr. Orren's handout, "State Agency Rulemaking in Minnesota." Some highlights from the overview include:

- ? State agency rules are law: rules have the force and effect of law.
- ? Historically, before there were formal, written rules, agencies still implemented the law. Agencies made decisions on how to apply or interpret the law. These decisions and interpretations had the force and effect of law. The Legislature created rules and the rulemaking process in response to the public's desire to know in advance how agencies would implement the law.
- ? After passing laws that set major policy directions and goals, the Legislature will sometimes delegate the details to an agency because: (1) the agency has scientific expertise; (2) the agency has specialized knowledge or experience with a regulated industry; or, (3) the agency has the necessary resources to work with interested parties and adequately address all issues.
- ? Before an agency can adopt rules, the rules are reviewed by an Administrative Law Judge. About 20% of rules are adopted after a hearing. About 80% of rules are adopted without a hearing.
- ? There is broad public involvement in most rulemakings. It is more in the nature of representative involvement rather than participation by all affected individuals

- ? The Legislature has been very active in overseeing the rulemaking process during the past few years. The legislation leading to this task force followed directly from the Legislature's active interest in state agency rules.

Discussion following Rulemaking Overview. Representative Seifert asked whether committee members had questions, clarifications, or concerns regarding Mr. Orren's presentation.

- ? Senator Dan Stevens commented that Socrates was correct a few thousand years ago when he stated that we do not really need laws because good people do not require them and bad people ignore them anyway. Senator Stevens also commented that from the birth of our nation on, for 150 years, we had the standard of common sense and common law. Senator Stevens expressed the opinion that the perception that everything must be in law or rule in order for people to get along is a dismal failure, because no one has ever crafted the perfect law. Senator Stevens also opined that no rulemaker will ever craft the perfect rule, because it is impossible to address 100% of any issue. Senator Stevens stated that the task force should keep these points in mind as they move forward with its tasks.
- ? Senator Stevens also commented that there are some things that can work, and some things that the agencies are doing that would allow us to take some steps back to common sense and common law. Senator Stevens suggested that we need to look at alternatives to rulemaking and cited Minnesota Laws 2000, chapter 469, section 5, clause (6), in which administrative penalty orders, descriptive guidelines, best management practices, technical assistance, etc. are listed as means to ensure compliance with state policies and goals. Senator Stevens expressed hope that the task force would spend considerable time on these alternatives to rulemaking. Senator Stevens viewed these alternative mechanisms to rulemaking as facilitating a return to common sense by allowing people in the front lines to make judgments as any reasonable person would do. Senator Stevens stated that these people have no authority to change rules or laws, and that such authority lies with the Legislature.
- ? Representative Gene Pelowski stated that legislators receive, on a weekly or monthly basis, reports from constituents about the laws and rules. Representative Pelowski stated that constituents do not understand that legislators only meet for 120 days over a two year period, that legislators do not have constant contact with the agencies, and that many legislators do not know all the rules and laws because they do not sit on all of the committees. Representative Pelowski stated that constituents have the misperception that legislators should have total command of the situation. Representative Pelowski stated that when the Legislature is not in session, the agencies are in charge of implementing the laws enacted by the Legislature.

Representative Pelowski Elected Task Force Chair. Representative Seifert asked members to elect a task force chair. Representative Pelowski volunteered to be the chair. Representative Seifert nominated Representative Pelowski. The task force unanimously elected Representative Pelowski as task force chair.

Task Force Charge. Representative Pelowski directed the members to the task force charge under Minnesota Laws 2000, chapter 469, section 5, which states:

“The task force must study and make recommendations to the governor and the legislature by January 15, 2001, on issues relating to review of agency rules. The recommendations must include, but are not limited to:

(1) a process to be used by agencies, the governor, and the legislature to identify and prioritize rules and related laws and programs that will be subject to legislative review;

(2) a process by which the legislature will review rules and related laws and programs identified under clause (1);

(3) the estimated agency and legislative time and resources required for review of rules and related laws and programs under the processes recommended under clauses (1) and (2);

(4) the effect of possible repeal of agency rules on the state budget and any loss of benefits to citizens of the state resulting from such a repeal;

(5) the desirability of changes in the rulemaking requirements of the Administrative Procedure Act, given increased legislative scrutiny of rules; and

(6) an analysis of ways to ensure or encourage compliance with state policies and goals using methods other than rulemaking, such as administrative penalty orders, descriptive guidelines, best management practices, compliance incentives, technical assistance, training, and procedural templates.

In making its recommendations, the task force must consult with interested parties, and must consider relevant state and federal laws and commitments.”

Discussion of Task Force Charge. Representative Pelowski facilitated a discussion of the task force charge. The discussion took a number of turns, including the task force’s role in identifying obsolete rules, the schedule of task force meetings, meeting topics, public testimony, and publicizing the work of the task force.

Obsolete Rules Discussion. Representative Pelowski asked task force members to provide input into formulating the time line and scope of work of the task force. Representative Seifert responded that the task force members received a draft of a task force workplan. One of the items in the workplan was “draft obsolete rules repeal bill for task force consideration and approval,” which lead to an extensive discussion on obsolete rules and whether it is the task force’s responsibility to deal with obsolete rules.

? Representative Pelowski stated that at the last meeting before the conference committee report, many agencies approached the conference committee with rules that the agencies wanted repealed. Representative Pelowski then asked parties in attendance at the task force meeting to present obsolete rules to the task force as an ongoing process, so that the task force could maintain a list of which rules need to be repealed and why. Mr. Orren responded that the rules presented to the conference committee were likely rules that the agencies had identified in their annual obsolete rules reports. Mr. Orren indicated that agencies would be willing to come forward to have their obsolete rules repealed by legislation, and by doing so, avoid having to go through the rulemaking process to repeal the rules.

? Senator Betzold stated that it was not within the task force’s scope of authority to maintain a list of obsolete rules to be repealed.

- ? John Knapp pointed out that agencies presently compile a list of obsolete rules and asked Paul Marinac, Deputy Revisor for Drafting, to testify before the task force regarding this matter.
- ? Mr. Marinac testified that there is an obsolete rules report provision in chapter 14 that requires each agency to report, by December 1st of each year, on its obsolete rules and a time table for repeal, as well as a requirement to report to the Legislature what the agency did with previously identified obsolete rules. Mr. Marinac stated that agency compliance with the report provision has, in the recent past, been 80-90%. Mr. Marinac credited Mr. Orren and the Interagency Rules Committee for educating agencies about this report requirement. Mr. Marinac offered to share his report with the task force. Mr. Marinac also commented that agencies have some other options to handle obsolete rules: 1) the Revisor's Office has narrow editorial authority to remove obsolete rules; 2) the agencies could prepare a bill to repeal the obsolete rules; or 3) the agencies could utilize the rulemaking process, including the good cause exemption. Mr. Marinac stated that the law is very clear in holding agencies responsible for identifying obsolete rules and identifying a course of action to deal with them.
- ? Representative Pelowski asked Mr. Marinac why, if this report provision is in place, that a number of agencies came forward to the conference committee last session with list of such rules. Mr. Marinac replied that he did not know the reason for that, but thought perhaps that the agencies might have presented obsolete rules intended for this coming session.
- ? Representative Pelowski asked Mr. Marinac to clarify whether MNSCU falls under the aegis of a state agency in regard to reporting obsolete rules. Mr. Marinac stated that some educational institutions are exempted from the report requirement, but that he was not sure whether MNSCU was specifically exempted. Representative Pelowski asked Mr. Marinac to include this information in his report to the task force, as well as information on DCFL's exemption status. Mr. Marinac stated that DCFL routinely reports, but other education agencies do not. Mr. Marinac stated that in the area of education, large grants of authority for such agencies were repealed and were replaced by specific grants of authority as the result of the 1995 APA Reform Act.
- ? Senator Stevens concurred with Senator Betzold's statement that it was not within the task force's scope of activities regarding agency compliance with obsolete rule reporting. He stated he was uncomfortable with this task force identifying obsolete rules. Senator Stevens stated that the task force should leave the process of identifying such rules to agencies, and that the Legislature should only review the rules presented by agencies. Senator Stevens stated that the task force should rethink its charge in terms of what the session bill specified the charge of the task force to be. Senator Stevens suggested focusing on agencies that do not comply with obsolete rule reporting and perhaps withdraw rulemaking authority from those agencies.
- ? John Knapp asked how wide spread a practice it is for the Legislature to repeal long sections of administrative rules that might, perhaps, have some unintended consequences. Mr. Marinac stated that he will provide the task force with information concerning bills containing rule repealers as well as bills containing rule repealers identified in an obsolete rule report.

- ? Representative Seifert commented that repealing rules was not listed in the six specific tasks listed under section 5 of Minnesota Laws 2000, chapter 469, but might be a task for this task group after it is able to fully address the six specific tasks under section 5. Representative Seifert offered to chief author the repealer bill and have the agencies contact his office, so that the task force does not have to address this matter.
- ? Mr. Orren stated that agencies must go through the rulemaking process to repeal obsolete rules, if the rules are not repealed by legislation. When rules are repealed by legislation, each respective legislative committee reviews the rules in order to avoid unintended consequences.

Task Force Meeting Schedule. The task force scheduled three meetings. The consensus of the task force was that the meetings would last about two hours each. Meeting locations will be arranged. The meeting dates and times are:

- ? Friday, November 10, 2000, at 10:30 a.m.
- ? Friday, December 1, 2000, at 9:30 a.m.
- ? Thursday, December 14, 2000, at 9:30 a.m.

Further Discussion of Task Force Charge. Discussion returned to the task force charge.

- ? Senator Betzold stated that items 1 and 2 of the task force charge require the task force to recommend a process to identify rules, not necessarily under consideration for repeal, but rules that the agencies have adopted that should be presented to the Legislature for its review. Senator Betzold mentioned, as an illustration, the bed rail rules that might have had a better outcome had the legislative committees worked more closely with the agencies.
- ? Representative Seifert stated that some items of the required task force recommendations might be addressed by Mr. Orren's letter to the conference committee for chapter 469. The letter had been discussed with the conference committee in regard to the process the agencies would follow to facilitate legislative review of rules. Mr. Orren stated he had drafted the letter after meeting with Representative Seifert and Senator Hottinger, co-chairs of the conference committee, about their understanding of what type of justification agencies would need for reporting to the Legislature about their rules. Mr. Orren indicated that the understanding was that agencies would provide a paragraph or two on each chapter of rules, and that agencies would not be required to provide another Statement of Need and Reasonableness for each chapter of rules. Mr. Orren stated that the one or two paragraphs would identify which rules are controversial, out-of-date, in need of attention and which ones are up-to-date and don't need attention. The paragraphs would give a short justification for the agency's conclusions. This level of detail would not overburden the agencies and yet would focus attention on rules requiring legislative attention. Representative Seifert asked Mr. Orren to provide the task force with a copy of the letter at the next task force meeting.
- ? Representative Seifert expressed an interest in knowing what other states are doing in regard to regulatory reform. John Knapp indicated that his firm has information regarding how other states handle regulatory reform and would be happy to present it to members. Representative Pelowski asked that Mr. Knapp's presentation of this information be placed on the next meeting agenda. Representative Pelowski also asked that information

- from George McCormick (Counsel for Senate Gov Ops) concerning how other state legislatures provide oversight to agency rulemaking be placed on the next meeting agenda.
- ? Representative Pelowski indicated that public testimony regarding best business practices, and other non-rule methods of achieving compliance with state policies, would be welcome but asked that the public contact the task force in advance of its meeting, with the subject matter of the testimony.
- ? Senator Stevens pointed out that rules are usually technical in nature, and that it is not the role of the Legislature to review every rule. Senator Stevens indicated that controversial rules, however, do require legislative oversight. Senator Stevens stated that information as to what other states are doing would be helpful, but stressed that the task force should not just copycat what other states are doing.
- ? Representative Pelowski indicated that the task force is more interested in a macro approach, not a micro approach.
- ? Mr. Orren suggested that the task force should recommend that the policy committees should plan on each reviewing only one set of rules during the first year in order to provide the committees with a better idea of what resources it would entail to adequately complete the review. Mr. Orren suggested that the review of one set of rules would include the rules and underlying legislation and also any relevant federal laws and rules. As an example, Mr. Orren mentioned the bed rail issue that had been reviewed by Senator Stevens' subcommittee after the 1999 Session.
- ? Senator Betzold suggested that the task force divide the six items out across the remaining meetings and place specific items on specific meeting agendas, so that the task force may report back on each one.
- ? Representative Pelowski asked members to make a motion regarding Senator Betzold's proposal to place specific items on the remaining meeting agendas. The members agreed to address report requirements as follows:
- ? November 10, 2000 - items 1 to 4.
 - ? December 1, 2000 - items 5 and 6.
 - ? December 14, 2000 - any of the items or other issues before the task force.

Stakeholder Input. Representative Pelowski asked members to discuss stakeholder input.

- ? John Knapp asked if stakeholder testimony should be related to the scheduled topic items. Representative Pelowski indicated that public testimony should be related to topic agenda items associated with a specific meeting, and that stakeholders should let the task force know if they wish to testify. The members agreed to reserve time during each task force meeting for stakeholder and other public testimony.
- ? Senator Stevens suggested that in regard to stakeholder input, written submissions should be encouraged and would be more efficient. Testimony should only be on the high points of the written material.

Publicizing Task Force Meetings and Work.

- ? Mr. Orren asked if information presented to the task force could be placed on the web. The members agreed that this would be good, if it can be done. Adrienne Buske will check out if this can be done through the legislative web site.

- ? John Knapp suggested that the task force utilize the State Register to solicit written comments. All members agreed to the use of the State Register, and that Mr. Orren would work with Laura Offerdahl to put a notice in the State Register.
- ? Representative Seifert stated that meeting notices should be distributed as broadly as possible, and stated that the notices will be published in the House Information Web Site.
- ? Representative Seifert asked whether agency representatives will be notified of task force meetings so that they may assist the task force with stakeholder questions. Mr. Orren indicated that there are approximately 100 persons on the Interagency Rules Committee listserv and that he would notify these persons. Laura Offerdahl indicated that the Governor's Office will notify the agencies regarding the scheduled task force meetings.

No Further Discussion. Representative Pelowski invited public comment on task force discussion thus far. No public comments were made. Representative Pelowski asked the task force if there was any other discussion. There was none.

Meeting Adjourned. Representative Pelowski moved to adjourn the meeting. Mr. Orren seconded. The motion for adjournment passed unanimously. The meeting was adjourned at 3:10 p.m.

Attachments:

- ? Meeting agenda.
- ? Workplan.
- ? State Agency Rulemaking in Minnesota.

Thank you to Diane Gnotta for her assistance in taking notes and preparing the minutes.