

HF1261 - 1E - "State Agency Rulemaking"

Chief Author: **Ron Kresha**
 Committee: **State Government Finance**
 Date Completed: **04/08/2015**
 Lead Agency: **Pollution Control Agency**

Other Agencies:
 Health Licensing Boards Human Services Dept
 Agriculture Dept Office of the Legislative Auditor
 Legislature Health Dept
 Transportation Dept Natural Resources Dept
 Education Department Labor And Industry Dept
 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)	Biennium			Biennium		
	Dollars in Thousands	FY2015	FY2016	FY2017	FY2018	FY2019
Administrative Hearings	-	-	-	-	-	-
General Fund	-	-	-	-	-	-
Agriculture Dept						
Agriculture Fund	-	50	50	50	50	50
Education Department						
General Fund	-	66	66	66	66	66
Health Dept						
General Fund	-	469	469	469	469	469
Health Licensing Boards	-	-	-	-	-	-
Health Related Boards	-	-	-	-	-	-
Human Services Dept						
General Fund	-	626	595	595	595	595
Labor And Industry Dept						
Construction Code	-	110	110	110	110	110
Workers Compensation	-	50	50	50	50	50
Natural Resources Dept						
General Fund	-	373	222	222	222	222
Game And Fish (Operations)	-	197	295	295	295	295
Office of the Legislative Auditor						
General Fund	-	123	123	123	123	123
Pollution Control Agency						
Environmental	-	465	417	417	417	417
Transportation Dept						
Trunk Highway	-	22	-	-	-	-
State Total						
General Fund	-	1,657	1,475	1,475	1,475	1,475

State Cost (Savings)	Biennium			Biennium	
	Dollars in Thousands	FY2015	FY2016	FY2017	FY2018
Agriculture Fund	-	50	50	50	50
Health Related Boards	-	-	-	-	-
Construction Code	-	110	110	110	110
Workers Compensation	-	50	50	50	50
Game And Fish (Operations)	-	197	295	295	295
Environmental	-	465	417	417	417
Trunk Highway	-	22	-	-	-
Total	-	2,551	2,397	2,397	2,397
Biennial Total			4,948		4,794

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2015	FY2016	FY2017	FY2018	FY2019
Administrative Hearings	-	-	-	-	-
General Fund	-	-	-	-	-
Agriculture Dept					
Agriculture Fund	-	-	-	-	-
Education Department					
General Fund	-	-	-	-	-
Health Dept					
General Fund	-	.53	.53	.53	.53
Health Licensing Boards	-	-	-	-	-
Health Related Boards	-	-	-	-	-
Human Services Dept					
General Fund	-	3.5	3.5	3.5	3.5
Labor And Industry Dept					
Construction Code	-	.88	.88	.88	.88
Workers Compensation	-	.12	.12	.12	.12
Natural Resources Dept					
General Fund	-	-	-	-	-
Game And Fish (Operations)	-	-	-	-	-
Office of the Legislative Auditor					
General Fund	-	1.5	1.5	1.5	1.5
Pollution Control Agency					
Environmental	-	1	1	1	1
Transportation Dept					
Trunk Highway	-	-	-	-	-
Total	-	7.53	7.53	7.53	7.53

Lead Executive Budget Officer's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with MMB's Fiscal Note policies. This fiscal note reflects a sampling of agencies that undertake rulemaking. The Office of Legislative Auditor reflects staff needed to support the panel; costs of the panel are reflected as a transfer out in agency estimates.

EBO Signature: Michelle Mitchell Date: 04/08/2015
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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	
	FY2015	FY2016	FY2017	FY2018	FY2019
Administrative Hearings	-	-	-	-	-
General Fund	-	-	-	-	-
Agriculture Dept					
Agriculture Fund	-	50	50	50	50
Education Department					
General Fund	-	66	66	66	66
Health Dept					
General Fund	-	469	469	469	469
Health Licensing Boards	-	-	-	-	-
Health Related Boards	-	-	-	-	-
Human Services Dept					
General Fund	-	626	595	595	595
Labor And Industry Dept					
Construction Code	-	110	110	110	110
Workers Compensation	-	50	50	50	50
Natural Resources Dept					
General Fund	-	373	222	222	222
Game And Fish (Operations)	-	197	295	295	295
Office of the Legislative Auditor					
General Fund	-	123	123	123	123
Pollution Control Agency					
Environmental	-	465	417	417	417
Transportation Dept					
Trunk Highway	-	22	-	-	-
	Total	-	2,551	2,397	2,397
	Biennial Total		4,948		4,794

1 - Expenditures, Absorbed Costs*, Transfers Out*

Administrative Hearings	-	-	-	-	-
General Fund	-	58	58	58	58
Agriculture Dept					
Agriculture Fund					
Expenditures	-	-	-	-	-
Transfers Out	-	50	50	50	50
Education Department					
General Fund					
Expenditures	-	42	42	42	42
Transfers Out	-	24	24	24	24
Health Dept					
General Fund					
Expenditures	-	229	229	229	229
Transfers Out	-	240	240	240	240
Health Licensing Boards	-	-	-	-	-

State Cost (Savings) = 1-2 Dollars in Thousands	Biennium			Biennium	
	FY2015	FY2016	FY2017	FY2018	FY2019
Health Related Boards					
Expenditures	-	26	26	26	26
Absorbed Costs	-	(26)	(26)	(26)	(26)
Human Services Dept					
General Fund					
Expenditures	-	864	816	816	816
Transfers Out	-	100	100	100	100
Labor And Industry Dept					
Construction Code					
Expenditures	-	62	62	62	62
Transfers Out	-	48	48	48	48
Workers Compensation					
Expenditures	-	38	38	38	38
Transfers Out	-	12	12	12	12
Natural Resources Dept					
General Fund	-	373	222	222	222
Game And Fish (Operations)	-	197	295	295	295
Office of the Legislative Auditor					
General Fund	-	123	123	123	123
Pollution Control Agency					
Environmental					
Expenditures	-	165	117	117	117
Transfers Out	-	300	300	300	300
Transportation Dept					
Trunk Highway					
Expenditures	-	12	-	-	-
Transfers Out	-	10	-	-	-
	Total	-	2,947	2,776	2,776
	Biennial Total		5,723		5,552
2 - Revenues, Transfers In*					
Administrative Hearings					
General Fund	-	58	58	58	58
Agriculture Dept					
Agriculture Fund	-	-	-	-	-
Education Department					
General Fund	-	-	-	-	-
Health Dept					
General Fund	-	-	-	-	-
Health Licensing Boards					
Health Related Boards	-	-	-	-	-
Human Services Dept					
General Fund	-	338	321	321	321
Labor And Industry Dept					
Construction Code	-	-	-	-	-
Workers Compensation	-	-	-	-	-
Natural Resources Dept					

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2015	FY2016	FY2017	FY2018	FY2019
General Fund		-	-	-	-	-
Game And Fish (Operations)		-	-	-	-	-
Office of the Legislative Auditor						
General Fund		-	-	-	-	-
Pollution Control Agency						
Environmental		-	-	-	-	-
Transportation Dept						
Trunk Highway		-	-	-	-	-
	Total	-	396	379	379	379
	Biennial Total			775		758

HF1261 - 1E - "State Agency Rulemaking"

Chief Author: **Ron Kresha**
 Committee: **State Government Finance**
 Date Completed: **04/08/2015**
 Agency: **Health Licensing Boards**

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)	Biennium			Biennium		
	Dollars in Thousands	FY2015	FY2016	FY2017	FY2018	FY2019
Health Related Boards	-	-	-	-	-	-
Total	-	-	-	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2015	FY2016	FY2017	FY2018	FY2019
Health Related Boards	-	-	-	-	-
Total	-	-	-	-	-

Executive Budget Officer's Comment

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

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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		Biennium			Biennium	
Dollars in Thousands		FY2015	FY2016	FY2017	FY2018	FY2019
Health Related Boards		-	-	-	-	-
Total		-	-	-	-	-
Biennial Total				-		-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Health Related Boards						
Expenditures		-	26	26	26	26
Absorbed Costs		-	(26)	(26)	(26)	(26)
Total		-	-	-	-	-
Biennial Total				-		-
2 - Revenues, Transfers In*						
Health Related Boards						
Total		-	-	-	-	-
Biennial Total				-		-

Bill Description

A bill related to state government; regulating rulemaking by state agencies; providing process requirements for rules that have substantial economic impact; amending Minnesota Statutes 2014, sections 14.02.

A rule has a substantial economic impact if the rule would result in, or likely result in:

- An adverse effect or impact on the private-sector economy of the state of Minnesota of \$5,000,000 or more in a single year
- A significant increase in costs or prices for consumers, individuals private-sector industries, state agencies, local governments, individuals, or private-sector enterprises
- Significant adverse impacts on the competitiveness of private-sector
- Compliance costs, in the first year after the rule takes effect, of more than \$25,000 for any one business

Assumptions

The boards listed below assume this bill will not affect the current rulemaking process. The boards do not meet the definition of substantial economic impact.

The Boards have never engaged in rulemaking that would have an adverse effect or impact on the private-sector economy of the state of Minnesota of \$5,000,000 or more in a single year. Rulemaking conducted by the boards does not result in substantial economic impact. The Boards have not promulgated, and do not intend to promulgate, a rule for which there were compliance costs, in the first year after the rule takes effect, of more than \$25,000 for any one business. If this bill passes, no rule with a substantial economic impact could take effect until approved by the Legislature. Since rulemaking is already a lengthy, complicated and expensive process, the Boards would view it as most efficient to seek statutory change

and forgo rulemaking entirely.

Typically minor non-controversial rule making can be absorbed within the boards current base budget. The boards have historically gone to the legislature and asked for additional funds to cover the costs related to extensive rule making.

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Behavioral Health & Therapy

Rulemaking conducted by the board does not result in substantial economic impact per section 1 of HF 1261 therefore no fiscal impact is identified.

The board has not promulgated rules for a number of years and has no immediate need or intention to promulgate rules that would have substantial economic impact as outlined in subdivision 5 of the proposed legislation HF 1261-E1.

Petitions against agency pronouncements: The Board has historically not had any such petitions, and does not anticipate any future petitions for determining the validity of a rule or similar pronouncements.

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Chiropractic Examiners

Rulemaking conducted by the board does not result in substantial economic impact per section 1 of HF 1261 therefore no fiscal impact is identified.

The board has not promulgated rules for a number of years and has no immediate need or intention to promulgate rules that would have substantial economic impact as outlined in subdivision 5 of the proposed legislation HF 1261-E1.

Petitions against agency pronouncements: The Board has historically not had any such petitions, and does not anticipate any future petitions for determining the validity of a rule or similar pronouncements.

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Dentistry

Rulemaking conducted by the board does not result in substantial economic impact per section 1 of HF 1261 therefore no fiscal impact is identified.

Number of rules: The Board estimates an annual change of ten (10) rules per year, combined into single rule making docket. Of these ten (10) rules in a single docket, the Board does not believe that any will have a substantial economic impact, due to the Boards regulatory scope and policy.

For rules without substantial economic impact Administrative law judge review: The Board estimates that each rule will take approximately three (3) hours, for a total of thirty (30) hours per fiscal year of an Administrative Law judges time to review non-controversial proposed rules. The Administrative Law judge review may include research, preparing correspondences, reports, peer reviews, and other professional services commonly associated with rule making. The Board estimates thirty (30) hours of Administrative Law Judge time and a cost of \$5,000 per fiscal year.

Petitions against agency pronouncements: The Board of Dentistry has historically not had any such petitions, and does not anticipate any future petitions for determining the validity of a rule or similar pronouncements.

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Dietetics & Nutrition Practice

Rulemaking conducted by the board does not result in substantial economic impact per section 1 of HF 1261 therefore no fiscal impact is identified.

The Minnesota Board of Dietetics and Nutrition Practice has not promulgated rules for a number of years and has no immediate need or intention to promulgate rules that would have substantial economic impact as outlined in subdivision 5 of the proposed legislation HF 1261-E1. The Board of Dietetics and Nutrition Practice estimates that no petitions will be made to determine the validity of a rule or similar pronouncement.

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Emergency Medical Services Regulatory Board

Rulemaking conducted by the board does not result in substantial economic impact per section 1 of HF 1261 therefore no fiscal impact is identified.

The Minnesota Emergency Medical Services Regulatory Board (EMSRB) has not promulgated rules related to regulation of licensed ambulance services, EMS Education Programs or EMS personnel for a number of years and has no immediate need or intention to promulgate rules that would have substantial economic impact as outlined in subdivision 5 of the proposed legislation HF 1261-E1. The EMSRB estimates that no petitions will be made to determine the validity of a rule or similar pronouncement.

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Marriage & Family Therapy

Historically, the Board engages in rulemaking approximately every 10-15 years. The Board does not anticipate promulgating rules in the next four years. Accordingly, this bill would have no financial impact on the Board.

The Board does not anticipate any petitions for determining the validity of a rule or similar pronouncements.

Medical Practice

Rulemaking under the Board of Medical Practice does not result in substantial economic impact, per section 1 of HF 1261. The Board has not engaged in rule-writing since 2008 and estimates that it will not engage in rule-writing during the next four fiscal years. When necessary, the Board seeks changes to licensure requirements through legislation.

The Board does not anticipate any petitions to the Court of Appeals for determining the validity of any agency guideline, bulletin, or similar pronouncement.

Nursing

Rulemaking conducted by the board does not result in substantial economic impact per section 1 of HF 1261 therefore no fiscal impact is identified. Rulemaking conducted by the boards does not result in substantial economic impact

Number of rules: The Board has historically promulgated rules every 3-5 years. For the purpose of estimating annual costs in this fiscal note assumes the Board assumes an annual change of ten (10) rules per year, combined into single rule making docket. Of these ten (10) rules in a single docket, the Board does not believe that any will have a substantial economic impact, due to the Boards regulatory scope and policy.

For rules without substantial economic impact Administrative law judge review: The Board estimates that each rule would be expected to take approximately three (3) hours, for a total of thirty (30) hours per fiscal year of an Administrative Law judges time to review non-controversial proposed rules. The Administrative Law judge review may include research, preparing correspondences, reports, peer reviews, and other professional services commonly associated with rule making. The Board estimates thirty (30) hours of Administrative Law Judge time and a cost of less than \$5,000 per fiscal year. The Board estimates that each rule would be expected to take approximately two (2) hours x 16 board members x

\$75.00, for a total of \$2,400 per fiscal year for board review. The total cost would be absorbed within the current base budget.

Petitions against agency pronouncements:

The Board has historically published position papers to provide guidance; however, the Board does not enforce the guidance as rule. The Board does not anticipate any petitions to the Court of Appeals for determining the validity of any agency guidance, bulletin, or similar pronouncement.

Board of Nursing Home Administrators

Rulemaking conducted by the board does not result in substantial economic impact per section 1 of HF 1261 therefore no fiscal impact is identified.

The board appears to not meet the definition of a substantial economic impact. The board has not done any rulemaking in the last 7 years and doesn't anticipate any other rulemaking in the next four years. For rules without substantial economic impact, unknown expense for the Administrative Law Judge review would be estimated at no more than 8 hours at \$165.00 per hour or \$1320.00. This can be absorbed within the current base budget.

For petitions against agency pronouncements, the board has no historical basis to estimate however, the board has worked with allied stakeholders in the past to avoid petitioners or contested cases and would continue in that endeavor while achieving public safety. If a petition would occur, the board would assume that they would be able to recoup associated costs.

Optometry

Rulemaking conducted by the board does not result in substantial economic impact per section 1 of HF 1261 therefore no fiscal impact is identified.

The Minnesota Board of Optometry has historically not met the definition of a substantial economic impact.

The current pending 2015 Statute revisions *may* engage formal rule revisions and the board would anticipate a reasonable estimate of not to exceed 8 hours for the Administrative Law Judge or \$1320.00 for their review.

For petitions against agency pronouncements, the board has no historical basis to estimate however, the board has worked with allied stakeholders in the past to avoid petitioners or contested cases and would continue in that endeavor while achieving public safety. If a petition would occur, the board would assume that they would be able to recoup associated costs. The board last engaged in rule writing in 2000.

Pharmacy

The Board of Pharmacy has never engaged in rule-making that would have had an adverse effect or impact on the private-sector economy of the state of Minnesota of \$5,000,000 or more in a single year. The Board does not anticipate ever engaging in such rule-making. It has been rare for the Board to promulgate a rule for which there were compliance costs, in the first year after the rule takes effect, of more than \$25,000 for any one business.

However, it is possible that businesses that sell synthetic drugs might see a loss of revenue in excess of \$25,000 if the Board were to use its expedited rule-making authority to place such drugs into Schedule I. If this bill passes, and if the Board makes an initial determination that a proposed rule would have a compliance cost in excess of \$25,000, the Board would not proceed with the rule-making but would instead seek a change in statutes. That would delay the placement of such drugs into Schedule I.

If the nature of a proposed rule was such that it would be very apparent that there would be no substantial economic impact, the Board might still engage in rule-making. But if it were that readily apparent, presumably the ALJ would have to expend very little time in making that determination and, thus, there would most likely be only a very small increase in the amount we pay for ALJ services. Since the Board rarely expends the full amount that we already budget for OAH rule-making services, there will be no additional costs beyond those that we already budget for.

The Board has published guidance documents for many years but has made it very clear that such guidance documents

do not have the force and effect of law and the Board does not enforce the guidance documents as if they were rules. Consequently, the Board has never had any type of assertion made that guidance documents constituted unpromulgated rule-making. Consequently, the Board anticipates that no petitions would be made to the Court of Appeals under Section 9 of the bill.

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Physical Therapy

Potential rulemaking by this health licensing regulatory board would not meet the definition of substantial economic impact.

For rules without substantial economic impact: The board estimates 3 hours x \$165.00 per hour rate = \$495.00 for administrative law judge review. The cost will be funded within current base budget. There will be a zero impact.

The board is currently working to promulgate one proposed rule; however the Board has not done any other rulemaking in the last 10 years and doesn't anticipate any other rulemaking in the next four years.

Petitions against agency pronouncements: The Board estimates that no petitions related to proposed physical therapy rules will be submitted to the Office of Administrative Hearings.

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Podiatric Medicine

Rulemaking conducted by the board does not result in substantial economic impact per section 1 of HF 1261 therefore no fiscal impact is identified.

The Minnesota of Podiatric Medicine has not promulgated rules for a number of years and has no immediate need or intention to promulgate rules that would have substantial economic impact as outlined in subdivision 5 of the proposed legislation HF 1261-E1. The Board of Podiatric Medicine estimates that no petitions will be sent to the Office of Administrative Hearings.

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Psychology

This fiscal note assumes the Minnesota Board of Psychology would not promulgate, or propose to promulgate, a rule that would meet the definition of substantial economic impact as stated by the proposed bill.

Number of rules: The Board estimates an annual change of ten (10) rules per year, combined into single rule making docket. Of these ten (10) rules in a single docket, the Board does not believe that any will have a substantial economic impact, due to the Board's regulatory scope and policy.

For rules without substantial economic impact Administrative law judge review: The Board estimates that each rule will take approximately three (3) hours, for a total of thirty (30) hours per fiscal year of an Administrative Law judge's time to review non-controversial proposed rules. The Administrative Law judge review may include research, preparing correspondences, reports, peer reviews, and other professional services commonly associated with rule making. The Board estimates thirty (30) hours of Administrative Law Judge time and a cost of \$5,000 per fiscal year.

Petitions against agency pronouncements: The Board does not anticipate any petitions for determining the validity of a rule or the similar pronouncements.

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Social Work

This Minnesota Board of Social Work has not made any changes to rules since 2005 and has no immediate need or intention to promulgate, or propose to promulgate, any rules under MS Section 14. Any rules proposed by this health licensing board would not meet the definition of substantial economic impact as stated by the proposed bill, HF 1261.

Petitions against agency pronouncements: The Board does not anticipate any petitions for determining the validity of a rule or the similar pronouncements.

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Veterinary Medicine

Potential rulemaking by this health licensing regulatory board would not meet the definition of substantial economic impact.

Number of rules and costs: If new rule making is done, it will involve many board member and staff hours as there are a number of rules that may need revision/updates, and new rules if we ever proceed with licensing veterinary technicians. The board estimate 80 staff hours (\$40/hr) = \$3,200 (but already part of job) plus 80 hours cumulative for Board members = 20 per diems x \$75 = 1,500. Total cost of \$4,700. Estimate 10 hours administrative law judge review totaling \$1,650. Costs would be absorbed within the current base budget.

Last rule changes went into effect October 2, 2007. If we do choose to promulgate rules regarding the veterinary technicians, the anticipated costs would be those above and absorbed in the current budget.

Petitions against agency pronouncements: The Board does not anticipate any petitions for determining the validity of a rule or the similar pronouncements.

Expenditure and/or Revenue Formula

All costs will be absorbed within the current base budgets of each board.

Board Name	Estimate Annual Costs
Behavioral Health & Therapy	\$0.00
Chiropractic Examiners	\$0.00
Dentistry	\$5,000.00
Dietetics & Nutrition Practice	\$0.00
Emergency Medical Services	\$0.00
Marriage & Family Therapy	\$0.00
Medical Practice	\$0.00
Nursing	\$7,400.00
Nursing Home Administrators	\$1,320.00
Optometry	\$1,320.00
Pharmacy	\$0.00
Physical Therapy	\$0.00
Podiatric Medicine	\$0.00
Psychology	\$5,000.00
Social Work	\$0.00

Board Name	Estimate Annual Costs
Veterinary Medicine	\$6,350.00
Total	\$26,390.00

Long-Term Fiscal Considerations

No Impact.

Local Fiscal Impact

No Impact.

References/Sources

Agency Contact:

Agency Fiscal Note Coordinator Signature: Juli Vangsness

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Date: 4/1/2015 2:15:18 PM

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HF1261 - 1E - "State Agency Rulemaking"

Chief Author: **Ron Kresha**
 Committee: **State Government Finance**
 Date Completed: **04/08/2015**
 Agency: **Human Services Dept**

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)	Biennium			Biennium		
	Dollars in Thousands	FY2015	FY2016	FY2017	FY2018	FY2019
General Fund	-	626	595	595	595	595
Total	-	626	595	595	595	595
Biennial Total			1,221			1,190

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2015	FY2016	FY2017	FY2018	FY2019
General Fund	-	3.5	3.5	3.5	3.5
Total	-	3.5	3.5	3.5	3.5

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: Brian McLafferty Date: 4/6/2015 2:48:24 PM
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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		Biennium			Biennium	
Dollars in Thousands		FY2015	FY2016	FY2017	FY2018	FY2019
General Fund	-	626	595	595	595	595
Total		-	626	595	595	595
Biennial Total				1,221		1,190
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund						
Expenditures	-	864	816	816	816	816
Transfers Out	-	100	100	100	100	100
Total		-	964	916	916	916
Biennial Total				1,880		1,832
2 - Revenues, Transfers In*						
General Fund						
General Fund	-	338	321	321	321	321
Total		-	338	321	321	321
Biennial Total				659		642

Bill Description

Section 1 amends § 14.02, subd. 5, by adding a definition of substantial economic impact.

Section 2 amends § 14.05, subd. 1, to restrict an agency's authority to adopt original rules to authority expressly delegated by state and federal law.

Section 3 amends § 14.05, subd. 2, adds a new provision that a modification makes a proposed rule substantially different if the modification causes a rule that did not previously have a substantial economic impact to have a substantial economic impact.

Section 4 amends § 14.116, clause (a) to add the Legislative Coordinating Commission to the required recipients of the annual report required in and to require each agency to post a link to its rulemaking docket on the agency website home page.

Section 5 amends § 14.127, subd. 1 and 2, to require an agency to determine whether a proposed rule has a substantial economic impact before giving notice of intent to adopt permanent rules with or without a hearing, under a dual notice, or under the expedited permanent procedure.

Section 5 amends § 14.127, subd. 3, to add, in the case of a determination of substantial economic impact, requirements for the agency to request the legislative auditor to convene a five-person peer review advisory panel to conduct an economic impact analysis of the proposed rule. The section includes a provision for payment of costs by the agency, a quasi-hearing procedure for the panel, a 60-day deadline for the panel's report, and requirements for review by the administrative law judge. This section requires that a rule determined to have substantial economic impact cannot take effect until the rule is approved by a law. Exceptions for rules with appropriated funds to offset costs and for a waiver by the governor are removed from the statute. Severable portions of the rule without substantial economic impact may take effect without legislative approval.

Section 6 amends § 14.131 to require the agency to include its determination about substantial economic impact in its regulatory analysis (item 9) in the Statement of Need and Reasonableness (SONAR); to describe how the agency considered and implemented legislative policy supporting performance-based regulatory systems in a cost-effective and timely manner; and to describe, with reasonable particularity, the scientific, technical, and economic information and rationale that supports the proposed rule.

Section 7 Requires that an agency proposing to use the good cause exemption to adopt a rule give notice of this to the chairs and ranking minority members of legislative policy and budget committees with jurisdiction over the subject matter of the proposed rules, and to the Legislative Coordinating Commission.

Section 8 amends § 14.389, subd. 2, to add chairs and ranking minority members of committees with jurisdiction and the Legislative Coordinating Commission to the required notifications.

Section 9 amends § 14.44 to expand the scope of things subject to challenge as to validity beyond existing rules to include any agency policy, guideline, bulletin, criterion, manual standard, or similar pronouncement that the petitioner believes is a rule. Agency must cease enforcement upon filing of a petition. Agency must reimburse petitioner for costs unless done in bad faith or frivolous.

Section 10 amends § 14.45 regarding a rule declared invalid to conform to amendments in Section 9.

Assumptions

The department averages about five rulemaking projects per year, with one rulemaking having a substantial economic impact. We estimate that this level of work will continue under this bill.

For rules determined to have substance economic impact (estimated at one per year), we estimate that costs associated with the five-person peer review advisory panel will be about \$100,000. This is based on the costs for a recent complex rulemaking project.

For rules determined to not have a substantial economic impact (estimated at 4 per year), we estimate that an administrative law judge review will require 12 hours of work at a cost of \$165/hour for each for the four rules. This would cost about \$8,000 every year.

The changed definition of substantial economic impact and interfacing with the OLA peer review panel will annually require an estimated 1,040 hours of attorney work to manage this new process.

The expected increase in the internal Court of Appeals litigation preparation will annually require about 2,080 hours of attorney time at DHS. It is anticipated that the Court of Appeals cases will require an estimated 3,120 hours of work by the Attorney Generals office. While not affecting the FTEs at DHS, this work is paid for by DHS through a contract with the AGO at \$129/hour.

The increased processing of legal documents and meetings and communications with the OLA peer review panels will annually require about 1,040 hours for an administrative assistant position.

DHS estimates that 100 petitions would be filed stating the departments guidelines, bulletins, or other pronouncements should have been adopted as rules. The estimated 100 petitions per year based upon 85 bulletins issued per year, 10 administrative policies that have some direct effect on how we implement programs per year, and 5 fair hearing decisions per year that have a broader program impact that get appealed further through the district courts. This estimate does not include challenges to manuals, attorney opinion letters, or any other agency statements that impact our interpretation and implementation of programs. On average, DHS estimates that each petition would require 30 hours of attorney time to prepare and manage responses. This provision, in total, would require about 3,000 hours of staff time, or 1.5 FTEs.

This analysis does not include estimates for litigation payments for Court of Appeals cases or Court of Appeals petitioner costs. These costs are not currently calculable because the department does not have experiences with paying for these new processes or how frequently such costs will come to DHS.

Expenditure and/or Revenue Formula

Net Impact by Fund (dollars in thousands)	FY 16	FY 17	FY 18	FY 19
General Fund	\$626	\$595	\$595	\$595
Description	FY 16	FY 17	FY 18	FY 19
3 Attorneys	\$404	\$363	\$363	\$363
.5 Admin Staff	\$50	\$43	\$43	\$43
AGO Costs	\$402	\$402	\$402	\$402
Peer Review Panel	\$100	\$100	\$100	\$100
ALJ Review	\$8	\$8	\$8	\$8
35% FFP	(\$338)	(\$321)	(\$321)	(\$321)

*The AGO Contract costs are estimated by multiplying the hourly rate for work done by the Attorney Generals office (\$129/hr.) times the estimated number of hours of work to address additional DHS cases in the Court of Appeals

Fiscal Tracking Summary (\$000s)						
Fund	BACT	Description	FY2016	FY2017	FY2018	FY2019
GF	11	Rulemaking Compliance (FTEs)	454	406	406	406
GF	11	Contract with AGO	402	402	402	402
GF	11	Transfer to OLA for Peer Review Panel	100	100	100	100
GF	11	Rulemaking Compliance (ALJ Review)	8	8	8	8
REV2	11	Administrative FFP @ 35%	(338)	(321)	(321)	(321)
		Total Net Fiscal Impact	626	595	595	595
		Full Time Equivalentents	3.5	3.5	3.5	3.5

Long-Term Fiscal Considerations

Local Fiscal Impact

References/Sources

DHS and Attorney General Interagency Agreement

2014-2015 MAPE Contract

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HF1261 - 1E - "State Agency Rulemaking"

Chief Author: **Ron Kresha**
 Committee: **State Government Finance**
 Date Completed: **04/08/2015**
 Agency: **Agriculture Dept**

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)	Biennium			Biennium		
	Dollars in Thousands	FY2015	FY2016	FY2017	FY2018	FY2019
Agriculture Fund	-	50	50	50	50	50
Total	-	50	50	50	50	50
Biennial Total			100			100

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2015	FY2016	FY2017	FY2018	FY2019
Agriculture Fund	-	-	-	-	-
Total	-	-	-	-	-

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: Christopher Zempel Date: 4/7/2015 1:38:20 PM
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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		Biennium			Biennium	
Dollars in Thousands		FY2015	FY2016	FY2017	FY2018	FY2019
Agriculture Fund		-	50	50	50	50
Total		-	50	50	50	50
Biennial Total				100		100
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Agriculture Fund						
Expenditures		-	-	-	-	-
Transfers Out		-	50	50	50	50
Total		-	50	50	50	50
Biennial Total				100		100
2 - Revenues, Transfers In*						
Agriculture Fund						
Total		-	-	-	-	-
Biennial Total				-		-

Bill Description

H.F. 1261 adds to the administrative procedures required for rule writing. It modifies and adds criteria for agencies to determine if rules have a substantial economic impact. Legislative approval is required for rules deemed to have a substantial economic impact. The bill requires that the agency request the legislative auditor to convene a five-person peer review advisory panel to conduct an economic impact analysis on a proposed rule. The panel has up to 90 days to convene, accept public comment and draft a report. This could add 90 days to the rule writing process. The peer review advisory panel report is submitted to the Legislative Coordinating Commission and other members as described in the bill.

The addition of Subd. 3(b) to M.S. 14.127 calls for administrative law judge review if the agency determines that a rule will not have a substantial economic impact. If the administrative law judge disagrees with the agency and establishes the rule will have a substantial economic impact, the review panel described above will need to be convened and the agency must give new notice of intent to adopt the proposed rule. This could add additional time to the rule writing process.

M.S. 14.127 Subd. 3(c) allows for an entity to file a written statement claiming a temporary exception from the rules. The rule does not apply to that entity until approved by a law enacted after the agency determination or administrative law judge disapproval. H.F. 1261 does not provide for entities to claim a temporary exemption. Instead it delays the adoption of the rule until approved by law. This could result in adding up to a year to the process.

Assumptions

It is assumed that one rule per year, on average, would be developed within the MDA. The MDA assumes its rules will be considered to have a substantial economic impact because they may require compliance costs of more than \$25,000 for at least one business with less than 50 full-time employees. It is also possible that the other criteria may be met, such as a \$5 million impact on the private sector economy, although this would appear to be unlikely for most MDA rules.

To estimate the costs, the MDA assumes the five person review panel will meet for three days. No cost is provided for the administrative law judge because the MDA assumes no hearing will be needed since the agency is considering the rules to have a substantial economic impact. Given the short timeline and potentially significant effort required to assemble the advisory committee and prepare a report on a complex topic, the MDA envisions approximately 0.25 FTE for the legislative auditor to complete the tasks.

The MDA assumes the source of the funding will be the Agricultural Fund, although other funds may be used depending on the rule being proposed.

Any increase in the time required to prepare rules may result in increased staff time to develop the rule and a related increase in costs. These costs could vary widely and have not been estimated for this fiscal note.

Per MMB, it is assumed that all costs related to advisory panels, including payments to panel members, would be transferred to the Legislative Auditor's office. These costs would be additional uses of fee-payer's dollars but would be allowable rule-making expenses under existing statutory appropriations.

Expenditure and/or Revenue Formula

The MDA estimates the total cost to convene a peer review advisory panel to be \$49,500.

Individual cost estimates:

\$1,300 per person non first class airfare x 5 people = \$6,500

\$1,100 per person per day for time for 3 days x 5 people = \$16,500

\$100 per person per day for meals, taxi, incidentals for 3 days x 5 people = \$1,500

Legislative auditor staff (0.25 FTEs at \$100,000 per year) = \$25,000

Long-Term Fiscal Considerations

This is an annual expense.

Local Fiscal Impact

None unless local government appeals.

References/Sources

Agency Contact: Bruce Montgomery (651) 201-6178

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HF1261 - 1E - "State Agency Rulemaking"

Chief Author: **Ron Kresha**
 Committee: **State Government Finance**
 Date Completed: **04/08/2015**
 Agency: **Office of the Legislative Auditor**

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)	Biennium			Biennium		
	Dollars in Thousands	FY2015	FY2016	FY2017	FY2018	FY2019
General Fund	-	123	123	123	123	123
Total	-	123	123	123	123	123
Biennial Total			246			246

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2015	FY2016	FY2017	FY2018	FY2019
General Fund	-	1.5	1.5	1.5	1.5
Total	-	1.5	1.5	1.5	1.5

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: Christopher Zempel Date: 4/7/2015 1:39:07 PM
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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		Biennium			Biennium	
Dollars in Thousands		FY2015	FY2016	FY2017	FY2018	FY2019
General Fund	-	123	123	123	123	123
Total	-	123	123	123	123	123
Biennial Total			246			246
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund	-	123	123	123	123	123
Total	-	123	123	123	123	123
Biennial Total			246			246
2 - Revenues, Transfers In*						
General Fund	-	-	-	-	-	-
Total	-	-	-	-	-	-
Biennial Total			-			-

Bill Description

Section 5 of HF1261-1E requires the Office of the Legislative Auditor (OLA), if requested by an agency, to convene a five-person peer review advisory panel to conduct an economic impact analysis of a proposed rule. An agency must make this request if (1) it determines that a proposed rule has a substantial economic impact or (2) the administrative law judge determines that a rule may have a substantial economic impact. OLA must convene a peer review advisory panel within 30 days of receiving a request, and the panel must submit a written report within 60 days of being convened. The agency must pay each panel member for the costs of the persons service on the panel. Additionally, the agency shall transfer funds to OLA to pay for the costs of convening the peer review advisory panel process.

Assumptions

Section 5, Lines 4.3-4.6, of the bill states that: "If the agency determines that a proposed rule has a substantial economic impact, the agency must request the legislative auditor to convene a five-person peer review advisory panel to conduct an impact analysis of the proposed rule." Further, Section 5, Lines 4.23-4.26, states: "(b) If the agency determines that a rule does not have a substantial economic impact, the administrative law judge must review this determination. If the administrative law judge determines that a rule *may* have a substantial economic impact, the agency must have the legislative auditor arrange for the analysis required by paragraph (a)" (*emphasis added*). Last year, the Office of Administrative Hearings reviewed 62 rules. For the purposes of this fiscal note, we assumed 62 proposed rules annually. Based on the language cited above, we assumed all 62 proposed rules would be required to have a five-person peer review advisory panel conduct an economic impact analysis as outlined in this bill. Convening the peer review advisory panel processes would be a new function for OLA. To fulfill the related responsibilities, we estimate that one full-time professional position and one half-time administrative position would support the function. We estimate the personnel costs (salaries and benefits) for these positions to be approximately \$123,000 annually. Duties would include identifying qualified people to serve on the panels; scheduling, coordinating, and staffing panel meetings; coordinating with various organizations, including the Office of Administrative Hearings and state agencies, and panel members; and assisting with report drafting, as needed. At this time, we assume that additional costs beyond personnel costs would be negligible. Section 5, Lines 4.9-4.11, states: "The agency must pay each panel member for the costs of the persons service on the panel, as determined by the legislative auditor." Additionally, Section 5, Lines 4.11-4.13, states: "The agency shall transfer an amount from the agency's operating budget to the legislative auditor to pay for costs for convening the peer review advisory panel process" As a result, we estimate a net cost of \$0 to OLA as the result of this bill.

Expenditure and/or Revenue Formula

Job Classification	Professional	Administrative
Annual Salary	\$ 70,000	\$ 31,320
Fringe (13.15%)	\$ 9,205	\$ 4,119
Insurance (\$1,470 for family coverage/month)	\$ 17,640	\$ 17,640
Total cost per FTE	\$ 96,845	\$ 53,079
FTE	1	0.5
Total Cost	\$ 96,845	\$ 26,540

Long-Term Fiscal Considerations

This bill requires ongoing responsibilities for OLA that will continue beyond the initial forecast period. However, as drafted, there is no fiscal impact on OLA.

Local Fiscal Impact

References/Sources

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HF1261 - 1E - "State Agency Rulemaking"

Chief Author: **Ron Kresha**
 Committee: **State Government Finance**
 Date Completed: **04/08/2015**
 Agency: **Legislature**

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)	Biennium			Biennium		
	Dollars in Thousands	FY2015	FY2016	FY2017	FY2018	FY2019
Total	-	-	-	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2015	FY2016	FY2017	FY2018	FY2019
Total	-	-	-	-	-

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: Christopher Zempel Date: 4/6/2015 2:40:59 PM
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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		Biennium			Biennium	
Dollars in Thousands	FY2015	FY2016	FY2017	FY2018	FY2019	
Total	-	-	-	-	-	-
Biennial Total			-			-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Total	-	-	-	-	-	-
Biennial Total			-			-
2 - Revenues, Transfers In*						
Total	-	-	-	-	-	-
Biennial Total			-			-

Bill Description

HF 1261-1E modifies statutory requirements regarding state agency rulemaking. The bill creates a new definition to determine when a rule would have a substantial economic impact. The bill modifies agency reporting requirements under MS 14.365 to include the Legislative Coordinating Commission (LCC) and posting to the agency website as a part of its rulemaking docket reporting requirements. Any rule that is determined by the agency or the Administrative Law Judge to have a substantial economic impact must be analyzed by a peer review advisory panel to be convened by the Legislative Auditor. The agency or the Administrative Law Judge determination along with the peer review advisory panel report will be delivered to the LCC and the Legislature. The rule would not take effect until it is approved by law.

Agencies must include the determination of substantial economic impact in its Statement of Need and Reasonableness. MS 14.388 and MS 14.389 are amended to require agencies to give rulemaking notice to the Legislature and the LCC along with other electronic and mail notice requirements. A person can challenge any agency rule as well as a policy or guideline by filing a petition with the Court of Appeals. Agencies must cease enforcement of a rule, policy, or guideline upon a petition being filed. Rules or agency pronouncements will be declared invalid if it is determined that the agency was not in compliance with rulemaking procedures.

Assumptions

1. The peer review advisory panel process will be addressed in the fiscal note by the Office of the Legislative Auditor.
2. The legislative review of rules with substantial economic impact will be primarily done by the committees with subject matter jurisdiction over the rule.
3. The committees will be able to conduct their review in the normal course of their work during the legislative session. No interim meetings will need to be held.

Expenditure and/or Revenue Formula

The bill will have no fiscal impact on the House, Senate, and the LCC.

Long-Term Fiscal Considerations

N/A

Local Fiscal Impact

N/A

References/Sources

Jim Reinholdz, Minnesota House of Representatives

Mark Shepard, Minnesota House of Representatives

JoAnne Zoff, Minnesota Senate

Greg Hubinger, Legislative Coordinating Commission

Agency Contact:

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HF1261 - 1E - "State Agency Rulemaking"

Chief Author: **Ron Kresha**
 Committee: **State Government Finance**
 Date Completed: **04/08/2015**
 Agency: **Health Dept**

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)	Biennium			Biennium		
	Dollars in Thousands	FY2015	FY2016	FY2017	FY2018	FY2019
General Fund	-	469	469	469	469	469
Total	-	469	469	469	469	469
Biennial Total			938			938

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2015	FY2016	FY2017	FY2018	FY2019
General Fund	-	.53	.53	.53	.53
Total	-	.53	.53	.53	.53

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: Susan Earle Date: 4/8/2015 4:45:32 PM
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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		Biennium			Biennium	
Dollars in Thousands		FY2015	FY2016	FY2017	FY2018	FY2019
General Fund	-	469	469	469	469	469
Total		-	469	469	469	469
Biennial Total				938		938
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund						
Expenditures	-	229	229	229	229	229
Transfers Out	-	240	240	240	240	240
Total		-	469	469	469	469
Biennial Total				938		938
2 - Revenues, Transfers In*						
General Fund						
Total	-	-	-	-	-	-
Biennial Total				-		-

Bill Description

This bill amends Minnesota Statutes, Chapter 14, which regulates rulemaking by state agencies, in two ways.

1. Substantial Economic Impact Review. The bill requires that the Office of the Legislative Auditor (OLA) convene a five-member peer review panel to review proposed rules and rule amendments having a *substantial economic impact*, as defined in the bill.

If the agency, or the Office of Administrative Hearings (OAH) upon its review, determines that the rules have such an impact, the OLA must convene the panel within 30 days at the respective agency's expense. The panel may receive written and oral comments from the public and must submit its report within 60 days. Proposed rules that have a substantial economic impact cannot take effect until the legislature enacts a law approving them.

2. Validity of Rule Determinations The bill also changes the procedures and broadens the grounds for seeking a declaratory judgment on rule validity or agency enforcement policy by allowing a party to petition the Court of Appeals directly instead of first petitioning OAH. It also requires that the agency suspend its enforcement during litigation.

Assumptions

1. Substantial Economic Impact Review

Determining costs based on *substantial economic impact* that would be added to Minn. Stat. § 14.05 is difficult because we do not know how this definition will be applied. In addition, the meaning of the broadly written terms adverse effect or impact, significant increase in costs, and private-sector economy cannot be determined with precision.

Based on MDH's current rulemaking activity, for FY 2016 we assume three projects would require administrative law judge (ALJ) review of the agency analysis only and an additional two projects would undergo the full panel review described below.

For the three anticipated rules projects that do not have substantial economic impact, this bill would require ALJ review of the agency analysis. We assume that this would add an additional eight hours of ALJ time to perform this analysis, resulting in an annual cost of \$3,960 (8 hours X \$165/hour X 3 projects = \$3,960).

For the two projects with substantial economic impact that would undergo the full peer review panel review, we base our cost estimate on two cost items: the economic impact analysis for every proposed rule and the peer review panel triggered by rules of substantial economic impact. MDH does not have the expertise on staff to do the economic analysis internally, so we assume that we will contract the economic analysis. For this fiscal note, we have relied on DNRs average estimate of \$93,000, based on federal Interior and Agriculture data on economic analysis contracts.

For each project with substantial economic impact, we assume the five-member peer review panel will add at least three months to the rulemaking process and require additional MDH staff time (calculated below) to manage it. We assume the panels review would include economic analysis and a review of MDHs underlying scientific calculations, as suggested by the term peer review.

We assume the cost of running a panel would be similar to a public rulemaking hearing. Based on the bill language and consultation with Minnesota Management and Budget, we assume that the costs of the panel will be a transfer out from MDH to OLA. Based on the assumptions MDH used for the medical cannabis program for hiring experts from outside the agency, MHD used \$250 per hour for estimating scientific-expert consulting services. MDH assumes that the five panel members would prepare for and meet at least once to receive oral public comments. We anticipate two panel members would travel to Minnesota to attend the meeting in person and three would participate by video conference. After that meeting, panel members would follow up with individual and collaborative work to generate their report. We assumed the five panelists would require four eight-hour days each, plus each panelist who appears in person would require a travel day.

Panel expenses

\$250/hour per panelist x 8 hours/day =	\$2,000/panelist per day
\$2,000/panelist per day x 5 panelists for 4 days + 2 panelists for 2 travel days (22 days) =	22 Panelist days: \$44,000

For the two panelists travel to Minnesota, we used our best estimate of costs: \$1,500 for air fare, \$400 for two days food and lodging, and \$100 in incidentals (taxi, other misc. expenses).

Panel travel expenses

\$1,500 airfare + (\$200/day food & lodging x 2 days) + \$100 incidentals =	\$2,000/traveling panelist per day
\$2,000/traveling panelist per day x 2 traveling panelists =	Panelist travel and lodging: \$4,000

Additional cost items would include transcribing the public meeting (or otherwise keeping a record), producing a report, Administrative Law Judge (ALJ) review of this new item (before and after the panel), and additional staff time. For OAH costs, we expect to pay for ALJ time and other OAH staff time. We assume eight hours for the ALJ to do a first review and 12 hours for the final review at the current ALJ billing time of \$165 per hour. We assumed the ALJ is likely to require staff attorney time for report drafting at an estimated \$140 per hour for at least 16 hours for report drafting. We assume \$1,000 for the transcript (the usual cost of a one-day hearing) and \$1,000 for report production.

We estimate the three additional months for the rulemaking process would result in additional costs of 17% for an 18-month rulemaking or 13% for a 24-month project. Using the average of 15% in additional time of \$257,920 for staff time for a major rule (from the rulemaking manual) equals an additional \$38,688 in staff time. This rulemaking staff time will be comprised of .02 FTE of a clerical support staff and .50 FTE of a program/rules staff.

We assume OLA will charge for their additional time for coordinating the panel. Assuming their staff time of approximately \$38.50 per hour based on the FTE that they provided and at least five hours per panel coordination, plus eight hours for the meeting equals 13 hours times \$38.50, or approximately \$550.

Additional costs

\$1,000 transcription + \$1,000 report production	=	Other costs:	\$2,000
ALJ time (\$165/hr x 20 hrs) + OAH staff attorney time (\$140/hr x 16 hours)	=	OAH costs:	\$5,540 (\$3,300 + \$2,240)
OLA staff time (\$38.50/ x 13 hours)	~	OLA staff time:	\$550
MDH staff time (15% of \$257,920)	=	MDH staff time:	\$38,688

Total project costs from tables: = \$94,778

Average estimate of economic analysis: = \$93,000

Estimated costs per project: = \$187,778

Based on MDHs current rulemaking activity, for FY 2016 we project three projects would require ALJ review of the agency analysis only and two projects would undergo the full panel review described above.

Projected annual costs for 3 ALJ analyses: = \$ 3,960

Projected annual costs for 2 panel-review projects: = \$375,556

2. Validity of Rule Determinations

The remaining costs for this bill are potential lawsuits under the amendments in Sections 9 and 10 that could expand the grounds for challenges to agency enforcement based on agency policies or pronouncements about interpretation of its rules. In addition, the agency must bear the costs of the review. An agency that prevails can, however, recover costs from petitioner, unless the Court of Appeals makes certain findings.

The bar is low enough that the agency cannot assume it could recover its costs from the petitioner. We assume one challenge per year at a cost of \$60,000 per year, assuming \$60,000 in AGO time, per suit based on MDHs past litigation experience (cost supplied by general counsel) for one lawsuit generated per year.

Litigation costs

Estimated costs per lawsuit: \$60,000 MDH cost for AGO time	+	Cost per enforcement challenge (Estimated to be 1 annually):
Estimated costs for reimbursing petitioners legal expenses: \$60,000		\$120,000

Expenditure and/or Revenue Formula

	FY2016	FY2017	FY2018	FY2019
MDH staff time (.52 FTEs)	39	39	39	39
Admin	4	4	4	4
Economic Analysis P/T contract (2 occurrences @ \$93,000 each)	186	186	186	186

	FY2016	FY2017	FY2018	FY2019
* 2 contracts per year				
Total expenditures:	229	229	229	229
Review of agency determinations by ALJ (OAH)	4	4	4	4
Convene advisory panel (2 events @ \$58,090 each) (OAH)	116	116	116	116
AGO litigation costs (1 suit per year @ \$60,000 + cost of petitioners litigation @ \$60,000) (OAH)	120	120	120	120
Total transfers out to OAH	240	240	240	240
Total annual costs (expenditures and transfers out)	469	469	469	469

Long-Term Fiscal Considerations

This would be an ongoing increase in rulemaking cost to the agency.

Local Fiscal Impact

N/A

References/Sources

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Agency Contact:

Agency Fiscal Note Coordinator Signature: Dave Greeman

Phone: 651 201-5235

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HF1261 - 1E - "State Agency Rulemaking"

Chief Author: **Ron Kresha**
 Committee: **State Government Finance**
 Date Completed: **04/08/2015**
 Agency: **Transportation Dept**

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)	Biennium			Biennium		
	Dollars in Thousands	FY2015	FY2016	FY2017	FY2018	FY2019
Trunk Highway	-	22	-	-	-	-
Total	-	22	-	-	-	-
Biennial Total			22			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2015	FY2016	FY2017	FY2018	FY2019
Trunk Highway	-	-	-	-	-
Total	-	-	-	-	-

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: Michelle Mitchell Date: 4/8/2015 7:55:17 PM
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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		Biennium			Biennium	
Dollars in Thousands		FY2015	FY2016	FY2017	FY2018	FY2019
Trunk Highway		-	22	-	-	-
Total		-	22	-	-	-
Biennial Total				22		-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Trunk Highway						
Expenditures		-	12	-	-	-
Transfers Out		-	10	-	-	-
Total		-	22	-	-	-
Biennial Total				22		-
2 - Revenues, Transfers In*						
Trunk Highway						
Total		-	-	-	-	-
Biennial Total				-		-

Bill Description

HF 1261-1E modifies statutory requirements regarding state agency rulemaking. The bill creates a new definition to determine when a rule would have a substantial economic impact. The bill modifies agency reporting requirements under MS 14.365 to include the Legislative Coordinating Commission (LCC) and posting to the agency website as a part of its rulemaking docket reporting requirements. Any rule that is determined by the agency or the Administrative Law Judge to have a substantial economic impact must be analyzed by a peer review advisory panel to be convened by the Legislative Auditor. The agency or the Administrative Law Judge determination along with the peer review advisory panel report will be delivered to the LCC and the Legislature. The rule would not take effect until it is approved by law.

Agencies must include the determination of substantial economic impact in its Statement of Need and Reasonableness. MS 14.388 and MS 14.389 are amended to require agencies to give rulemaking notice to the Legislature and the LCC along with other electronic and mail notice requirements. A person can challenge any agency rule as well as a policy or guideline by filing a petition with the Court of Appeals. Agencies must cease enforcement of a rule, policy, or guideline upon a petition being filed. Rules or agency pronouncements will be declared invalid if it is determined that the agency was not in compliance with rulemaking procedures.

Assumptions

MnDOT has not had major rulemaking occur in over four years. It is possible rulemaking could occur during the forecast period, though nothing is currently planned. For purposes of this fiscal note, MnDOT assumes one rulemaking would occur in FY2017, and it will trigger the review panel. None will occur in other years. For this, we would contract the needed economic analysis (if small, we would be able to prepare internally). As we do not typically complete this type of analysis and are unsure of the cost, we will assume the cost per hour at \$250 per hour as other agencies have, and assume 40 hours, as our rules are relatively narrow in scope.

We will assume the 5 person panel needed would meet for 8 hours, again because our rules are relatively narrow in scope. While the cost will be determined by OLA, we will assume \$250 per hour, and no travel costs we will assume videoconferencing would be used if necessary.

We assume two MnDOT staff would be needed to prepare for, attend, and complete reporting and other follow-up after the

hearing, for a total of 30 hours at a blended rate of \$40, times 50% for overhead costs, including fringe benefits.

We assume the ALF will concur with MnDOT's determination in this case, so there will be no additional costs.

The fund used will depend on the area the rulemaking occurs; we will assume the Trunk Highway Fund.

Expenditure and/or Revenue Formula

Economic Analysis 40 hours X \$250 - \$10,000

Panel 5 people X 8 hours X \$250 per hour - \$10,000- to be transferred to OLA

MnDOT staff 30 hours X \$40 per hour X50% overhead - \$1,800

Total - \$ 21,800 from the Trunk Highway Fund

Long-Term Fiscal Considerations

If rulemaking occurs in the long term, MnDOT would incur staff time for the economic analysis and advisory panel preparation, and would need to pay the cost of the panel.

Local Fiscal Impact

None

References/Sources

MnDOT Office of Chief Counsel

Agency Contact:

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HF1261 - 1E - "State Agency Rulemaking"

Chief Author: **Ron Kresha**
 Committee: **State Government Finance**
 Date Completed: **04/08/2015**
 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)	Biennium			Biennium		
	Dollars in Thousands	FY2015	FY2016	FY2017	FY2018	FY2019
Environmental	-	465	417	417	417	417
Total	-	465	417	417	417	417
Biennial Total			882			834

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2015	FY2016	FY2017	FY2018	FY2019
Environmental	-	1	1	1	1
Total	-	1	1	1	1

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: Michelle Mitchell Date: 3/27/2015 12:13:29 PM
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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		Biennium			Biennium	
Dollars in Thousands		FY2015	FY2016	FY2017	FY2018	FY2019
Environmental	-	465	417	417	417	417
Total	-	465	417	417	417	417
Biennial Total			882			834
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Environmental						
Expenditures	-	165	117	117	117	117
Transfers Out	-	300	300	300	300	300
Total	-	465	417	417	417	417
Biennial Total			882			834
2 - Revenues, Transfers In*						
Environmental						
Total	-	-	-	-	-	-
Biennial Total			-			-

Bill Description

This bill makes several amendments to Minnesota Statutes Chapter 14 (Administrative Procedures Act). The provisions addressed in this fiscal note are 1) those related to additional analysis required for rules that will or may have a substantial economic impact; and 2) those related to the changes to legal challenges of the validity of agency actions that may be unadopted rules.

1) Substantial Economic Impact Review

The bill lists several criteria that, if met, would result in a proposed rule being considered to have a substantial economic impact. These criteria include: an adverse effect on the private-sector economy of more than \$5,000,000 in a single year, a significant increase in costs or prices for various entities, significant adverse effects on business competitiveness, or certain compliance costs for small businesses or small cities.

First, the Agency proposing a rule must determine if any proposed rule will have a substantial economic impact. If so, the agency must request that the Office of the Legislative Auditor (OLA) convene a five-person peer review advisory panel to conduct an impact analysis of the proposed rule. The panel can receive public comments and then is to prepare a report. The report must comment on the extent to which the proposed rule is: based on sound, reasonably available scientific, technical, economic, or other information or rationale; and is more restrictive than a standard, limitation, or requirements imposed by federal law or rule pertaining to the same subject matter. Presumably the report would also include the results of the impact analysis.

The bill also requires that, if the administrative law judge (ALJ) assigned to review the rule determines that the rule may have a substantial economic impact, the same panel process must be convened. The ALJ can make this determination at any time, but if the ALJ does after the Agency has published the notice of intent to adopt the proposed rule, the agency must give new notice of the intent to adopt the proposed rule after the panel is convened.

2) Determination of Validity of Rule

The bill also proposes changes to Minn. Stat. 14.44 and 14.45, to allow challenges to unadopted rules, allowing those who want to challenge an agency action as an unpromulgated rule, even if the agency action is not currently being enforced, to go directly to the Court of Appeals.

Assumptions

The bill states that the OLA will convene a five-person peer review advisory panel to conduct an impact analysis of the proposed rule. The panel may take public comment and must prepare a final report on its peer review.

It is not clear what impacts would be reviewed in the required impact analysis (especially as compared to the more defined elements of an economic impact analysis). In particular, it is unclear whether an impact analysis, like an economic impact analysis, would require any economic modeling or use of other tools that might require special skills to use and therefore carry a cost.

Therefore, this fiscal note focuses on 1) the work that will need to be done by the MPCA to determine if a rule has a substantial economic impact and 2) the panels work to conduct a peer review of the available scientific, technical, economic, or other information or rationale and a comparison of the rule to the requirements imposed by federal law or rule.

The MPCA assumes the peer review panel will hold at least one public meeting. Panel members will need to review the proposed rule and impact analysis, travel to public meetings, document the public meeting (transcript), and produce a report on the impacts of the proposed rule and peer review conclusions.

In FY2014, the MPCA completed three rulemakings; to date in FY2015, the MPCA has completed five rulemakings. For this fiscal note, we assume five rulemakings annually, where two will have a substantial economic impact.

We assume that this bill, if passed, will only affect rulemakings in FY2016 and later.

Expenditure and/or Revenue Formula

1) Substantial Economic Impact Review

Agency Internal Costs

The MPCA would need to conduct at least a basic economic analysis on every rule developed to determine if a rule would be likely to have a substantial economic impact as defined by the bill. Even if the rule would not have a substantial economic impact, that would need to be documented and described in the SONAR. If the rule would have a substantial impact, the Agency would need to make that determination in order to ask the OLA to convene the rule panel, and then would have to both document and describe the economic impact in the SONAR.

Based on recent workload, we assumed this basic economic analysis would be completed for about five rules a year. It is estimated the agency will need 1 FTE to review the potential economic impacts of rules and document the analyses as required in the SONAR. This FTE could also respond to any questions raised by the OLA review panel.

The best way to determine the impact of a proposed rule on the economy of the State of Minnesota, including impacts on prices or competitiveness, is likely to be through economic impact analysis. Economic impact analysis generally entails using input-output models such as or IMPLAN (Impact analysis for Planning) or general equilibrium models, such as REMI (Regional Economic Models, Inc.), to estimate the impact of a regulation or policy on the economic activity of a certain area. The MPCA currently has licenses for both of these modeling packages. However, additional data might be needed to compare impacts between Minnesota and other states (such as for competitiveness estimates.) The MPCA recently purchased IMPLAN data for Minnesota and aggregated United States data, which cost \$2,250. Purchasing data for all states would cost close to \$50,000. We assume that this data will be needed and purchased in the first year.

Other Agency Costs Transferred to OLA

The ALJ will need to review the Agency's determination as to whether or not the proposed rule causes a substantial economic impact as part of the review of the rule and SONAR. The MPCA estimates that this additional review could require an additional day (eight hours) of ALJ review time. That would cost the Agency \$1320 at the OAH billing rate of \$165/hour. The OAH will need to provide information on whether this can be done with existing staff. At five rules a year,

this is about \$7,000 per year.

For the peer review panel, it is not clear how the OLA will bill back costs back to the agency, whether at a specific dollar per hour rate or using some other mechanism.

When the MPCA has previously estimated the costs for the MPCA to convene a peer review panel, we have assumed that peer reviews fall into three categories simple, moderately complex, and complex. Simple reviews are assumed to involve a study or proposal totaling 10 pages or less, up to three reviewers, the opportunity for public comment, but no face-to-face review meeting. Complex reviews would involve five to seven reviewers of a more complex study or proposal, including a face-to-face review meeting that was open to the public for observation and comment. Moderately complex reviews are assumed to be more involved than simple but less than the level of effort and rigor required for complex reviews.

Complex review costs = \$100,000, based on the cost of the Wild Rice Standards Study peer review. The Wild Rice Standards Study peer review cost the MPCA about \$123,000. It involved seven peer reviewers who were directed by 13 charge questions three general and 10 very specific. It also included a two-day peer review public meeting with public comments.

Moderately complex review costs = \$50,000, based on an assumption of three to five reviewers, up to two weeks for the review plus documentation, and a face-to-face meeting including public comment.

Simple review costs = \$6,000, based on an assumption of three reviewers each requiring up to 15 hours for the review and documentation, plus coordination of a public comment process.

Based on the need for five reviewers and a public comment period, the MPCA assumes that the peer review convened for rule review would be moderately complex to complex. Although the panel envisioned under HF1261 would consist of only 5 reviewers, compared to the seven in the Wild Rice Standards Study, this bill also requires the panel to conduct an impact analysis and review federal laws and rules related to the same subject as a proposed rule. Based on these additional items, the MPCA estimates the peer review panel would cost \$150,000 each time it is activated. Estimating two major reviews per year, this would cost \$300,000 annually.

2) Determination of Validity of Rule

Challenges to unadopted rules currently go through the procedures in Minn. Stat. 14.381, which makes the agency liable for all OAH costs associated with a petition for review of an unadopted rule. However, this section allows the agency to recover some of those costs if the ALJ rules in the Agency's favor, unless payment would be an undue hardship on a petitioner proceeding in *forma pauperis* who brought a petition in good faith. A key here is that the ALJ must determine that a petition was brought in good faith AND payment of the costs would be an undue hardship.

General court procedures also allow the recovery of costs by the winning party. The changes to 14.44 allow for a possibility that the Agency would not be able to recover costs if it prevails before the Court of Appeals. The language allows the Agency to recover costs unless the petitioner is entitled to proceed in *forma pauperis* OR the court determines that the petition was brought in good faith OR the payment of the costs would be an undue hardship on the petitioner. The fact that a determination that a petition was brought in good faith alone might be sufficient to prevent the Agency from recovering costs could result in many cases where the Agency bears the entirety of the costs for legal challenges to unadopted rules through the Court of Appeals. We cannot make an exact estimate of the cost, because this portion of the bill opens up a new avenue for legal challenges to agency actions. However, this provision is very likely to have a fiscal impact on the MPCA and the impact could be substantial.

The agency's costs, both internal and amounts transferred to the OLA, are summarized in the table below. The annual cost of 1.0 FTE for the MPCA is \$108,000 in FY 2016 and \$110,000 thereafter. Annual costs of 1.0 FTE include salary, fringe, and agency indirect costs.

Dollars in Thousands

	FY 2016	FY 2017	FY 2018	FY 2019
Estimated cost of 1.0 FTE for MPCA staff	\$108	\$110	\$110	\$110
Conduct potential economic analysis of rules and document conclusions as required in	1.0	1.0	1.0	1.0

	FY 2016	FY 2017	FY 2018	FY 2019
SONAR				
Cost of new FTE	\$108	\$110	\$110	\$110
Purchase IMPLAN data for Minnesota and all states	50	0	0	0
Convene peer review advisory panel (2 events @ \$150,000 each)	300	300	300	300
Review of agency determinations by ALJ (OAH)	7	7	7	7
Total Annual cost of staffing and other expenses	\$465	\$417	\$417	\$417

Long-Term Fiscal Considerations

Requiring legislative approval for rules that have a substantial economic impact and undergo peer review would delay implementation, and could result in the standards/rules not being implemented if the legislature did not approve them. This could lead to third-party litigation or other impacts from the federal government, due to an inability to implement rules to meet federal requirements. Past litigation of issues involving water quality standards, a common subject of rules, and impaired waters (Annandale-Maple Lake, Princeton) have cost the state an average of \$90,000 in Attorney Generals Office (AGO) staff time. While totals of MPCA staff time associated with those cases are not available, it is reasonable to estimate that MPCA staff costs would be at least as much as the AGO staff time given the need for depositions and testimony of permit engineers and permit writers, as well as the need for technical analysis by MPCA of litigation documents.

Local Fiscal Impact

Requiring legislative approval for rules that have a substantial economic impact and undergo peer review would delay implementation, and could result in the rules not being implemented if the legislature did not approve them. For rules that ultimately result in implementation through permitting, such as water quality standards, the MPCA anticipates that the federal Environmental Protection Agency will object to permits that do not contain limits to protect receiving waters, and compel the MPCA to develop permit limits based on the states descriptive (i.e. narrative) water quality standards. EPA has made such objections in other states. These objections will slow permitting of projects such as local government wastewater treatment plans. The costs of permitting delays will depend on the specifics of the project, but could include increases in construction or financing costs.

References/Sources

Contracting costs of Wild Rice Standard Study Peer Review.

Agency Fiscal Note for HF616 and HF617.

Average annual estimates of rules based on MPCA program numbers since 2013.

Attorney Generals Office billing records for Annandale-Maple Lake and Princeton litigation.

Recent Agency purchase of IMPLAN software.

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HF1261 - 1E - "State Agency Rulemaking"

Chief Author: **Ron Kresha**
 Committee: **State Government Finance**
 Date Completed: **04/08/2015**
 Agency: **Natural Resources Dept**

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)	Biennium			Biennium		
	Dollars in Thousands	FY2015	FY2016	FY2017	FY2018	FY2019
General Fund	-	373	222	222	222	222
Game And Fish (Operations)	-	197	295	295	295	295
Total	-	570	517	517	517	517
Biennial Total			1,087			1,034

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2015	FY2016	FY2017	FY2018	FY2019
General Fund	-	-	-	-	-
Game And Fish (Operations)	-	-	-	-	-
Total	-	-	-	-	-

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: Michelle Mitchell Date: 3/25/2015 10:12:18 AM
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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		Biennium			Biennium	
Dollars in Thousands		FY2015	FY2016	FY2017	FY2018	FY2019
General Fund	-	373	222	222	222	222
Game And Fish (Operations)	-	197	295	295	295	295
Total	-	570	517	517	517	517
Biennial Total			1,087			1,034
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund	-	373	222	222	222	222
Game And Fish (Operations)	-	197	295	295	295	295
Total	-	570	517	517	517	517
Biennial Total			1,087			1,034
2 - Revenues, Transfers In*						
General Fund	-	-	-	-	-	-
Game And Fish (Operations)	-	-	-	-	-	-
Total	-	-	-	-	-	-
Biennial Total			-			-

Bill Description

Section 1 amends § 14.02, subd. 5, by adding a definition of substantial economic impact.

Section 2 amends 14.05, subd. 1, to clarify that an agency's authority to adopt original rules to authority delegated by state and federal law.

Section 3 amends 14.05, subd. 2, adds a new provision that a modification makes a proposed rule substantially different if the modification causes a rule that did not previously have a substantial economic impact to have a substantial economic impact.

Section 4 amends 14.116, clause (a) to add the Legislative Coordinating Commission to the required recipients of the annual report required in and to require each agency to post a link to its rulemaking docket on the agency website home page.

Section 5 amends 14.127, subd. 1 and 2, to require an agency to determine whether a proposed rule has a substantial economic impact before giving notice of intent to adopt permanent rules with or without a hearing, under a dual notice, or under the expedited permanent procedure. Requirement for the administrative law judge to review and approve or disapprove the agency's determination about impact prior to publishing notice of intent is removed.

Section 5 amends 14.127, subd. 3, to add, when the agency determines that a proposed rule has a substantial economic impact, requirements for the agency to request the legislative auditor to convene a five-person peer review advisory panel to conduct an impact analysis of the proposed rule. The section includes a provision for payment of costs by the agency, a quasi-hearing procedure for the panel, a 60-day deadline for the panel's report, and requirements for review by the administrative law judge. This section requires that a rule determined to have substantial economic impact cannot take effect until the rule is approved by a law. Exceptions for rules with appropriated funds to offset costs and for a waiver by the governor are removed. Severable portions of the rule without substantial economic impact may take effect without legislative approval. If the administrative law judge determines that a rule may have a substantial economic impact (conflicting with an agency determination of no substantial impact), the agency must back up, have the legislative auditor convene the panel process, and give a new notice of intent. The judge may make this determination at any time after being

assigned to the rule proceeding.

Section 6 amends 14.131 to require the agency to include its determination about substantial economic impact in its regulatory analysis (item 9) in the Statement of Need and Reasonableness (SONAR); to describe how the agency considered and implemented legislative policy supporting performance-based regulatory systems in a cost-effective and timely manner; and to describe, with reasonable particularity, the scientific, technical, economic, and other information and rationale that supports the proposed rule.

Section 7 amends 14.388, subd. 2, to add chairs and ranking minority members of committees with jurisdiction and the Legislative Coordinating Commission to the required notifications.

Section 8 amends 14.389, subd. 2, to add chairs and ranking minority members of committees with jurisdiction and the Legislative Coordinating Commission to the required notifications.

Section 9 amends 14.44 to expand the scope of things subject to challenge as to validity beyond existing rules to include any agency policy, guideline, bulletin, criterion, manual standard, or similar pronouncement that the petitioner believes is a rule. Agency must cease enforcement upon filing of a petition. Makes agency liable for all costs associated with review of petition. If Court of Appeals rules in favor of agency, the agency may recover all or a portion of the cost unless petitioner is entitled to proceed in forma pauperis or the court determines that the petition was brought in good faith or the assessment of costs would constitute a hardship.

Section 10 amends 14.45 regarding a rule declared invalid to conform to amendments in Section 9.

Assumptions

1. Analysis of substantial economic impact

- QUANTITY: DNR estimates it would prepare determinations about substantial economic impact on an average of 2 permanent rules and 1 expedited permanent rule per year. General Fund: 1 in FY16; all others Game and Fish Fund due to relative rulemaking activity.

- COST PER ANALYSIS: DNR would contract with a vendor to do the economic analysis. Based on data from U.S. Departments of Interior and Agriculture, the anticipated cost for each analysis ranges from \$64,000 to \$167,000. We are using the average cost of \$98,400 in this fiscal note.

2. Peer review panel and ALJ review re: substantial economic impact determination

- QUANTITY: For the purposes of this fiscal note, DNR assumes that 1 proposed rule would trigger the review panel in FY16 (General Fund), and none during FY17-19. We assume that the ALJ will concur with DNR's determination in all cases and DNR would not have to back up and re-notice a rule.

- COST: Assume the panel members will work individually and confer during the time period and meet together once, when 2 will travel to meet in person and 3 will participate by video-conference. Sample expert testimony rate used but rates do vary depending on subject, etc. Video-conference would be necessary for the meeting instead of the less expensive WebEx or Lync because it offers the ability to take oral public comments.

Panel members time: 4 days x 5 people = \$42,300

Travel: \$2,100 x 2 people = \$4,200

Video-conferencing: \$0 (covered under subscription)

Transcript (proxy for record keeping, especially for public comments) = \$1,100

Report production: \$1,100

ALJ review time: (8 hours initial review + 12 hours final review) x \$165/hour = \$3,500

TOTAL COST PER PEER REVIEW PANEL: \$52,200

3. Petition challenging validity of a rule

- QUANTITY: DNRs estimate assumes one petition challenge per year. Assuming that petitions would be on rules dependent on the General Fund, but in fact it could fall either way.

- COST PER PETITION: \$63,600 estimate is based on agency experience. Petitioners cost estimated to be at minimum \$158,600 based on agency experience. Figures provided by general counsel. This fiscal note assumes that the DNR will not be able to recover costs from petitioners.

This fiscal note does not include the cost for OLA to coordinate and convene peer review panels, even though the agency will be invoiced for that cost. We assume that OLA will provide that estimate.

Expenditure and/or Revenue Formula

economic analysis		\$98,394			
panel		\$52,159			
petition		\$222,180			
<u>distribution of costs by funds and years</u>					
	economic analysis	panel	petition	ANNUAL TOTAL	
FY16					
GFF	\$196,788	\$0	\$0	\$196,788	
GF	\$98,394	\$52,159	\$222,180	\$372,733	
FY17-19					
GFF	\$295,182	\$0	\$0	\$295,182	
GF	\$0	\$0	\$222,180	\$222,180	

Long-Term Fiscal Considerations

This would be an ongoing increase in the cost of agency rulemaking.

Local Fiscal Impact

There may be a fiscal impact when local ordinances have to be updated to conform with a state rules amendment, as is the case with shoreland rules. This is an infrequent occurrence.

References/Sources

N/A

Agency Contact: Beth Carlson 259-5531

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HF1261 - 1E - "State Agency Rulemaking"

Chief Author: **Ron Kresha**
 Committee: **State Government Finance**
 Date Completed: **04/08/2015**
 Agency: **Education Department**

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)	Biennium			Biennium		
	Dollars in Thousands	FY2015	FY2016	FY2017	FY2018	FY2019
General Fund	-	66	66	66	66	66
Total	-	66	66	66	66	66
Biennial Total			132			132

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2015	FY2016	FY2017	FY2018	FY2019
General Fund	-	-	-	-	-
Total	-	-	-	-	-

Executive Budget Officer's Comment

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

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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		Biennium			Biennium	
Dollars in Thousands		FY2015	FY2016	FY2017	FY2018	FY2019
General Fund	-	66	66	66	66	66
Total	-	66	66	66	66	66
	Biennial Total		132			132
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund						
Expenditures	-	42	42	42	42	42
Transfers Out	-	24	24	24	24	24
Total	-	66	66	66	66	66
	Biennial Total		132			132
2 - Revenues, Transfers In*						
General Fund						
	-	-	-	-	-	-
Total	-	-	-	-	-	-
	Biennial Total		-			-

Bill Description

This bill modifies the Minnesota Administrative Procedures Act, Chapter 14 of Minnesota Statutes, and proposes various rulemaking reforms and initiatives.

Section 1 of this bill introduces a definition of substantial economic impact.

Section 2 makes minor changes and requires express authority delegated by state or federal law.

Section 3 provides that a modification of a proposed rule makes a proposed rule substantially different if the modification causes the rule to now have a substantial economic impact.

Section 4 requires the annual notice to the legislature to include the Legislative Coordinating Commission and requires agencies to post a link to its rulemaking docket on the agency home webpage.

Section 5 requires an agency to make the determination about whether a proposed rule has a substantial economic impact as defined in Section 1. This determination must be made before an agency gives notice of a hearing or a dual notice, etc., in the rulemaking process. This section also increases legislative oversight of the Minnesota rulemaking process by requiring an agency to request an economic impact analysis of the rule by a five-person peer review advisory panel if the agency determines that the proposed rule will have a substantial economic impact.

Section 6 adds a requirement to the Statement of Need and Reasonableness (SONAR), requiring the agency's findings and conclusions that support its determination that the proposed rule does or does not have a substantial economic impact. The SONAR must also include how the agency considered legislative policy supporting performance-based regulatory systems in a cost-effective and timely manner when developing the rules. The SONAR must also include specific scientific, technical and economic information and rationale that supports the proposed rule.

Section 7 requires agencies to notify the chairs and ranking minority members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule and the Legislative Coordinating Commission when they plan to adopt, amend, or repeal a rule under 14.388.

Section 8 requires the chairs and ranking minority members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rules and the Legislative Coordinating Commission when they plan to adopt, amend or repeal a rule under 14.389.

Section 9 requires the validity of any agency policy, guideline, or other pronouncement, that a petitioner questions to be addressed by the Court of Appeals. The agency policy, guideline, or other pronouncement, must not be enforced until the Court of Appeals rules on the matter. An agency is liable for all costs associated with review of the petition. If the Court of Appeals rules in favor of the agency, the agency may recover some or all of the costs from the petitioner with specified exceptions.

Section 10 provides that an agency pronouncement or rule is invalid if it is found that the rule was adopted or the pronouncement was improperly implemented.

Assumptions

This bill includes two major cost items:

- 1) The economic analysis to determine whether the rule will have a substantial economic impact required for every proposed rule, and
- 2) The peer review panel triggered by the determination that a rule will have a substantial economic impact.
 - a) Peer review panel costs will be a transfer out to the Office of the Legislative Auditor (OLA)

For Rules Determined to Have Substantial Economic Impact

It is difficult to anticipate how many full rulemaking projects MDE will handle every year, so this fiscal note will assume that 2-3 permanent rules are being begun each year that will require an analysis of substantial economic impact.

- MDE will need to contract out the required economic analysis as the agency does not have appropriate staff to handle this analysis.
- Given the number of rules that will require this analysis (2-3 a year), the agency will not require an FTE to manage this responsibility.
- Given that MDE has not been required to conduct such an economic analysis before the agency does not have data upon which to rely to provide an accurate cost figure, however the cost of conducting this analysis is expected to be quite significant.

Panel Costs

This bill requires agencies to bear the cost of the panels activities when reviewing whether or not a rule does in fact have a substantial economic impact.

- This note assumes that the 5 member panel will meet at least once for the purpose of receiving oral and written public comments.
- A minimum of 2 members will likely attend in person up to the full 5 members.

§ It is possible some members may attend remotely using teleconference capabilities.

- Panel members will likely convene as a group to discuss what was presented by the public and review agency materials and analysis related to the substantial economic impact determination, as well as work individually to review materials.
- It is unknown how many days the panel will meet to consider the proposed rule.
- Additional cost items the agency must bear include panelists time, travel, video-conferencing, if applicable, record keeping costs, including a transcript, report production and disbursement, and ALJ review time before and after the panel meets.
- MDE has not hired an economic expert before, so will use an estimate \$250/hour, which is the amount other

agencies, such as MDH, have used for estimating scientific-expert consulting services.

- An ALJ charges \$165 per hour of review time.

For Rules Without Substantial Economic Impact-Administrative Law Judge Review

The agency anticipates 0-3 rulemaking projects each year that may not have a substantial economic impact. The size of the rulemaking project will determine the hours required for ALJ review of the determination of the impact. MDE estimates this to range between 6-24 hours at \$165/hour.

It is assumed that this bill will take effect in FY 2016.

Petitions Against Agency Pronouncements

It is difficult to anticipate whether the agency will have any petitions. Therefore, the agency will estimate having 0-2 petitions. It is unknown whether these petitions will be found in the agency's favor and if so, whether the agency will be able to recoup any of the costs.

Expenditure and/or Revenue Formula

Assuming three rulemaking projects a year with a substantial economic impact:

Travel Costs	\$2,000	
# of People in Peer Review	3	
# of Projects per Year	3	
Total Travel Costs		\$18,000
Transcript Preparation Costs	\$1,000	
# of Transcripts per Year	3	
Total Transcript Preparation Cost		\$3,000
Video Costs	\$1,000	
# of Videos per Year	3	
Total Video Cost		\$3,000
Tota Cost of Peer Review (transfer out to OLA)		\$24,000
ALJ Review Cost per Hour	\$165	
# of Hours	24	
# of Projects per Year	3	
Total ALJ Review Costs		\$11,880
Contract for Economic		

Travel Costs	\$2,000	
Analysis Cost per Hour	\$250	
# of Hours	40	
# of Projects per Year	3	
Total ALJ Review Costs		\$30,000
Total Cost of Economic Analysis		\$41,880
Total Cost Per Year		\$65,880

Long-Term Fiscal Considerations

This is ongoing.

Local Fiscal Impact

None

References/Sources

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HF1261 - 1E - "State Agency Rulemaking"

Chief Author: **Ron Kresha**
 Committee: **State Government Finance**
 Date Completed: **04/08/2015**
 Agency: **Labor And Industry Dept**

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)	Biennium			Biennium		
	Dollars in Thousands	FY2015	FY2016	FY2017	FY2018	FY2019
Construction Code	-	110	110	110	110	110
Workers Compensation	-	50	50	50	50	50
Total	-	160	160	160	160	160
Biennial Total			320			320

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2015	FY2016	FY2017	FY2018	FY2019
Construction Code	-	.88	.88	.88	.88
Workers Compensation	-	.12	.12	.12	.12
Total	-	1	1	1	1

Executive Budget Officer's Comment

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

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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		Biennium			Biennium	
Dollars in Thousands		FY2015	FY2016	FY2017	FY2018	FY2019
Construction Code		-	110	110	110	110
Workers Compensation		-	50	50	50	50
	Total	-	160	160	160	160
	Biennial Total			320		320
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Construction Code						
	Expenditures	-	62	62	62	62
	Transfers Out	-	48	48	48	48
Workers Compensation						
	Expenditures	-	38	38	38	38
	Transfers Out	-	12	12	12	12
	Total	-	160	160	160	160
	Biennial Total			320		320
2 - Revenues, Transfers In*						
	Construction Code	-	-	-	-	-
	Workers Compensation	-	-	-	-	-
	Total	-	-	-	-	-
	Biennial Total			-		-

Bill Description

This bill does the following 7 things:

1. Creates a new definition of when a rule has a substantial economic impact, and requires agencies to determine whether each proposed rule would have a substantial economic impact. If the agency determines the proposed rule does not have a substantial economic impact, this determination must be reviewed by the administrative law judge.
2. If the agency determines the proposed rule does have a substantial economic impact, or the judge determines that the proposed rule may have a substantial economic impact, then the agency must request the Legislative Auditor to convene a 5 member review advisory panel to determine the economic impact. The panel conducts an economic impact analysis of the proposed rule and prepares a report. The agency must pay the costs of a peer review advisory panel.
3. A rule that has substantial economic impact cannot take effect until approved by a law.
4. Requires each agency to provide its rulemaking docket annually to the Legislative Coordinating Committee and post a link to its rulemaking docket on the agency web site.
5. Requires each agency to include some additional information in the Statement of Need and Reasonableness for each rule.
6. Requires each agency to provide certain rulemaking notices to various legislative policy and budget committees and to the Legislative Coordinating Commission.
7. Allows a person to challenge an agency policy, guideline, etc. (as well as a rule) by filing a petition with the Court of Appeals. Requires the agency to cease enforcement of the policy, guideline, etc. (but not a rule) while the petition is pending.

Assumptions

There is little to no direct fiscal impact for items 4, 6 and 7.

The remaining items would require expenditures in connection with determining whether the agencies proposed rules would have a substantial economic impact. DLI makes the following assumptions:

* DLI will engage in eight (8) agency rulemaking proceedings per year: three in the area of Workers Compensation, three in the area of Construction Codes and Licensing, and two in the areas of the independent authoritative boards: Plumbing Board, Board of Electricity, and Board of High Pressure Piping.

* DLI would need to perform more extensive research to obtain the additional economic, scientific and technical information needed for the Statement of Need and Reasonableness.

* DLI is assuming that five of the eight agency rulemakings would meet the substantial economic impact test and it would be necessary to request that the Legislative Auditor convene a five-person peer review panel on five rules.

Expenditure and/or Revenue Formula

DLI Total Expenditures = \$159,840

Agency Costs:

Added costs to the agency rulemaking process: For each rule, an additional 260 hours of DLI staff time (research, program, legal and clerical staff) at an average of \$48 per hour. 260 hours X \$48 per hour x 8 rulemakings: \$99,840.

Transfer out to OLA:

Cost of 5-member peer review advisory panel for each rulemaking to conduct economic impact analysis, hold any necessary hearings and write a report: 50 hours for each member of the 5 member panel, at a cost of \$48 per hour. 50 hours x 5 panelists x \$48 per hour x 5 rulemakings: \$60,000. 59

Long-Term Fiscal Considerations

Local Fiscal Impact

References/Sources

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HF1261 - 1E - "State Agency Rulemaking"

Chief Author: **Ron Kresha**
 Committee: **State Government Finance**
 Date Completed: **04/08/2015**
 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)	Biennium			Biennium		
	Dollars in Thousands	FY2015	FY2016	FY2017	FY2018	FY2019
General Fund	-	-	-	-	-	-
Total	-	-	-	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2015	FY2016	FY2017	FY2018	FY2019
General Fund	-	-	-	-	-
Total	-	-	-	-	-

Executive Budget Officer's Comment

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

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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		Biennium			Biennium	
Dollars in Thousands		FY2015	FY2016	FY2017	FY2018	FY2019
General Fund		-	-	-	-	-
Total		-	-	-	-	-
Biennial Total				-		-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund		-	58	58	58	58
Total		-	58	58	58	58
Biennial Total				116		116
2 - Revenues, Transfers In*						
General Fund		-	58	58	58	58
Total		-	58	58	58	58
Biennial Total				116		116

Bill Description

HF 1261-1E modifies statutory requirements regarding state agency rulemaking in various respects, two of which have clear fiscal impacts: Section 5s substantial economic impact review process; and Section 9s expanded bases for challenges of agency rule determinations. As only the Section 5 fiscal impact relates to the Office of Administrative Hearings (OAH), only that section of the bill is addressed in this OAH fiscal note.

Section 5: Substantial Economic Impact Review

As currently written, the bill will require every rulemaking proceeding to undergo review, either by an administrative law judge or by a five-person peer review panel operated by the Office of the Legislative Auditor (OLA), to determine whether the rule may have a substantial economic impact in the state. Substantial economic impact is defined as having (1) **\$5,000,000 or more of any adverse effect** or impact on the states private-sector economy in a year; (2) a **significant increase** in costs or prices for consumers, individual industries, state or local government, individuals or enterprises **within certain geographic regions** of Minnesota; (3) **significant adverse impacts** on private sector **competitiveness, employment, investment, productivity, or innovation** in Minnesota; or (4) first-year compliance costs of over \$25,000 for any one business with less than 50 full-time employees or certain cities with less than 10 full-time employees. [Note: under current statutory rules of interpretation, the terms highlighted in bold are relatively ambiguous and susceptible to many legal interpretations. As such, this statutory language is likely to result in litigation which will result in costs to state government agencies and other entities. These litigation costs are not captured by this or the consolidated fiscal note.]

As noted in Section 5 of the bill, every agency must determine whether any proposed rulemaking proceeding would likely have a substantial economic impact. If the agency determines the rule will have a substantial economic impact, the rule must be referred to the OLA, which must then convene a five-member peer review panel to confirm this determination. If the agency determines that the rule will not have a substantial economic impact, this determination must be reviewed by an administrative law judge, who must then refer to the OLA every rule that may have a substantial economic impact [see language at line 4.25] for consideration by the five-person peer review panel.

Assumptions

- Minn. Stat. § 14.53 requires OAH to bill requesting agencies for the costs of services provided by administrative law judges in rulemaking and other matters. At the beginning of the current fiscal year, OAHs hourly billable rate, as approved by MMB, was \$165 per hour. Though MMB approved a reduced hourly rate for the last half of the fiscal

year, OAH anticipates that its billable rate in FY16 will be in the range of its originally approved FY15 rate: \$165/hour.

- The consolidated fiscal note contains various agencies assumptions related to additional costs the agencies will bear related to administrative law judge reviews for purpose of determining substantial economic impact. OAH considers these assumptions to be fair and reasonable estimates of fiscal impact.
-
- Approximately 62 rulemaking proceedings were filed with the OAH in the last fiscal year. The agencies that submitted fiscal notes on HF 1261-1E, identified in the Expenditure and /or Revenue formula section below, account for only half of those filings. Assuming that FY 14 was an average year for rulemaking filings, there remain approximately 30 rulemaking proceedings that can be expected to be commenced and filed each year which are not specifically addressed in the fiscal costs noted by the responding agencies. OAH assumes that each of these remaining 30 rulemaking proceedings will require approximately six hours of ALJ time to perform the substantial economic impact analysis. At a typically approved OAH billable rate of \$165/hour, each review would generate costs of approximately \$1,000. Pursuant to Minn. Stat. § 14.53, the costs for each of these reviews will be billed back to the requesting agency, and so constitute a net cost of \$0 to the OAH.

Expenditure and/or Revenue Formula

The consolidated fiscal note indicates the following specified ALJ costs for the identified agencies, the total of which is reflected in the expenditure/transfer in formulas utilized in this fiscal note.

State Agency	Identified OAH-related costs
Education Department	\$11,800
Health Department	\$11,500
Health Licensing Boards	\$19,785
Human Services Department	\$8,000
Pollution Control Agency	\$7,000

Long-Term Fiscal Considerations

The costs associated with the substantial economic review process are ongoing.

Local Fiscal Impact

N/A

References/Sources

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