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Subject: Transferring chapter 13 responsibilities from the Commissioner of Administration to the Office of Administrative Hearings

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Overview

This bill transfers the responsibilities for the administration of the Minnesota Data Practices Act (DPA) from the commissioner of administration to the chief administrative law judge within the Office of Administrative Hearings (OAH). The bill eliminates the advisory opinion process overseen by the commissioner under section 13.072 and strengthens the administrative remedy overseen by the OAH under section 13.085.

Section

- 1** **Definitions.** Amends the definitions section of the DPA to add a definition for the chief administrative law judge.
- 2** **Civil remedy: action to compel compliance.** Section 17 of this bill repeals the advisory opinion process under section 13.072. However, the bill allows government entities to rely on previously-issued advisory opinions. Accordingly, this section amends the civil remedies portion of the DPA so that, in a civil action to compel a government entity's compliance with the DPA, a court considering whether to assess the statutory civil penalty of up to \$1,000 may take into account whether the government entity acted in conformity with a previously-issued advisory opinion or a precedential OAH decision.
- 3** **Administrative remedy: complaints.** This section eliminates the \$1,000 filing fee for an administrative complaint.
- 4** **Administrative remedy: disposition.** This section strikes language dealing with the publication and authority of OAH decisions. These topics are addressed in a new subdivision, added in section 6 of the bill. This section also clarifies that the administrative

Section

remedy available under this section is a “contested case” under the Administrative Procedure Act.

- 5** **Administrative remedy: costs; attorney fees.** Makes conforming changes related to the repeal of the advisory opinion section. Awards a prevailing complainant attorney fees (not to exceed \$5,000) if the respondent government entity violated a previously-issued advisory decision or a precedential OAH decision directed to that government entity. Also makes conforming changes related to the eliminating of the filing fee for an administrative complaint.
- 6** **Administrative remedy: publication and authority of decisions.**
- (a) Requires the chief administrative law judge to make OAH administrative decisions available on the office’s website.
 - (b) Provides that an administrative decision under this section may have a precedential effect on future OAH cases.
 - (c) Requires the chief administrative law judge to preserve and publish previously-issued advisory opinions by the commissioner.
 - (d) Extends safe-harbor provisions from the advisory-opinion section (13.072, subd. 2) to this administrative remedy section, thereby shielding a government entity from damages if it acts in conformity with a previously-issued advisory opinion or a prior OAH decision.
- 7** **Municipal utility customer data.** Makes conforming changes related to the repeal of the advisory-opinion section.
- 8** **Open meeting law: civil fines; forfeiture of office; other remedies.** Makes conforming changes related to the repeal of the advisory-opinion section. Also, allows a prevailing plaintiff to recover attorney fees if the defendant public body entity violated a previously-issued advisory decision or a precedential OAH decision.
- 9** **Office of Administrative Hearings: costs reimbursed.** Provides that the commissioner of management and budget shall reimburse OAH for costs up to \$547,000 incurred in association with the office’s responsibilities under the DPA and the Open Meeting Law.
- 10** **Office of Administrative Hearings: account created.** Conforming change allowing funds to be transferred to OAH per section 9 of the bill.
- 11 - 12** **Office of Administrative Hearings: FY2019 appropriation amended.** Eliminates the \$22,000 appropriated to the OAH relating to probable cause review of DPA complaints.
- 13 - 14** **Commissioner of administration: FY2019 appropriation amended.** Reduces the appropriation to the commissioner of administration by \$525,000 to reflect the transfer of DPA duties to OAH.
- 15** **Transfer of duties.** Transfers DPA and Open Meeting Law duties from the commissioner of administration to the OAH.
- 16** **Revisor’s instruction.** Instructs the revisor to replace “commissioner” with “chief administrative law judge” to conform to the transfer of duties in section 15 of the bill.

Section

17 **Repealer.** Repeals the advisory opinion section at 13.072. Repeals a special account for the OAH related to filing fees and bonds under the administrative remedy section of the DPA.