

HOUSE RESEARCH

Bill Summary

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Overview

This bill proposes a number of changes to the administrative rulemaking process in Minnesota Statutes, chapter 14.

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- 1** **Objections to rules.** Changes a statutory cross-reference, due to changes proposed to section 14.26 later in this bill.
- 2** **Review and repeal of rules.** Under current law, each state agency must annually submit a list of its rules that are obsolete, unnecessary, or duplicative. This section provides that this must be done every four years, instead of annually.
- 3** **Veto of adopted rules.** In the law giving the Governor authority to veto a rule before the rule takes effect, strikes a reference to rules adopted under section 14.3895 (process for repealing obsolete rules). The reference is stricken because section 14.3895 is proposed for repeal later in this bill.
- 4** **Electronic notices permitted.** Authorizes an agency to send required rulemaking notices and documents (or a link to the notices or documents) electronically. Authorizes an agency to file rule-related documents with the Office of Administrative Hearings electronically, in a manner approved by the office.
- 5** **Incorporations by reference.** Current law allows agencies to incorporate by reference into rules certain text that the Revisor determines is conveniently available to the public. This section provides that “conveniently available to the public” includes material available on the Internet without charge.

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- 6 Approval of rule and form.** Requires that when an agency notifies the chief administrative law judge that the agency has adopted a rule, the chief administrative law judge must file four copies of the rule with the Secretary of State, who must forward one copy of each rule filed to the agency, the revisor of statutes, and the governor.
- 7 Preliminary notice.** Current law requires that at least 60 days before publishing notice of intent to adopt a rule an agency must solicit public comments, by publishing notice in the State Register, on the subject matter of a possible rulemaking proposal under active consideration. This section provides that an agency may, instead of must, solicit these comments, and adds a requirement that when this notice is given it must be given on the agency website. This section also strikes the current requirement that notice also must be published within 60 days of the effective date of a law requiring rules to be adopted, amended, or repealed.
- 8 Rule notification.** Requires each agency to maintain a list of people who have registered with the agency to receive notice of rule proceedings. Additionally, requires each agency to make reasonable efforts to notify persons or classes of persons who may be significantly affected by a proposed rule by giving notice in newsletters, newspapers, or other publications, or by other means. Requires that for each rulemaking an agency must describe its efforts to provide additional notice. This new language replaces similar language that currently is codified in section 14.14, subdivision 1a.
- 9 Notice to legislature.** Strikes the requirements that:
- each agency submit its rulemaking docket and the official rulemaking record for any rule adopted during the prior calendar year to chairs and ranking minority members of relevant legislative committees.
 - an agency send a copy of the statement of need and reasonableness to committee chairs, ranking minority members, and the Legislative Coordinating Commission.
 - if notice of rulemaking is within two years of the effective date of the law granting authority to adopt the rules, the agency must make reasonable efforts to send notice and the statement of need and reasonableness to the chief authors of the bill granting the rulemaking authority.
- 10 Time limit on authority to adopt rules.** Under current law, if an agency does not publish a notice of intent to adopt rules within 18 months of the effective date of a law authorizing or requiring rules, the authority for the rules expires. This section instead provides that if an agency fails to publish the notice within 18 months the agency must report reasons for that failure to the Legislative Coordinating Commission, appropriate legislative committees, and the governor.
- 11 Committee vote.** Strikes reference to a process for repealing obsolete rules, because that process is proposed for repeal later in this bill.
- 12 Statement of Need and Reasonableness (SONAR).** Rewrites the law governing the

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contents of the Statement of Need and Reasonableness (SONAR) that agencies prepare when giving notice of proposed rules. Under the bill, the SONAR would contain:

- a citation to the most specific statutory authority for the rule;
- a general description of the need for and reasonableness of the proposed rule; and
- to the extent that agency, through reasonable effort can ascertain this information: (1) a description of categories of people who probably will be affected by the rule; and (2) the probable costs of the rule to affected persons and the agency, and the probable benefits of adopting the rule.

This section strikes from current law some more detailed requirements for information and analysis to be provided in the SONAR. The repealer at the end of the bill repeals the requirement for a SONAR when a rule is adopted without a public hearing.

- 13 Notice of rule hearing.** Strikes language about maintaining lists of persons who register to receive notice of rule proceedings, because this language is contained in proposed new section 14.105 earlier in this bill. Modifies required content of notice of rule hearing.
- 14 Hearing procedure.** Requires that an agency submit into the rulemaking record at a public hearing comments and responses to comments.
- 15 Time of preparation.** Requires that written material submitted after a rulemaking hearing must be in response to issues raised at the hearing or in material admitted into evidence at the hearing. Requires that at the hearing or in written materials submitted to the administrative law judge during the post-hearing comments period, the agency must respond to issues raised at the hearing and to written comments admitted into evidence at the hearing that are not in support of the proposed rule. Strikes requirement for a five-day rebuttal period to respond to new information submitted during the post-hearing comment period.
- 16 Review of modifications; notice.** Strikes a requirement that an agency give notice to all persons who requested to be informed that a rule has been adopted and filed with the Secretary of State.
- 17 Filing.** Requires the chief administrative law judge, rather than the agency, to file copies of adopted rules with the Secretary of State.
- 18 Notice of proposed adoption of rules.** Amends the law governing notice of proposed rule when an agency proposes to adopt a rule without a public hearing. Requires the notice to state that an agency must hold a public hearing if 100 or more people (instead of 25 people in current law) submit a written request for a hearing, and to state that a request for a public hearing must state the reasons for the objection to each portion of a proposed rule.
- 19 Public hearing.** Under current law, an agency must hold a public hearing if 25 or more people submit a written request for a hearing. Under this section, this threshold is increased from 25 to 100 people. This section also provides that a request for a public hearing must state the reasons for the objection to each portion of a proposed rule.

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20 Adoption of proposed rule; submission to administrative law judge. For cases in which no rulemaking hearing is required, strikes requirements that: the agency submit the SONAR to the administrative law judge (ALJ); the agency notify people who request to be informed that required materials have been submitted to the administrative law judge; and that the agency provide a free copy of a modified rule. Adds a new requirement that the agency submit to the ALJ a response to comments that were not in support of the proposed rule, and that this response demonstrate how the relevant portion of the proposed rule are needed and reasonable.

Under current law, the ALJ report determines, among other things, whether the record demonstrates a rational basis for the need for and reasonableness of the proposed rule. This section provides that if an agency received no comments on a specific provisions of a proposed rule during the comment period, other than supporting comments, those provisions are deemed needed and reasonable.

21 Official rulemaking record. Designates parts of the rulemaking record that must be permanently maintained by the Revisor of Statutes, and parts that must be retained for at least seven years by the agency.

22 Good cause exemption requirements. Current law contains a “good cause” exemption that agencies can use to adopt rules in specified circumstances without following the usual rulemaking requirements. This section strikes from current law a provision that a rule adopted to comply with a court order or a requirement in federal law in a manner that does not allow for compliance with usual rulemaking procedures is effective for only two years.

23 Application; expedited rulemaking process. Current law contains an expedited rulemaking process that can be used only when authorized or required by law. This section adds several circumstances under which an agency can use the expedited process. These new circumstances include: incorporation by reference of a code of standard referenced in law; adopting or modifying a rule to conform to a change in federal law or state law; adopting or incorporating by reference a uniform or model law that has been approved by an organization that is composed primarily of government entities; repealing rules that are obsolete, unnecessary, or duplicative of other state or federal statutes or rules.

24 Repealer. Repeals:

- 14.04: Requirement that Commissioner of Administration publish a guidebook of state agencies at least every four years
- 14.101, subdivisions 3 and 4: Rule cannot be invalidated due to insufficiency or inaccuracy of notice if agency made a good faith effort to comply. ALJ has authority to reduce time period for notice (These subdivisions are repealed because an earlier section of this bill makes this preliminary notice discretionary).
- 14.14, subdivision 1b: When public hearing is conducted on a rule that affects farming operations, at least one hearing must be conducted in an agricultural area of the state

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- 14.23: Requirement for SONAR for rules adopted without a public hearing
- 14.3895: Process for repealing obsolete rules

25 Effective date; application.