

April 26, 2018

The Honorable Jim Knoblach
Chair, House Ways and Means Committee
Minnesota House of Representatives
453 State Office Building
St. Paul, MN 55155

The Honorable Lyndon Carlson
DFL Lead, House Ways and Means Committee
Minnesota House of Representatives
283 State Office Building
St. Paul, MN 55155

Dear Members of the House Ways and Means Committee:

As the commissioners of agencies whose core work involves helping Minnesotans and Minnesota businesses understand the laws passed by the Legislature and how those laws will be implemented, we write in opposition to new administrative rulemaking provisions in sections 2, 3, 5 and 7 in Article 3 of House File 4016, of the Omnibus State Government and Finance Bill.

These provisions are from HF 3445 / SF 3113. This bill seeks to establish a new process, much like rulemaking, for the formation and maintenance of a broadly-defined group of “policies.” We appreciate the changes to language offered since introduction of this bill, especially the removal of letters and contracts from the definition of “policy.” However, we remain opposed to these provisions because they create new costs that are not funded, will serve to slow down agency work, create redundancy, and have serious unintended consequences. Our concerns:

- **The definition of policy is overly broad.** By defining policy to include “written policy, guideline, bulletin, manual, or similar document providing an interpretation, clarification or explanation of a statute or rule to provide guidance for agency regulatory functions including but not limited to permits or enforcement actions,” we are concerned this bill casts a wider net than my be expected.
- **The bill sets an unfunded mandate for five-year public notice/comment/review of all ‘policy.’** The bill voids any ‘policy’ that does not go through a review every 5 years. This review must include a public notice and public comment period – both of which will incur administrative costs. The immediacy of the effective date on existing policies would create a significant administrative burden.
- **The bill creates redundancy by requiring the re-vetting of federally approved language.** The language creates redundancy in cases where agencies adopt federal policy in whole, because those policies already have been reviewed and vetted at the federal level.
- **The bill would prevent agencies from providing compliance guidance to regulated industries.** Agencies provide policy information to communicate with regulated entities, to send notification regarding new state and federal laws and regulations, and articulate procedures for complying with statutory requirements. The bill’s restrictions on providing this guidance may create delays and inefficiencies and cause market disruptions harming industry and consumers.
- **This bill expands the authority of legislative committees into the powers of the executive branch by requiring a delay of policy implementation during legislation session.** An example of unintended consequences is the impact of this provision on Minnesota college students who need financial aid. The bill would hamper the Office of Higher Education’s ability to make timely

Members of the House Government Operations and Elections Policy Committee

April 25, 2018

Page 2

updates to policies and procedures by which they administer financial aid programs. As a result, this bill could impact post-secondary students' financial ability to attend and complete college.

- **Not all agencies can maintain a public policy docket without necessary funding.** Requiring the collection and posting of every agency policy, guideline, bulletin, manual or similar document providing a clarification or explanation of a statute or rule to provide guidance for permits or enforcement actions can present staffing issues. Many agencies have full-time staff already devoted to rulemaking. This bill necessitates similar staffing for policies.
- **Removing the governor's waiver authority removes the only available recourse for an agency that believes an administrative law judge has misconstrued the law.** Even if the language were to provide authority to appeal an ALJ's decision to the Minnesota Court of Appeals, an appeal process will take more time and money than the current waiver option.

For these reasons we do not support these provisions, especially since bill advocates have not clearly articulated the specific problem(s) they seek to address. This bill contains several new administrative 'hoops' without providing commensurate value.

Sincerely,



Thomas Landwehr, Commissioner
MN Department of Natural Resources



John Linc Stine, Commissioner
MN Pollution Control Agency



Charles Zelle, Commissioner
MN Department of Transportation



Matt Massman, Commissioner
MN Department of Administration



Larry Pogemiller, Commissioner
MN Office of Higher Education



Ramona Dohman, Commissioner
MN Department of Public Safety



Jessica Looman
MN Department of Commerce