



RUDY PERPICH
GOVERNOR

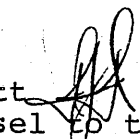
STATE OF MINNESOTA


OFFICE OF THE GOVERNOR

ST. PAUL 55155

November 2, 1978

REPORT

FROM: Thomas J. Triplett 
Legislative Counsel to the Governor

Sandra Gardebring 
Executive Director
Pollution Control Agency

RE: Survey of Agency Opinions on the
Administrative Procedure Act (APA)

Between 1975 and 1977, the Minnesota legislature undertook a major revision of the rule-making procedures of the state's administrative procedure act (APA). The 1975 amendments were the first substantive change in the law in over 20 years. Those amendments redefined "rule," established strict notice requirements so that interested members of the public would be informed of agency rule-making, clarified matters relating to hearing procedures, required rule-making notices to be published in the State Register, and established the Office of Hearing Examiners to provide unbiased administration of hearings.

Although the 1975 amendments imposed substantial safeguards for the public, they also added additional time and cost burdens to state agencies. For example, prior to 1977, the minimum time for promulgating a rule was 7 months. In 1977, in response to the requests of various state agency heads, the legislature reduced some of the cost and time burdens. After the 1977 amendments, the minimum time period was reduced to approximately 5 or 5½ months. In addition, other amendments reduced certain publishing requirements and thereby relieved the agencies of burdensome costs.

Despite the 1977 improvements, many state agencies expressed concern to the Governor that the APA continues to impose cost and time burdens which are not justified in protection to the public. As a result of these concerns, the Governor

designated the authors of this report to compile the opinions of interested state agencies. The purpose of this report is to summarize the responses of the agencies. A copy of the memo to affected agencies, with the specific questions asked, is included as an attachment to this report. As the memo indicates, we expressly did not seek specific examples of problems. Rather, we were after the agencies' general consensus on the APA and how it was working.

Twenty-nine agencies affected by the APA responded to the survey. In addition, two agencies were sent surveys who were excluded from APA coverage. A listing of the responding agencies is attached to this report. Throughout the remainder of this report the agencies are identified by the abbreviations appearing after their names on the agency listing.

Cost Factor

Fourteen agencies replied that the high cost of APA conformance is not balanced by increased protection to the public. (Correc., Econ.Sec., EPB, Health, HFA, DNR, Nursing, Pers., PERB, Pub.Saf., Pub.Serv., DPW, SPA, Vets).

Five agencies responded that the APA does in fact impose additional cost burdens but that those burdens are not unreasonable in light of the increased protection afforded the public. (Admin., Ag., Educ., L&I, Sec).

Two agencies were unsure whether the additional cost burdens provided further protection to the public (DOT), and the remaining agencies did not comment directly on the question

Several agencies cited specific problems resulting in higher costs. This listing of special problems includes the following:

1. Anticipated APA costs in a piece of legislation should be included in the fiscal note for that legislation. (Correc.)
2. Conformance with the APA requires the preparation of too many documents. (Educ.)
3. The simultaneous requirement of notice through the State Register and the Secretary of State's list is duplicative and unnecessary. (Health, DPW, Nursing)

4. As a general matter, the State Register publication is unreasonably expensive. (Health, DNR, DPW, Vets)
5. The Minnesota Code of Administrative Rules (MCAR) is not effective, given its high cost. (Health, DPW, HFA, Pers.)
6. A method should be developed so that only the affected portion of a rule need be published and not the entire rule. (Health, HFA, Pers., DPW)
7. There is no need to have the Office of Hearing Examiners involved in hearings on rule-making. (HFA, DNR) Note: the third issue discussed in this report concentrates exclusively on the Office of Hearing Examiners and the Attorney General.
8. The Office of Hearing Examiners need not be involved in contested cases. (PERB)
9. Small agencies are especially vulnerable to the high cost impact of the APA. (Vets)

Time Factor

Twelve agencies responded that APA procedures are unreasonably time-consuming without substantial benefit to the public. (Admin., Econ.Sec., EPB, Health, HFA, DNR, Pers., PERB, Pub. Saf., Pub.Serv., SPA, Vets)

Three agencies responded that the APA imposes difficult time burdens, but they noted that these burdens did result in better protection for the public. (Ag., L&I, Sec.)

One agency replied that the APA does not impose substantial time burdens. (Educ.)

The remaining agencies had no specific comment on this question.

Several agencies cited particular problems resulting in time delays. These include the following:

1. Time requirements needlessly restrict the ability of agencies to implement new programs (Econ.Sec.)

2. There is no need for various of the waiting and "notice and comment" periods (HFA, Pub.Saf).
3. State Register publication requirements, in particular, are needlessly long (HFA, DNR, Pers., Pub.Saf.).

Hearing Examiners/Attorney General

Twenty-five agencies responded with concerns over the general issue of attorneys' review in the rule-making process. Of the respondents, ten agencies specifically cited conflict and duplication between the Attorney General and the Office of Hearing Examiners. Most of this conflict and duplication arose in the context of rule review for "substantial change." (Admin., Ag., Arch., Correc., EPB, Health, Pub.Saf., DPW, Sec., Vets)

Nine agencies responded that they were generally satisfied with the performance of the Office of Hearing Examiners, but certain problems needed correction. (Ag., Banks, Econ.Sec., Educ., L&I, Nursing, Pers., Pub.Ser.)

Three agencies questioned whether the Office of Hearing Examiners makes a positive contribution to their administrative activities. (HFA, DNR, SPA)

Other problems and concerns cited by the agencies in respect to the Office of Hearing Examiners include the following:

1. Actions performed by the office take unreasonably long to complete. (Econ.Sec., Energy, L&I, Nursing, Pers.)
2. Specialties should be encouraged within the office and/or improvements made in general staff competence. (Correc., Nursing, Rev, Sec., SPA, DOT)
3. The issue of "substantial change" needs redefinition or clarification. (Energy, Health, HFA, Pub.Saf.)
4. Procedures required by the Hearing Examiner are too formal, too legalistic, or are at needless variance with procedures required by others in the administrative process. (Arch., DNR, DOT, Vets)
5. Hearing examiners often lack objectivity or try, inappropriately to fulfill a role as "arbiter". (Health, L&I, DNR)
6. The Office of Hearing Examiners has too much discretion in its activities. (Pub.Serv.)

Comments were also submitted by the agencies in respect to the general role of attorneys in the process. These comments include the following:

1. The Attorney General should have final responsibility for determining the issue of substantial change. (Admin., Health)
2. Too many attorneys, with too many different procedures, are involved in the entire process. (Arch., Correc., Vets)

General Comments

Nineteen agencies submitted additional comments relating to the Administrative Procedure Act. Topics covered by these agencies include the following:

1. The APA has been amended by the legislature too often in recent years. (Admin)
2. Additional training is necessary for all persons involved in the rule-making and contested case procedures. (Correc., Rev.)
3. Special provisions should be made in the APA where federal law requires differing procedures for the adoption of a rule. (Econ.Sec.)
4. The legislature should review whether the State Register is the best means of notice for rule-making or whether other publication methods might be more useful. (Cosmetology, Econ.Sec., DNR)
5. Testimony gained in APA hearings should not be permitted to be used in subsequent criminal hearings (in order to encourage testimony at license revocation proceedings). (Health)
6. Rules should be effective upon publication. (Econ.Sec.)
7. Agencies should not be restricted from contacting an individual person outside the agency in respect to a rule-making proceeding. (Health, HFA)

8. The legislature should adopt a special procedure for adopting rules or adjudicating contested cases when there is in fact no controversy. (Pers., DOT, Nursing, Rev.)
9. The legislature should make it easier to adopt, renew, or amend temporary rules. (Pers., DPW, DOT)
10. Occupational licensing boards should be given the authority to assess fines for license violations. (Barbers)
11. The Office of Hearing Examiners should be funded through direct appropriations rather than charges to individual agencies. (Pub.Saf.)
12. Matters of lesser consequence should be permitted to be adjudicated in a less formal "small claims court" procedure. (Pub.Serv.)
13. The scope of discovery in contested case proceedings needs to be re-examined. (Sec.)
14. Certain functions should be exempt from the APA. (All PERB hearings and all SPA environmental impact statements were suggested.)

* * * * *

The authors of this report wish to extend their appreciation to the agency personnel who took the time to respond to this questionnaire. It is our hope that the constructive suggestions contained in these responses will be incorporated into legislation for the 1979 session. We wish to express particular appreciation to the following agencies who submitted detailed and innovative responses to the questionnaire: the departments of Economic Security, Health, Labor and Industry, Natural Resources, Personnel, Public Service, and Public Welfare.

TJT:SSG:bwm

Agencies Responding to APA Questionnaire

(The abbreviations after each agency are those used in the body of the report.)

Administration	(Admin)
Agriculture	(Ag)
Architects, Engineers, Land Surveyors and Landscape Architects Bd.	(Arch)
Banks	(Banks)
Barbers Board	(Barbers)
Cosmetology Board	(Cosmetology)
Corrections	(Correc)
Economic Development	(Econ Dev)
Economic Security	(Econ Sec)
Education	(Educ)
Energy	(Energy)
Ethical Practices Board	(EPB)
Finance	(Fin)
Health	(Health)
Housing Finance Agency	(HFA)
Insurance	(Insur)
Labor and Industry	(L&I)
Natural Resources	(DNR)
Nursing Board	(Nursing)
Personnel	(Pers)
Public Employees Relations Board	(PERB)
Public Safety	(Pub Saf)
Public Service	(Pub Serv)
Public Welfare	(DPW)
Revenue	(Rev)
Securities	(Sec)
State Planning Agency	(SPA)
Transportation	(DOT)
Veterans Affairs	(Vets)

The Judicial Standards Board and the Department of Military Affairs responded to the questionnaire by indicating they are expressly excluded from APA coverage.



DEPARTMENT _____ EXECUTIVE _____

Office Memorandum

TO : All State Agency Heads

DATE: 9/18/78

FROM : Thomas J. Triplett
Legislative Counsel to the Governor

PHONE: _____

Sandra Gardebring
Executive Director, Pollution Control Agency

SUBJECT: Administrative Procedure Act

Two months ago Governor Perpich initiated an inter-agency study of the impact of the Administrative Procedure Act (APA) on state agency operations. As part of that study, we are seeking your thoughts on ways in which the APA can be improved. We specifically invite you to advise us on the following:

1. Additional costs and time burdens placed on your agency by APA procedures which, in your opinion, do not result in better service or protection to the public.
2. Your evaluation of the role performed by the Office of Hearing Examiners in your agency's administrative actions.
3. Any suggestions you may have for improving the language or operation of the APA. The Governor prefers that problems with agency procedures be resolved by amendments to the APA rather than by granting statutory exemptions or waivers from APA procedures to individual agencies. Therefore, we are especially interested in your suggestions which will have applicability to other agencies as well as your own.

We do not need lengthy responses to this memo, nor are individual examples of problems necessary. Please try to have these responses returned to Tom Triplett within one week after your receipt of this memo.

Thank you very much for your assistance.

TJT:bwm

cc: Governor Perpich
Terry Montgomery
APA Study Group
Senator BordenSenator Chenoweth
Senator Schaaf
Representative Harry Sieben
Representative Voss



STATE OF MINNESOTA

OFFICE OF THE GOVERNOR

ST. PAUL 55155

JUDY PERPICH
GOVERNOR

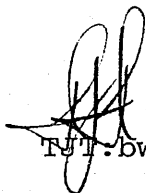
November 2, 1978

MEMORANDUM

FROM: Tom Triplett
Legislative Counsel to the Governor

RE: Attached APA Report

I thought you might be interested in a copy of our report. The individual questionnaire responses are available for your review in the Office of the Governor.


TJT:bwm