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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. **1261**

02/26/2015 Authored by Kresha and Heintzeman

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

03/05/2015 Adoption of Report: Re-referred to the Committee on Civil Law and Data Practices

03/16/2015 Adoption of Report: Amended and re-referred to the Committee on State Government Finance

1.1 A bill for an act
1.2 relating to state government; regulating rulemaking by state agencies; providing
1.3 process requirements for rules that have substantial economic impact; amending
1.4 Minnesota Statutes 2014, sections 14.02, by adding a subdivision; 14.05,
1.5 subdivisions 1, 2; 14.116; 14.127; 14.131; 14.388, subdivision 2; 14.389,
1.6 subdivision 2; 14.44; 14.45.

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

1.8 Section 1. Minnesota Statutes 2014, section 14.02, is amended by adding a subdivision
1.9 to read:

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

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

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

1.17 (3) significant adverse impacts on the competitiveness of private-sector
1.18 Minnesota-based enterprises or on private-sector employment, investment, productivity,
1.19 or innovation within the state of Minnesota; or

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

1.23 Sec. 2. Minnesota Statutes 2014, section 14.05, subdivision 1, is amended to read:

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

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

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

2.10 Sec. 3. Minnesota Statutes 2014, section 14.05, subdivision 2, is amended to read:

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

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

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

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

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

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

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

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

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

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

3.1 Sec. 4. Minnesota Statutes 2014, section 14.116, is amended to read:

3.2 **14.116 NOTICE TO LEGISLATURE.**

3.3 (a) By January 15 each year, each agency must submit its rulemaking docket
 3.4 maintained under section 14.366, and the official rulemaking record required under section
 3.5 14.365 for any rule adopted during the preceding calendar year, to the chairs and ranking
 3.6 minority members of the legislative policy and budget committees with jurisdiction over
 3.7 the subject matter of the proposed rule and to the Legislative Coordinating Commission.
 3.8 Each agency must post a link to its rulemaking docket on the agency Web site home page.

3.9 (b) When an agency mails notice of intent to adopt rules under section 14.14 or
 3.10 14.22, the agency must send a copy of the same notice and a copy of the statement of need
 3.11 and reasonableness to the chairs and ranking minority party members of the legislative
 3.12 policy and budget committees with jurisdiction over the subject matter of the proposed
 3.13 rules and to the Legislative Coordinating Commission.

3.14 (c) In addition, if the mailing of the notice is within two years of the effective date
 3.15 of the law granting the agency authority to adopt the proposed rules, the agency shall
 3.16 make reasonable efforts to send a copy of the notice and the statement to all sitting
 3.17 legislators who were chief house of representatives and senate authors of the bill granting
 3.18 the rulemaking authority. If the bill was amended to include this rulemaking authority,
 3.19 the agency shall make reasonable efforts to send the notice and the statement to the chief
 3.20 house of representatives and senate authors of the amendment granting rulemaking
 3.21 authority, rather than to the chief authors of the bill.

3.22 Sec. 5. Minnesota Statutes 2014, section 14.127, is amended to read:

3.23 **14.127 LEGISLATIVE APPROVAL REQUIRED.**

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

3.32 Subd. 2. **Agency determination.** An agency must make the determination required
 3.33 by subdivision 1 ~~before the close of the hearing record, or before the agency submits the~~
 3.34 ~~record to the administrative law judge if there is no hearing~~ agency gives notice under

4.1 ~~section 14.14, 14.22, 14.225, or 14.389. The administrative law judge must review and~~
4.2 ~~approve or disapprove the agency determination under this section.~~

4.3 Subd. 3. **Legislative approval required.** (a) If the agency determines that a
4.4 proposed rule has a substantial economic impact, the agency must request the legislative
4.5 auditor to convene a five-person peer review advisory panel to conduct an impact analysis
4.6 of the proposed rule. Within 30 days of receipt of the agency's request, the legislative
4.7 auditor shall convene a peer review advisory panel. The advisory panel must be made up
4.8 of individuals who have not directly or indirectly been involved in the work conducted or
4.9 contracted by the agency and who are not employed by the agency. The agency must pay
4.10 each panel member for the costs of the person's service on the panel, as determined by
4.11 the legislative auditor. The agency shall transfer an amount from the agency's operating
4.12 budget to the legislative auditor to pay for costs for convening the peer review advisory
4.13 panel process. The panel may receive written and oral comments from the public during
4.14 its review. The panel must submit its report within 60 days of being convened. The
4.15 agency must receive a final report from the panel before the agency conducts a public
4.16 hearing on a proposed rule or, if no hearing is held, before the rule is submitted to the
4.17 administrative law judge. The panel's report must include its conclusions on the extent to
4.18 which the proposed rule:

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

4.21 (2) is more restrictive than a standard, limitation, or requirement imposed by federal
4.22 law or rule pertaining to the same subject matter.

4.23 (b) If the agency determines that a rule does not have a substantial economic impact,
4.24 the administrative law judge must review this determination. If the administrative law
4.25 judge determines that a rule may have a substantial economic impact, the agency must
4.26 have the legislative auditor arrange for the analysis required by paragraph (a), and the
4.27 agency must give new notice of intent to adopt the proposed rule after receiving this
4.28 analysis. The administrative law judge may make this determination as part of the
4.29 administrative law judge's report on the proposed rule, or at any earlier time after the
4.30 administrative law judge is assigned to the rule proceeding.

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

5.1 ~~such a statement with the agency, the rules do not apply to that business or that city until the~~
 5.2 ~~rules are~~ have a substantial economic impact, the agency or the administrative law judge
 5.3 shall deliver the determination and peer review advisory panel report to the Legislative
 5.4 Coordinating Commission and to the chairs and ranking minority members of the house
 5.5 of representatives and senate committees and divisions with jurisdiction over the subject
 5.6 matter of the rule, and the proposed rule does not take effect until the rule is approved by a
 5.7 law enacted after the agency determination or administrative law judge disapproval.

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

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

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

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

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

5.25 Subd. 5. **Severability.** If an administrative law judge determines that part of a
 5.26 proposed rule ~~exceeds the threshold specified in subdivision 1~~ has a substantial economic
 5.27 impact, but that a severable portion of a proposed rule does not ~~exceed the threshold in~~
 5.28 ~~subdivision 1~~ have a substantial economic impact, the administrative law judge may
 5.29 provide that the severable portion of the rule that does not ~~exceed the threshold~~ have a
 5.30 substantial economic impact may take effect without legislative approval.

5.31 Sec. 6. Minnesota Statutes 2014, section 14.131, is amended to read:

5.32 **14.131 STATEMENT OF NEED AND REASONABLENESS.**

5.33 By the date of the section 14.14, subdivision 1a, 14.22, or 14.225, notice, the agency
 5.34 must prepare, review, and make available for public review a statement of the need for and
 5.35 reasonableness of the rule. The statement of need and reasonableness must be prepared

6.1 under rules adopted by the chief administrative law judge and must include the following
6.2 to the extent the agency, through reasonable effort, can ascertain this information:

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

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

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

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

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

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

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

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

6.23 (9) the agency's findings and conclusions that support its determination that the
6.24 proposed rule does or does not have a substantial economic impact.

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

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

6.32 The statement must describe, with reasonable particularity, the scientific, technical,
6.33 economic, or other information and rationale that supports the proposed rule.

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

7.1 The agency must consult with the commissioner of management and budget to
7.2 help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local
7.3 government. The agency must send a copy of the statement of need and reasonableness
7.4 to the Legislative Reference Library when the notice of hearing is mailed under section
7.5 14.14, subdivision 1a.

7.6 Sec. 7. Minnesota Statutes 2014, section 14.388, subdivision 2, is amended to read:

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

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

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

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

7.21 Sec. 8. Minnesota Statutes 2014, section 14.389, subdivision 2, is amended to read:

7.22 Subd. 2. **Notice and comment.** The agency must publish notice of the proposed
7.23 rule in the State Register ~~and~~₂ must mail the notice by United States mail or electronic
7.24 mail to persons who have registered with the agency to receive mailed notices, and must
7.25 give notice to the chairs and ranking minority members of the legislative policy and
7.26 budget committees with jurisdiction over the subject matter of the proposed rules and to
7.27 the Legislative Coordinating Commission. The mailed notice and the notice to legislators
7.28 must include either a copy of the proposed rule or a description of the nature and effect
7.29 of the proposed rule and a statement that a free copy is available from the agency upon
7.30 request. The notice in the State Register must include the proposed rule or the amended
7.31 rule in the form required by the revisor under section 14.07, an easily readable and
7.32 understandable summary of the overall nature and effect of the proposed rule, and a
7.33 citation to the most specific statutory authority for the rule, including authority for the

8.1 rule to be adopted under the process in this section. The agency must allow 30 days after
8.2 publication in the State Register for comment on the rule.

8.3 Sec. 9. Minnesota Statutes 2014, section 14.44, is amended to read:

8.4 **14.44 DETERMINATION OF VALIDITY OF RULE.**

8.5 (a) The validity of any rule, or the validity of any agency policy, guideline, bulletin,
8.6 criterion, manual standard, or similar pronouncement that the petitioner believes is a
8.7 rule as defined in section 14.02, subdivision 4, may be determined upon the petition
8.8 for a declaratory judgment thereon, addressed to the Court of Appeals, when it appears
8.9 that the rule or pronouncement, or its threatened application, interferes with or impairs,
8.10 or threatens to interfere with or impair the legal rights or privileges of the petitioner.
8.11 The agency shall be made a party to the proceeding. The declaratory judgment may be
8.12 rendered whether or not the petitioner has first requested the agency to pass upon the
8.13 validity of the rule in question, whether or not the petitioner has petitioned the Office
8.14 of Administrative Hearings under section 14.381, and whether or not the agency has
8.15 commenced an action against the petitioner to enforce the rule.

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

8.24 Sec. 10. Minnesota Statutes 2014, section 14.45, is amended to read:

8.25 **14.45 RULE DECLARED INVALID.**

8.26 In proceedings under section 14.44, the court shall declare the rule or agency
8.27 pronouncement invalid if it finds that it violates constitutional provisions or exceeds the
8.28 statutory authority of the agency or if the rule was adopted or the pronouncement was
8.29 improperly implemented without compliance with statutory rulemaking procedures. Any
8.30 party to proceedings under section 14.44, including the agency, may appeal an adverse
8.31 decision of the Court of Appeals to the Supreme Court as in other civil cases.