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# Legislative Coordinating Commission

## *Subcommittee on Generic Rulemaking*

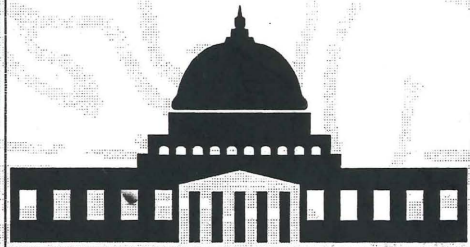
COMMITTEE MEMBERS:

SENATOR DON BETZOLD, CHAIR

SENATOR PAT PARISEAU

REPRESENTATIVE MINDY GREILING

REPRESENTATIVE PEGGY LEPPIK



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**DON BETZOLD**

Senator District 48  
306 State Capitol Building  
75 Constitution Avenue  
St. Paul, MN 55155-1606  
Phone: (612) 296-2556  
Fax: (612) 296-6511  
E-Mail: sen.don.betzold@senate.leg.state.mn.us



# Senate

State of Minnesota

December 2, 1998

Senator Allan Spear, Chair  
Legislative Coordinating Commission  
120 State Capitol  
St. Paul, MN 55155

Dear Senator Spear,

The 1998 Legislature required the Legislative Coordinating Commission or a subcommittee appointed by the LCC to study broad statutory delegations of rulemaking authority to state agencies (Session Laws, 1998, Chapter 303, Section 5). As your designated Subcommittee Chair, I am reporting the results of our study to you.

Enclosed is the report required by the 1998 law. The subcommittee's major recommendation is that all legislative policy committees should review the broad delegations of rulemaking authority that the subcommittee has identified. Our subcommittee believed that policy committees are best able to determine if a grant of authority is too broad or not. I am forwarding copies of this report to the Legislative Reference Library and to the Chair of each policy committee in the Senate and the House of Representatives.

The subcommittee also concluded that it is important for the Legislature to do a better job of overseeing agency rules. The subcommittee believed that the best way to do this is to ensure the existence of a permanent bicameral group to review rules. An additional or alternative method for rules review would be for policy committees to become more active in this responsibility.

Sincerely,



Don Betzold, Chair  
LCC Subcommittee on Generic Rulemaking



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**Report on Broad Statutory Delegations of Rulemaking  
Authority Mandated by Laws 1998, Chapter 303  
November, 1998**

**Establishment of the Subcommittee**

The 1998 Legislature required the Legislative Coordinating Commission to study broad statutory delegations of rulemaking authority to state agencies (Laws 1998, Chapter 303, Section 5). The LCC appointed the following members to a subcommittee to conduct this study:

Senator Don Betzold, Chair  
Senator Pat Pariseau  
Representative Mindy Greiling  
Representative Peggy Leppik

**Subcommittee Process**

The subcommittee met three times, and reviewed the rulemaking delegations specified in the 1998 legislation. The subcommittee identified two types of broad rulemaking authority:

- (1) Delegations of authority that cover an entire department or board;
- (2) Delegations of authority that apply only to specific programs within an agency.

The compilation of rulemaking delegations reviewed by the subcommittee is enclosed. In addition to listing the delegations of authority, the enclosed materials make the following general points:

- In some agencies, there are specific grants of authority, in addition to the broad grants of authority listed.
- The broadness of delegation of authority is affected by factors other

than the language of the delegation. For example, some departments (e.g. Commerce) have far broader jurisdiction than some small boards (e.g. the Barber Board). Also, the degree of detail in the statutes governing an agency affects the breadth of the rulemaking delegation. A delegation that appears very broad on its face may in fact be narrow because the statutes governing the agency may leave little agency discretion.

Senator Betzold sent a letter to each agency that has a statutory delegation of rulemaking authority that covers the entire agency. The letter asked for the agencies' reactions to possible repeal of the agency-wide delegations of authority and for suggestions on statutory language to replace these delegations.

The agency responses to this letter are enclosed, along with a summary of the responses. In general, some agencies expressed concerns with any effort to repeal agency-wide delegations of authority. Other agencies did not feel the repeal of the broad grant of authority would cause a problem if specific language replaced the broad grant.

### **Recommendations**

- The subcommittee encourages policy committees to review the broad delegations of rulemaking authority that the subcommittee has identified.
- The subcommittee believes that the policy committees are best able to determine if a grant of authority is overly broad, or if broad authority is needed to implement the laws consistent with legislative intent.
- The subcommittee believes that, in addition to increased scrutiny of agency rulemaking by policy committees, it is important to have a permanent bicameral group to review rulemaking. The subcommittee believes that the initial scope of statutory rulemaking delegation may not be as important as consistent legislative review of proposed and adopted rules.

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**Senate Counsel & Research**

G-17 STATE CAPITOL  
75 CONSTITUTION AVENUE  
ST. PAUL, MN 55155-1606  
(612) 296-4791  
FAX (612) 296-7747

JO ANNE ZOFF SELLNER  
DIRECTOR

**Senate**  
**State of Minnesota**

COUNSEL  
PETER S. WATTSON  
JOHN C. FULLER  
BONNIE L. BEREZOVSKY  
DANIEL P. MCGOWAN  
KATHLEEN E. PONTIUS  
GEORGE M. MCCORMICK  
KATHERINE T. CAVANOR  
CHRISTOPHER B. STANG  
KENNETH P. BACKHUS  
CAROL E. BAKER  
JOAN E. WHITE  
THOMAS S. BOTTERN  
ANN MARIE BUTLER

TO: ✓ Senator Don Betzold  
Senator Pat Pariseau  
Representative Mindy Greiling  
Representative Peggy Leppik

FROM: George M. McCormick, Senate Counsel (296-6200)

DATE: November 16, 1998

SUBJ: Legislative Oversight of Rules

*gmc*

LEGISLATIVE  
ANALYSTS  
DAVID GIEL  
GREGORY C. KNOPFF  
MICHAEL J. BULL  
RANDAL S. HOVE  
PATRICK J. MCCORMACK  
DANIEL L. MUELLER  
JACK PAULSON  
CHRIS L. TURNER  
AMY M. VENNEWITZ  
MAJA WEIDMANN

At Thursday's subcommittee meeting, all of you expressed strong interest in reviving ongoing, institutionalized legislative oversight of agency rules. In view of that interest, I thought it might be helpful to remind you of what remains in statute regarding rule oversight and what the options might be for achieving your goal.

First, some background: after the Legislative Commission to Review Administrative Rules (LCRAR) was abolished, I invited a group of interested persons to meet during the interim to discuss what, if anything, should be done to assure continuing legislative oversight of rules. The late Professor Melvin Goldberg of William Mitchell College of Law agreed to serve as the group's facilitator, and participants met several times during the summer and autumn at the law school. The group, which included representatives of state agencies, the revisor's office, the attorney general's office, legislative staff, and attorneys from the private sector, agreed that continuing legislative oversight would be desirable. The consensus was that the legislature, having just abolished the LCRAR, was unlikely to recreate it or something very like it. Given that, the Legislative Coordinating Commission (LCC), which had been assigned the LCRAR's duties, should be encouraged to appoint an ongoing joint subcommittee to handle those duties, just as an ongoing subcommittee had been appointed to carry out the duties of the also-abolished Legislative Commission on Employee Relations. To make the subcommittee's task more manageable, some of the strictly clerical duties of the LCRAR, which either were or could be carried out by other entities, should be eliminated. Existing legislative staff could serve such a subcommittee.

Legislation embodying that consensus was enacted during the following session, leaving the LCC—or, expressly, “a legislative commission or subcommittee established by the coordinating commission” (Minn. Stat. § 3.841)—with the power to hold public hearings on complaints about rules (Minn. Stat. § 3.842, subd. 3), to ask the office of administrative hearings to hold a public hearing on rules that are the subject of complaints if those rules had been adopted without a public hearing (*Id.*), to object to rules, putting the burden of proof on the agency to establish the validity of the rules (Minn. Stat. § 3.842, subd. 4a), to petition for a declaratory judgment to establish the validity of a rule to which the commission has objected (*Id.*), and to request agencies to hold public hearings on any commission recommendations (Minn. Stat. § 3.843).

One distinction must be made between the transferred duties of the Commission on Employee Relations and the transferred powers of the LCRAR. The former are mandatory; the LCC or an entity appointed by it *must* perform them. The latter are discretionary; the LCC *may* exercise them: Someone may lodge a complaint about an agency rule, and the LCC or an appointed entity may, but need not, take any action. That, perhaps, is why the LCC appointed an ongoing Joint Subcommittee on Employee Relations but did not appoint a body to carry out the transferred powers of the LCRAR.

With no statutory change needed, then, the LCC could appoint a joint subcommittee to carry out the oversight formerly provided by the LCRAR. Perhaps the LCC would do so if members of the current subcommittee on broad delegations of rulemaking power were to indicate an interest in taking on the ongoing task. Given the tone of our interim meetings, I suspect that many agencies would support the effort. If, however, the LCC remains uninterested or opposed, someone could always introduce a bill to establish a new version of the LCRAR by law. I’m open to any drafting requests.

GMM:la

# Research Department

Thomas Todd, Director

600 State Office Building  
St. Paul, Minnesota 55155-1201  
(651) 296-6753 [FAX 296-9887]



# Minnesota House of Representatives

November 5, 1998

TO: Members, LCC Subcommittee on Rulemaking Delegation  
FROM: Mark Shepard, Legislative Analyst (296-5051)  
RE: Delegation of Rulemaking Authority: Responses from Agencies

Enclosed is material in preparation for the next meeting of the Subcommittee:

**Thursday, November 12  
10:00  
Room 125 Capitol**

\*\*\*\*\*

This memorandum summarizes responses received from agencies to a letter sent by Senator Betzold. I also have enclosed copies of all of the responses that were received by November 5.

**After the last subcommittee meeting Senator Betzold sent a letter to each agency that has a statutory delegation of rulemaking authority that covers the entire agency.**

- Senator Betzold's letter stated the sense of the subcommittee that it may be desirable to replace these agency-wide rulemaking delegations with delegations that would authorize adoption of rules only in specific subject areas within each agency.
- The letter asked for thoughts on how such an approach would affect each agency. The letter also encouraged agencies to suggest statutory language that might be needed to replace a broad delegation of authority with delegations in specific subject areas.

**Many agencies expressed concerns with the general policy of repealing agency-wide delegations of rulemaking authority.**

- Some major departments (e.g. Commerce, DTED) set forth policy arguments for maintaining the current agency-wide delegations.
- Occupational licensing boards tended to point out that they have relatively limited jurisdiction, and that language giving them broad rulemaking authority did not necessarily give them tremendous discretion. The health-related licensing boards discussed the issue together. Their responses make similar points:
  - They urge the subcommittee not to pursue legislation that would unduly restrict boards' rulemaking authority.
  - They state that each board's authority is limited to a narrow area of occupational regulation, and that the board should not have to seek specific statutory authority to amend rules every time there is a change in standards.
  - It appears that most of these boards would prefer to keep general rulemaking authority. However, the boards' responses included proposals for statutory language that would authorize rules only in specific areas
  - They express concern that changes in statutory authority not negate existing rules, and that changes in rulemaking authority not compel agencies to abide by time limits for adopting rules in section 14.125 (This statute provides that if a new grant of rulemaking authority is not used in 18 months it expires).
  - The health boards also asked that they be granted a rulemaking exemption that would allow them to set fees without going through rulemaking.
- A number of agencies made the general point that broad rulemaking authority may be particularly useful to help agencies respond to changes in federal law.



Agency	Text of Rule Delegation	Summary of Response to Letter
<b>Board of Campaign Finance and Public Disclosure</b>	"The board may adopt rules to carry out the purposes of this chapter." 10A.02(13)	No response received as of November 5.
<b>Department of Administration</b>	"Subject to chapter 14, the commissioner may adopt, amend, and rescind rules relating to any purpose, responsibility or authorization in this chapter. Rules must comply with any provisions in this chapter which specify or restrict the adoption of particular rules." 16B.04(1)	<ul style="list-style-type: none"> <li>-Department would continue to work well within framework for delegation being considered by the subcommittee.</li> <li>-Lists specific grants of rulemaking authority in current law, and lists rules that currently rely on the general authority (no specific suggested statutory language for dealing with these).</li> <li>-Suggests adding specific rulemaking authority to various operating statutes, rather than a single table of contents approach (however, indicates that it would be desirable in general laws to indicate the existence of specific grants of authority)</li> </ul>
<b>Department of Commerce</b>	"The commissioner of commerce may adopt, amend, suspend, or repeal rules in accordance with chapter 14, and as otherwise provided by law, whenever necessary or proper in discharging the commissioner's official responsibilities. ... 45.023	<ul style="list-style-type: none"> <li>-Due to a dynamic economy, issues and business practices can change rapidly in areas under the supervision of the department. The commissioner needs tools to act promptly to responding to the change marketplace.</li> <li>-General rulemaking authority is a significant tool for responding to market changes. The department has used its general authority responsibly and on a limited basis.</li> <li>-The department requests that the LCC subcommittee recommend no changes to the department's general grant of rulemaking authority in section 45.023.</li> </ul>
<b>Board of Water and Soil Resources</b>	"The board may hold public hearings and adopt rules necessary to execute its duties." 103B.101(7)	No response received as of November 5.

Agency	Text of Rule Delegation	Summary of Response to Letter
<b>Harmful Substance Compensation Board</b>	“...the board shall: (1) adopt rules...including rules governing practice and procedure before the board, the form and procedure for applications for compensation, and procedures for claims investigations...” 115B.28(1)	No response received as of November 5.
<b>Department of Trade and Economic Development</b>	“The commissioner may adopt rules pursuant to chapter 14 as necessary to carry out the commissioner’s duties and responsibilities pursuant to this chapter.” 116J.035(2)	DTED has many program specific grants  There are advantages to maintaining broad grants of authority. This is especially true when administering federal programs. In general board authority gives DTED ability to respond to changing and emerging conditions quickly. If DTED’s grant and loan programs were subject to a strict delegation of rulemaking, the ability to make the best judgments for disbursing funds could be weakened
<b>Board of Medical Practice</b>	“The board shall have authority to adopt rules as may be found necessary to carry out the purposes of this chapter.” 147.01(3)	–Contains list of subject-specific rulemaking delegation –States that deletion of the current rulemaking authority might be unnecessary and might hinder the Board’s ability to serve the needs of its clientele by restricting the ability to adapt to changing standards of professional practice.
<b>Board of Chiropractic Examiners</b>	“The board shall...promulgate rules to govern its actions.” 148.05	–See general comments about health board responses in cover memo.

Agency	Text of Rule Delegation	Summary of Response to Letter
<b>Board of Chiropractic Examiners</b>	“The board of chiropractic examiners shall promulgate rules necessary to administer sections 148.01 to 148.105 to protect the health, safety, and welfare of the public, including rules governing the practice of chiropractic...” 148.08(3)	See comments on previous statute, immediately above
<b>Board of Nursing</b>	“The board is authorized to adopt and, from time to time, revise rules not inconsistent with the law, as may be necessary to enable it to carry into effect the provisions of sections 148.171 to 148.285.” 148.191(2)	–See general comments about health board responses in cover memo.
<b>Board of Optometry</b>	“The state board of optometry shall have the power to make any rules...for the effective enforcement of sections 148.52 to 148.62 or for the full and efficient performance of its duties thereunder.” 148.53	May be covered by general health board response. No specific response received by November 5.
<b>Board of Social Work</b>	“The board of social work shall: (a) Adopt and enforce rules for licensure of social workers and for regulation of their professional conduct. The rules must be designed to protect the public.” (b) Adopt rules establishing standards and methods of determining whether applicants and licensees are qualified under sections 148B.21 to 148B.24. The rules must make provision for examinations and must establish standards for professional conduct, including adoption of a code of professional ethics and requirements for continuing education.” [148.B.20(1)]	–Supports specific rulemaking authority, and includes suggested draft language.  –See general comments about health board responses in cover memo.

Agency	Text of Rule Delegation	Summary of Response to Letter
<b>Board of Marriage and Family Therapy</b>	<p>“The board shall:</p> <p>(1) adopt and enforce rules for marriage and family therapy licensing, which shall be designed to protect the public;</p> <p>(2) develop by rule appropriate techniques, including examinations and other methods, for determining whether applicants and licensees are qualified under sections 148B.29 to 148B.39;” [148B.31]</p>	<p>May be covered by general health board response. No specific response received by November 5.</p>
<b>Board of Dentistry</b>	<p>“The board may promulgate rules as are necessary to carry out and make effective the provisions and purposes of sections 150A.01 to 150A.12...” [150A.04 ]</p>	<p>--See general comments in cover letter concerning health boards' responses  --Expresses concern that dental practices act could be decimated if opened up</p>
<b>Board of Pharmacy</b>	<p>“...it shall be the duty of the board to make and publish uniform rules not inconsistent herewith for carrying out and enforcing the provisions of this chapter.” [151.06(1)]</p>	<p>--See general comments in cover letter concerning health boards' responses</p>
<b>Board of Podiatric Medicine</b>	<p>“The board may adopt rules as necessary to carry out the purposes of this chapter.” [153.02]</p>	<p>--See general comments in cover memo about health boards' responses</p>
<b>Board of Barber Examiners</b>	<p>“The board of barber examiners shall have authority to make reasonable rules for the administration of the provisions of this chapter and prescribe sanitary requirements for barber shops and barber schools...” [154.24]</p>	<p>No response received by November 5.</p>
<b>Board of Veterinary Medicine</b>	<p>“It shall make, alter, or amend such rules as may be necessary to carry into effect the provisions of this chapter.” [156.01(3)]</p>	<p>--See general comments in cover memo concerning health boards' responses</p>

Agency	Text of Rule Delegation	Summary of Response to Letter
<b>Department of Labor and Industry</b>	<p>“The department of labor and industry shall have the following powers and duties:  .....(2) to adopt reasonable and proper rules relative to the exercise of its powers and duties, and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings...” [175.171]</p>	<ul style="list-style-type: none"> <li>-Referenced more specific grants of rulemaking authority in current law</li> <li>-Listed three areas in which new authority would be needed if the general delegation were repealed: (1) portions of prevailing wage rules; (2) fraud investigation unit, other than workers’ compensation; and (3) Labor Education Advancement Program.</li> <li>-Suggested draft language to grant rulemaking authority in the three cited areas</li> </ul>
<b>Bureau of Mediation Services</b>	<p>“The commissioner shall:  .....(6) adopt rules relating to the administration of this chapter and the conduct of hearings and elections;” [179A.04(3)]</p>	<ul style="list-style-type: none"> <li>-Authority to make rules should be sufficiently general so agency can promulgate rules for new programs consistent with existing statutory direction, respond to changing circumstances, and efficiently carry out the law. Too much specificity could complicate the overall process and risk omitting an area for which rules might be appropriate.</li> <li>-Having expressed that concern, suggests specific language needed for BMS rules.</li> </ul>
<b>Department of Public Service</b>	<p>“The commissioner shall make substantive and procedural rules to implement the provisions of this chapter and chapters 216B and 237.”  [216A.07(5)]</p>	<p>No response received by November 5.</p>
<b>Public Utilities Commission</b>	<p>“The commission is authorized to make rules in furtherance of the purposes of Laws 1974, chapter 429.”  <i>[This was a major rewrite of the laws governing regulation of public utilities.]</i> [216B.08]</p>	<ul style="list-style-type: none"> <li>-Concerned that amendments to rulemaking delegation not call into question validity of current rules. Thus proposes that current language of sections 216B.08 and 237.10 remain unchanged. Suggests a legislative intent section affirming validity of current rules.</li> <li>-Suggests adding new language to 216B.08 and 237.10 authorizing rules in specified areas.</li> </ul>

Agency	Text of Rule Delegation	Summary of Response to Letter
<b>Board on Aging</b>	“...and adopt rules the Minnesota board on aging deems necessary to carry out the purposes of this section.” [ 256.975(2)]	–Rulemaking authority is limited and pertains only to grant programs. The proposal being considered by the subcommittee falls within current need and past practice.
<b>Department of Economic Security</b>	“The commissioner may make rules to carry out this chapter.” [ 268.0122(5)]	–See comments below
<b>Department of Economic Security</b>	“The commissioner of the department of economic security is authorized to adopt rules in accordance with chapter 14, with respect to programs the commissioner administers under this chapter and other programs for which the commissioner is responsible under federal or state law.” 268.021	–Listed other specific grants of rulemaking authority from current law –Suggested new rulemaking language that would be needed in the reemployment insurance area. –Expressed concern that elimination of general authority could hamper response to federally-mandated changes, e.g. the recently Workforce Investment Act.
<b>Board of Architecture, Engineering, etc.</b>	“The board shall...make all rules, not inconsistent with law, needed to perform its duties...” 326.06	–Suggests more specific statutory language –Asks that subcommittee not make a final decision until after the Board’s November 18 meeting, so the full board can approve the suggested language.
<b>Board of Electricity</b>	“The board shall...: (6) Adopt reasonable rules to carry out its duties under sections 326.241 to 326.248...” [ 326.241(2)]	–Lists rules adopted under specific authority and rules adopted under general authority –Rules within board’s authority are narrower in scope than many other departments –Believes there is not need to replace the board’s general authority with specific authority; rules are related to specific statutes, and the APA process ensures rules are not outside of delegated authority or legislative intent.

Agency	Text of Rule Delegation	Summary of Response to Letter
<b>Minnesota State Retirement System</b>	<p>“The board shall:  “...(3) establish rules to administer this chapter and chapters 3A, 352B, 352C, 352D, and 490 and transact the business of the system.” 352.03(4)</p>	<p>Offers suggestions for categories to be included in specific rulemaking authority</p>
<b>Department of Human Rights</b>	<p>“The commissioner shall...  (7) adopt suitable rules for effectuating the purposes of this chapter;” 363.05(1)</p>	<p>No response received by November 5.</p>
<b>Housing Finance Agency</b>	<p>“It may make, and from time to time, amend and repeal rules not inconsistent with the provisions of sections 462A.01 to 462A.24.” 462A.06(4)</p>	<p>States belief that current rulemaking authority is appropriate:  –MHFA is not a regulatory agency  –MHFA functions primarily as a banker and does not set major policy  –MHFA administers 60 programs, and often gets new assignments. Current rulemaking authority lets MHFA respond to changing needs  Offers suggestions for more specific language if the current language is replaced.</p>
<b>Board of Peace Officer Standards and Training</b>	<p>“The board shall adopt rules with respect to:  ....(p) such other matters as may be necessary consistent with sections 626.84 to 626.863.”  <i>[clauses (a) to (o) contain specific rulemaking authority]</i> 626.843 (1)</p>	<p>No response received by November 5.</p>

# Research Department

Thomas Todd, Director

600 State Office Building  
St. Paul, Minnesota 55155-1201  
(651) 296-6753 [FAX 296-9887]



# Minnesota House of Representatives

November 9, 1998

TO: Representative Peggy Leppik

FROM: Mark Shepard, Legislative Analyst

RE: Rulemaking Exemption

You probably have received in the mail a packet of material for the next meeting of the subcommittee on rulemaking delegation. You may have noticed that the responses from the health boards also commented on a slightly different issue—the repeal of an exemption for their fee-setting.

The comprehensive 1997 law dealing with rulemaking exemptions repealed an exemption that formerly allowed the health boards to set fees needed to cover anticipated expenditures without holding a public hearing. Because you chaired the subcommittee dealing with rulemaking exemptions, I wanted to give you some background, in case the topic comes up in the next meeting.

I've enclosed a sample of one of the responses from the health boards. The letter makes two different points concerning the repealed language:

1. The boards make policy arguments for why the repealed language was reasonable, and for why they think it should be restored.
2. The boards state there was insufficient notice and discussion before the provision was repealed.

I wanted to give you some background on the second point. The repeal of section 214.06, subdivision 3 was added to the bill as an amendment in the House and Senate Governmental Operations Committees. As such, the boards likely are correct, that there was no specific notice given to them of intent to repeal this provision. However, it is likely that the amended version of the bill was available for a relatively long time before it was discussed on the House and Senate floor.



I don't have a strong recollection of the origin of this repealer, and I have not had time to go back and review tapes. My recollection is that this was something brought to the attention of the subcommittee on rulemaking exemption, perhaps by lobbyist Tom Kelliher, who was representing one or more regulated occupations. My recollection is that the subcommittee may have discussed this issue, but perhaps too late to include it in the original bill draft (or perhaps the issue came up after the subcommittee was done meeting, and was discussed for the first time in the Governmental Operations Committees).

My recollection of the process used by the group that worked on rulemaking exemptions is that provisions were added to this bill based on consensus of the members of the subcommittee. Further, my recollection is that the subcommittee members gave extensive thought to each of the exemptions they dealt with (although the boards may be correct in suggesting that other legislators likely did not have detailed knowledge of this bill).

In conclusion, the board makes some reasonable policy arguments for its position. However, I don't believe the boards are correct in suggesting that this provision was adopted without discussion or awareness. My guess, based on my recollection of how the subcommittee worked, was that the subcommittee members considered the competing policies and decided to repeal the provision.

MS/jb

Enclosures

Senator Don Betzold

Page 2

October 29, 1998

In consultation with the Executive Directors of the other health-related boards, I am also requesting that you restore the language stricken from Minnesota Statutes section 214.06, subdivision 3. This provision, repealed in 1997, stated as follows:

Notwithstanding section 14.22, subdivision 1, clause (3), a public hearing is not required to be held when the health-related licensing boards need to raise fees to cover anticipated expenditures in a biennium. The notice of intention to adopt the rules, as required under section 14.22, must state no hearing will be held.

The provision was repealed with no hearing, no discussion, no contact with the boards and probably little awareness on the part of legislators, as the repealer was buried in Minnesota Laws 1997, Chapter 187 (article 5, section 36). Representatives of the Department of Finance as well as the boards believe that requiring a hearing to adjust fees is unnecessary, duplicative, time-consuming, and expensive. The interests of the public are amply protected in the following ways.

- The boards can adjust only fees that are authorized by statute.
- The statutes (section 214.06 subd. 1) requires that “. . . . total fees collected by each board will as closely as possible equal anticipated expenditures during the fiscal biennium . . . .” Thus the boards do not have discretion to increase or decrease fees other than to approximate anticipated expenditures. A board’s expenditures as authorized by the legislature determine its fees.
- All board appropriations must be approved by the legislature. Thus the legislature controls how much boards may spend, which in turn controls the amount of the boards’ fees.
- The statutes require that the commissioner of finance approve fee adjustments. The requirement ensures that fees will in fact approximate expenditures.

**Legislative Coordinating Commission  
Subcommittee on Rulemaking Delegation**

**September 17, 1998  
10:00  
Room 125 Capitol**

**Agenda**

Consideration of certain broad delegations of rulemaking authority, as required by Laws 1998, Chapter 303, section 5.

# Delegation of Rulemaking Authority

The two tables on the following pages list all of the delegations of rulemaking authority referred to in Laws 1998, chapter 303, section 5, which mandated a study of broad delegation of rulemaking authority.<sup>1</sup> The tables also include delegations of authority contained in the old MS248 bill draft, which the subcommittee reviewed at its first meeting.

- Table 1 lists delegations of rulemaking authority that cover an entire department or board.
- Table 2 lists delegations that apply only to one or more programs within an agency.

Within each table, the delegations are listed in statutory order.

Several comments:

- In some agencies, particularly large departments, there are more, specific grants of authority in law, in addition to the broad grants listed here.
- The broadness of a delegation of authority is affected by factors other than the language of the delegation. For example, the Department of Commerce and the Board of Barber Examiners both have authority to adopt rules on all topics within their jurisdiction. However, the jurisdiction of the Department is far broader than that of the Barber Board. Also, the degree of detail in the statutes governing an agency affects the breadth of the rulemaking delegation. For example, the Minnesota State Retirement System has authority to adopt rules relating to any part of the pension system that it administers. However, the statute is very detailed, so that in fact the System has little discretion to affect major parts of the system by rule.
- There may be other delegations of rulemaking authority in statute that are as broad as those listed in these tables. Staff has not yet done a complete search of the statutes.

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<sup>1</sup> Laws 1998, Chapter 303 referred to section 326.18, but that section is omitted here, because the broad grant of authority in that section was amended in 1998 to be specific.

**TABLE 1: Delegations in Chapter 303, section 5 that cover an entire agency**

Statute	Agency/Topic	Text of Rule Delegation
10A.02(13)	Board of Campaign Finance and Public Disclosure	"The board may adopt rules to carry out the purposes of this chapter."
16B.04(1)	Department of Administration	"Subject to chapter 14, the commissioner may adopt, amend, and rescind rules relating to any purpose, responsibility or authorization in this chapter. Rules must comply with any provisions in this chapter which specify or restrict the adoption of particular rules."
45.023	Department of Commerce	"The commissioner of commerce may adopt, amend, suspend, or repeal rules in accordance with chapter 14, and as otherwise provided by law, whenever necessary or proper in discharging the commissioner's official responsibilities."
103B.101(7)	Board of Water and Soil Resources	"The board may hold public hearings and adopt rules necessary to execute its duties."
115B.28(1)	Harmful Substance Compensation Board	"...the board shall: (1) adopt rules...including rules governing practice and procedure before the board, the form and procedure for applications for compensation, and procedures for claims investigations..."
116J.035(2)	Department of Trade and Economic Development	"The commissioner may adopt rules pursuant to chapter 14 as necessary to carry out the commissioner's duties and responsibilities pursuant to this chapter."

147.01(3)	Board of Medical Practice	"The board shall have authority to adopt rules as may be found necessary to carry out the purposes of this chapter."
148.05	Board of Chiropractic Examiners	"The board shall...promulgate rules to govern its actions."
148.08(3)	Board of Chiropractic Examiners	"The board of chiropractic examiners shall promulgate rules necessary to administer sections 148.01 to 148.105 to protect the health, safety, and welfare of the public, including rules governing the practice of chiropractic..."
148.191 (2)	Board of Nursing	"The board is authorized to adopt and, from time to time, revise rules not inconsistent with the law, as may be necessary to enable it to carry into effect the provisions of sections 148.171 to 148.285."
148.53	Board of Optometry	"The state board of optometry shall have the power to make any rules...for the effective enforcement of sections 148.52 to 148.62 or for the full and efficient performance of its duties thereunder."

148B.20(1)	Board of Social Work	<p>“The board of social work shall:</p> <p>(a) Adopt and enforce rules for licensure of social workers and for regulation of their professional conduct. The rules must be designed to protect the public.”</p> <p>(b) Adopt rules establishing standards and methods of determining whether applicants and licensees are qualified under sections 148B.21 to 148B.24. The rules must make provision for examinations and must establish standards for professional conduct, including adoption of a code of professional ethics and requirements for continuing education.”</p>
148B.31	Board of Marriage and Family Therapy	<p>“The board shall:</p> <p>(1) adopt and enforce rules for marriage and family therapy licensing, which shall be designed to protect the public;</p> <p>(2) develop by rule appropriate techniques, including examinations and other methods, for determining whether applicants and licensees are qualified under sections 148B.29 to 148B.39;”</p>
150A.04	Board of Dentistry	<p>“The board may promulgate rules as are necessary to carry out and make effective the provisions and purposes of sections 150A.01 to 150A.12...”</p>
151.06(1)	Board of Pharmacy	<p>“...it shall be the duty of the board to make and publish uniform rules not inconsistent herewith for carrying out and enforcing the provisions of this chapter.”</p>

153.02	Board of Podiatric Medicine	"The board may adopt rules as necessary to carry out the purposes of this chapter."
154.24	Board of Barber Examiners	"The board of barber examiners shall have authority to make reasonable rules for the administration of the provisions of this chapter and prescribe sanitary requirements for barber shops and barber schools..."
156.01	Board of Veterinary Medicine	"It shall make, alter, or amend such rules as may be necessary to carry into effect the provisions of this chapter."
175.171	Department of Labor and Industry	"The department of labor and industry shall have the following powers and duties: ....(2) to adopt reasonable and proper rules relative to the exercise of its powers and duties, and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings..."
179A.04	Bureau of Mediation Services	"The commissioner shall: .....(6) adopt rules relating to the administration of this chapter and the conduct of hearings and elections;"
216A.07(5)	Department of Public Service	"The commissioner shall make substantive and procedural rules to implement the provisions of this chapter and chapters 216B and 237."
216B.08	Public Utilities Commission	"The commission is authorized to make rules in furtherance of the purposes of Laws 1974, chapter 429." <i>[This was a major rewrite of the laws governing regulation of public utilities.]</i>



256.975	Board on Aging	"...and adopt rules the Minnesota board on aging deems necessary to carry out the purposes of this section."
268.0122(5)	Department of Economic Security	"The commissioner may make rules to carry out this chapter."
268.021	Department of Economic Security	"The commissioner of the department of economic security is authorized to adopt rules in accordance with chapter 14, with respect to programs the commissioner administers under this chapter and other programs for which the commissioner is responsible under federal or state law."
326.06	Board of Architecture, Engineering, etc.	"The board shall...make all rules, not inconsistent with law, needed to perform its duties..."
326.241	Board of Electricity	"The board shall...: (6) Adopt reasonable rules to carry out its duties under sections 326.241 to 326.248..."
352.03(4)	Minnesota State Retirement System	"The board shall: ...(3) establish rules to administer this chapter and chapters 3A, 352B, 352C, 352D, and 490 and transact the business of the system."
363.05(1)	Department of Human Rights	"The commissioner shall... (7) adopt suitable rules for effectuating the purposes of this chapter;"
462A.06(4)	Housing Finance Agency	"It may make, and from time to time, amend and repeal rules not inconsistent with the provisions of sections 462A.01 to 462A.24."

626.843 (1)	Board of Peace Officer Standards and Training	“The board shall adopt rules with respect to: ....(p) such other matters as may be necessary consistent with sections 626.84 to 626.863.” <i>[clauses (a) to (o) contain specific rulemaking authority]</i>
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**TABLE 2: Delegations in Chapter 303, section 5 that apply to one or more programs within an agency**

<b>Statute</b>	<b>Agency/Topic</b>	<b>Text of Rule Delegation</b>
18.022(8)	Department of Agriculture; insect pests, plant diseases, bee diseases, destructive or nuisance animals.	“The commissioner may make reasonable rules after a public hearing, in a manner provided by law, to properly carry out the purposes of this section and section 18.012 <i>[These sections are the policy statement and the substantive section dealing with pest control.]</i>
21.118	Agriculture; seed potato laws	“It shall be the duty of the commissioner to promulgate reasonable rules for carrying out the purposes and enforcing the provisions of sections 21.111 to 21.122 <i>[laws dealing with seed potato certification and inspection]</i>
21.85(11)	Agriculture; seed laws	“The commissioner may make necessary rules for the proper enforcement of sections 21.80 to 21.92.” <i>[the Minnesota seed law]</i>
41A.04(4)	Agricultural Resource Loan Guaranty Board/Loan Guaranty programs	“In order to effectuate the purposes of sections 41A.01 to 41A.066, the board shall adopt rules which are subject to the provisions of chapter 14.”

84.03	DNR; use of state land	<p>“The commissioner may adopt and promulgate reasonable rules, not inconsistent with law, governing the use and enjoyment of state land reserved from sale, state parks, state water access sites, state trails, state monuments, state scientific and natural areas, state wilderness areas, and recreational areas owned by other state, local and federal agencies and operated under agreement by the department of natural resources...”</p>
182.657	Department of Labor and Industry; OSHA	<p>“The commissioner shall promulgate, in accordance with chapter 14, such rules as may be deemed necessary to carry out the responsibilities of this chapter, except for those responsibilities contained in section 182.655, including rules dealing with the inspection of places of employment.” <i>[182.655 deals with OSHA standards, but provides an exemption from the APA. The LCC subcommittee reviewed this exemption in 1996 and the legislature modified it in 1997.]</i></p>

216C.02(3)	Department of Public Service; Energy Division	<p>“The commissioner may adopt rules under chapter 14 to carry out the commissioner’s duties and responsibilities under this section <i>[the section granting general authority over energy programs]</i> and those sections renumbered by laws 1987 chapter 312, article 1, section 10.” <i>[The sections renumbered in 1987 are current sections 216C.04 to 216C.381, all of which deal with energy policy and energy conservation duties of the department.]</i></p>
223.19	Department of Agriculture; Grain Buyers	<p>“The commissioner may make rules pursuant to chapter 14 to carry out the provisions of sections 223.15 to 223.22.” <i>[These sections constitute all of chapter 223 and deal with licenses and other regulation of grain buyers.]</i></p>
239.06	Department of Public Service; Weights and Measures Division	<p>“The department shall prescribe and adopt such rules as it may deem necessary to carry out the provisions of this chapter <i>[dealing with various topics relating to weights and measures; e.g. standard measures, petroleum products, violations, etc.]</i>, and it may change, modify or amend any or all rules when deemed necessary and the rules so made shall have the force and effect of law.</p>

270.06	Department of Revenue; administration and enforcement activities	<p>“The commissioner of revenue shall</p> <p>“.....(14) administer and enforce the assessment and collection of state taxes and fees, including the use of any remedy available to nongovernmental creditors, and from time to time, make, publish, and distribute rules for the administration and enforcement of assessments and fees administered by the commissioner and state tax laws. The rules have the force of law;”</p>
299J.04(1)	Department of Public Safety; Office of Pipeline Safety	<p>“The commissioner shall</p> <p>...(4) adopt rules to implement sections 299J.01 to 299J.17. <i>[This is the entire chapter dealing with pipeline safety regulation.]</i></p> <p>The rules adopted under clause (4) must treat separately and distinguish between hazardous liquid and gas pipelines and must be compatible with federal laws and regulations.”</p>
299K.03(5)	Emergency Response Commission; hazardous chemical emergency planning and response	<p>“The commission shall carry out all requirements of a commission under the federal act and may adopt rules to do so.”</p>
401.03	Department of Corrections; Community Corrections program	<p>“The commissioner shall, as provided in chapter 14, promulgate rules for the implement of sections 401.16...” <i>[The entire community corrections chapter]</i></p>

611A.33	Department of Corrections; battered women program	<p>“The commissioner shall          ...(6) Adopt under chapter 14, all rules necessary to implement the provisions of sections 611A.31 to 611A.36;” <i>[sections dealing with the battered women’s program]</i></p>
626.843(1)	Board of Peace Officer Standards and Training	<p>“The board shall adopt rules with respect to: <i>[Lists 13 specific subject areas, in addition to the general grant of authority noted at the end of Table 1]</i></p>

August 24, 1998  
 I:\USER\MSHEPARD\RULEDEL2.WPD



# Admin MINNESOTA

Department of Administration

Commissioner's Office  
200 Administration Building  
50 Sherburne Avenue  
St. Paul, MN 55155  
Voice: 651.296.4398  
Fax: 651.297.7909  
TTY: 651.297.4357

October 14, 1998

Honorable Don Betzold  
State Senator  
306 State Capitol Building  
St. Paul, MN 55155

Dear Senator Betzold:

I am in receipt of your October 1 letter to Commissioner Hansen regarding the Legislative Coordinating Commission rulemaking subcommittee study of delegated rulemaking authority.

This department is familiar with the Legislature's rationale for addressing broad, generic delegations of rulemaking authority. Although the department of administration has seldom been the focus of citizen dissatisfaction with rulemaking initiatives under its existing delegated statutory authority, we nevertheless believe that the department would continue to work well within the alternative framework now being considered by the subcommittee. With a slight modification, we believe the adoption of your approach will work into the future should new topics for rulemaking authority become necessary. This response only addresses the subcommittee suggestion, as it would apply to delegated rulemaking authority found in current statutes. (We assume that the subcommittee's work will not affect any of our agency division's rules already in place; rather, the intent is to address the statutory delegations for those rules.)

This department has two types of delegated statutory rulemaking authority. First, reprinted below is the department's generic grant of agency-wide rulemaking authority. This delegation appears at Minnesota Statutes, section 16B.04, subdivision 1, and is combined with the general powers of the commissioner (subdivision 2), which relate to the broad functional areas of the department.

**16B.04 Authority.**

**Subdivision 1. Rulemaking authority.** Subject to chapter 14, the commissioner may adopt, amend, and rescind rules relating to any purpose, responsibility, or authorization in this chapter. Rules adopted must comply with any provisions in this chapter which specify or restrict the adoption of particular rules.

**Subd. 2. Powers and duties, general.** Subject to other provisions of this chapter, the commissioner is authorized to:

(1) supervise, control, review, and approve all state contracts and purchasing;

...

(12) provide rental space within the capitol complex for a private day care center for children of state employees. The commissioner shall contract for services as provided in this chapter. The commissioner shall report back to the legislature by October 1, 1984, with the recommendation to implement the private day care operation.

Second, there are separate, independent grants of rulemaking authority located in several places throughout the department's operating statutes. Akin to the subcommittee approach, these provisions authorize rulemaking for a specific purpose related to the operating statute where it is found. For example, Chapter 16C governs department procurement activity. This functional area has a specific statute delegating to the commissioner the authority to adopt rules, which reads as follows:

**16C.03 Commissioner's Authority; Powers and Duties.**

Subdivision 1. **Scope.** The commissioner's authority in this section applies to an agency and is subject to other provisions of this chapter and chapter 16B. Unless otherwise provided, the provisions in this chapter and chapter 16B do not apply to the Minnesota state colleges and universities.

Subd. 2. **Rulemaking Authority.** Subject to chapter 14, the commissioner may adopt rules, consistent with this chapter and chapter 16B, relating to the following topics:

- (1) solicitations and responses to solicitations, bid security, vendor errors, opening of responses, award of contracts, tied bids, and award protest process;
- (2) contract performance and failure to perform;
- (3) authority to debar or suspend vendors, and reinstatement of vendors;
- (4) contract cancellation; and
- (5) procurement from rehabilitation facilities.

Other examples of Admin's specific statutory delegations of rulemaking authority independent from the generic agency-wide delegation relate to information policy analysis, building codes and elevator installation activities. These delegations are found at 13.07, 16B.61 and 16B.748, respectively.

**13.07 Duties of the commissioner.**

The commissioner shall with the advice of the intergovernmental information services advisory council promulgate rules, in accordance with the rulemaking procedures in the administrative procedures act which shall apply to state agencies, statewide systems and political subdivisions to implement the enforcement and administration of this chapter. The rules shall not affect section 13.04, relating to rights of subjects of data. Prior to the adoption of rules authorized by this section the commissioner shall give notice to all state agencies and political subdivisions in the same manner and in addition to other parties as required by section 14.06 of the date and place of hearing, enclosing a copy of the rules to be adopted.

**16B.61 General powers of commissioner; state building code.**

Subdivision 1. **Adoption of code.** Subject to sections 16B.59 to 16B.75, the commissioner shall by rule establish a code of standards for the construction, reconstruction, alteration, and repair of buildings, governing matters of structural materials, design and construction, fire protection, health, sanitation, and safety. The code must conform insofar as practicable to model building codes generally accepted and in use throughout the United States. In the preparation of the code, consideration must be given to the existing statewide specialty codes presently in use in the state. Model codes with necessary modifications and statewide specialty codes may be adopted by reference....

**16B.748 Rules.**

The commissioner may adopt rules for the following purposes:

- (1) to set a fee under section 16A.1285 for processing a construction or installation permit or elevator contractor license application;
- (2) to set a fee under section 16A.1285 to cover the cost of elevator inspections;
- (3) to establish minimum qualifications for elevator inspectors that must include possession of a current elevator constructor electrician's license issued by the state board of electricity and proof of successful completion of the national elevator industry education program examination or equivalent experience....



ADMINISTRATION DEPARTMENT RULE LIST

STATUTORY AUTHORITY

CENTRAL MOTOR POOL DIVISION

Chapter 1200 ...Insurance claims 16B.04

DATA PRIVACY DIVISION

Chapter 1205 ...Data practices 13.07

TELECOMMUNICATIONS DIVISION

Chapter 1215 ...Emergency 911 telephone systems 403.01 to 403.12

INTERGOVERNMENTAL INFORMATION SYSTEMS ADVISORY COUNCIL

Chapter 1220 ...Grant proposals 16B.04

PLANT MANAGEMENT DIVISION

Chapter 1225 ...Lost property and parking 16B.04; 16B.58, subd. 2

MATERIALS MANAGEMENT DIVISION

Chapter 1230 ...State contracts 16B.04, .07, .18, .19, .22  
Laws 1984, Ch.654, A.2, §8  
[16C.03]

PLANT MANAGEMENT DIVISION

Chapter 1235 ...Public rallies 16B.04; 16B.24, subd. 1

REAL ESTATE MANAGEMENT DIVISION

Chapter 1245 ...State-owned real property 16B.04

PRINT COMMUNICATIONS DIVISION

Chapter 1250 ...State publications 14.46; 16B.04

MATERIALS MANAGEMENT DIVISION

Chapter 1255 ...State surplus property sales section 16B.04

FEDERAL SURPLUS PROPERTY DIVISION

Chapter 1260 ...Federal surplus property 16B.04

TELECOMMUNICATIONS DIVISION

Chapter 1265 ...Telpak 16B.04

MINNESOTA STATE BUILDING CODE

Chapter 1300 ...Code administration 16B.61  
Chapter 1301 ...Building official certification 16B.61; 16B.65  
Chapter 1302 ...Construction approvals 16B.61  
Chapter 1305 ...Amendments to uniform building code 16B.61; 16B.59 to 16B.73  
Chapter 1306 ...Special fire protection systems 16B.61  
Chapter 1307 ...Elevators and related devices 16B.61  
Chapter 1308 ...Elevator Installation and Installers 16B.748  
Chapter 1315 ...Electrical code 14.07; 16B.61 to 16B.64;  
326.241 to 326.248  
Chapter 1325 ...Energy 16B.61; 216C.25  
Chapter 1330 ...Fallout shelters 16B.59 to 16B.73  
Chapter 1335 ...Floodproofing 16B.61; 104.05  
Chapter 1340 ...Facilities for the handicapped 16B.61; 471.467  
Chapter 1346 ...Uniform mechanical code 16B.61  
Chapter 1350 ...Manufactured homes 327.33; 327B.10  
Chapter 1360 ...Prefabricated buildings 16B.59 to 16B.73  
Chapter 1361 ...Industrialized/modular buildings 16B.61  
Chapter 1365 ...Appendix on snow loads 16B.61; 16B.59 to 16B.73  
Chapter 1370 ...Storm shelters 16B.59 to 16B.73

Designer Selection Board

Chapter 3200 ...Procedural Rules 16B.33

PLUMBING CODE

Promulgated in conjunction with the Health Department

Chapter 4715

There are several other instances where existing agency rules do not have independent statutory authority outside of 16B.04. It is in these cases where this department would not object to the creation of a new, specific statutory grant of authority to accommodate the existing rule(s). (Attached is a list of the agency's rule chapters and their corresponding statutory grant of authority.) The department is currently examining its rules using 16B.04 as their statutory authority to determine whether any are obsolete and should be repealed.

I agree with the subcommittee to the extent that it seeks to eliminate generic agency rulemaking authority and replace it with delegated authority for specific, identified rulemaking purposes. With respect to department of administration rulemaking authority, I propose to eliminate the generic grant of rulemaking authority found in 16B.04, subd. 1, but add a new paragraph contemplating rulemaking to the existing subdivision 2. The purpose of the addition is to alert the reader that among the commissioner's powers is specific rulemaking authority found elsewhere in the department operating statutes. The proposed language reads as follows:

Subd. 2. **Powers and duties, general.** Subject to other provisions of this chapter, the commissioner is authorized to: ...

(13) adopt, amend, and rescind rules relating to a specific purpose, responsibility, or authorization identified in this chapter.

In addition, consistent with the subcommittee proposal, I would add statutory language to replace the broad delegation with a delegation for specific subject areas. Only where rules are necessary to accomplish a department activity would a specific grant of rulemaking authority appear in the operating statute. We propose this alternative rather than adding a rules "table of contents" to 16B.04. For purposes of statutory organization, this department prefers that where rulemaking is necessary a specific grant of rulemaking authority be incorporated into the operating statute for that activity. This approach allows the Legislature to avoid list making and focus on crafting precise delegation statutes with the closest proximity to the statute authorizing the activity that necessitates the rule(s). This was the approach used in the 1998 session to create the rulemaking delegation for Admin's procurement activities.

I appreciate the opportunity to respond to the subcommittee's proposed approach. If you have questions or need any additional information, please contact me by telephone at 651.296.4398.

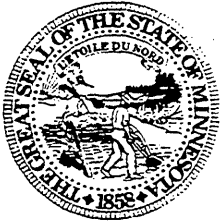
Sincerely,



Scott R. Simmons  
Counsel to the Commissioner

✓ c: Mark Shepard, House Research Department

attachment



## MINNESOTA DEPARTMENT OF COMMERCE

Office of the Commissioner

29 October 1998

Don Betzold  
Senator District 48  
306 State Capitol Building  
75 Constitution Avenue  
St. Paul, MN 55155-1606

RE: Broad Delegation of Rulemaking Authority

Dear Senator Betzold:

Thank you for the opportunity to comment on the recommendations being considered by the Legislative Coordinating Commission (LCC) with respect to broad delegations of rulemaking authority to state agencies.

I assume that the LCC has identified Minnesota Statutes § 45.023 as the statute granting the Department of Commerce broad rulemaking authority. This statute was enacted in 1983, which was approximately the same time that the Department of Commerce (as we currently know it) was created. Prior to 1983, the Department of Commerce was controlled by a commission composed of a commissioner of banks, a commissioner of insurance and a commissioner of securities. In 1983, the Minnesota legislature reorganized the Department of Commerce, merging together all of the duties of these three (3) commissioners under the control of one Commissioner of Commerce. Over the past 15 years since the reorganization, the Commissioner of Commerce has been given additional areas of regulatory authority over a wide-range of business industries. Because of the diverse types of industries currently under the commissioner's regulatory jurisdiction, the general grant of rulemaking authority under Minn. Stat. § 45.023 has been a very important mechanism for effective regulation of commerce activities in Minnesota.

Due to a dynamic economy, issues and business practices can change rapidly in areas under the supervision of the Department of Commerce. Many of these business practices can negatively affect consumers and can quickly cause consumers to experience significant financial loss. The Commissioner of Commerce needs the tools to act promptly and the authority to respond to the changing marketplace. Rulemaking, under Minn. Stat. § 45.023, is a significant tool for responding to market changes that could not have been anticipated by the legislature when it enacted specific grants of rulemaking authority.

133 East Seventh Street, St. Paul, MN 55101  
Tel. (612) 296-6694 • Fax (612) 297-3238 • TTY/TDD (612) 296-2860  
e-mail: [commerce.commissioner@state.mn.us](mailto:commerce.commissioner@state.mn.us)

An Equal Opportunity Employer

Jon Betzold  
Senator District 48  
29 October 1998  
Page 2

In administrative hearings and enforcement matters, some respondents have challenged the commissioner's authority to take action for violations of Minnesota law enforced by the Department of Commerce. The general grant of rulemaking authority under Minn. Stat. § 45.023 provides an additional defense to such challenges of authority. This additional defense is particularly important where bold new business practices threaten the public's safety or financial security.

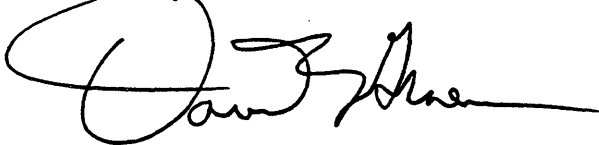
The Commerce Department has always used its authority under Minn. Stat. § 45.023 responsibly and on a limited basis. The department has never abused this authority. The general grant of rulemaking authority has afforded the commissioner the ability to evaluate and create a cohesive and comprehensive set of rules covering a very diverse collection of regulated industries.

For the most part, the department has used Minn. Stat. § 45.023 in conjunction with more specific grants of rulemaking authority. In instances where a specific grant of rulemaking authority is very narrow, Minn. Stat. § 45.023 allows the department to promulgate comprehensive rules covering closely-related topics in the same subject area. Thus, Minn. Stat. § 45.023 gives the department the ability to "fill-in-the-gaps" for minor lapses in specific grants of rulemaking authority, making both the legislative and the rulemaking processes more efficient.

The department respects the role of the Minnesota legislature in overseeing the rulemaking activities of state agencies. However, the repeal of Minn. Stat. § 45.023 would be a mistake. The department takes its rulemaking responsibilities very seriously and conducts rulemaking initiatives carefully. The department has not abused the authority given it by the legislature. Furthermore, the Administrative Procedures Act provides a general grant of rulemaking authority for all state agencies under Minn. Stat. § 14.06. The authority granted to the Department of Commerce under Minn. Stat. § 45.023 is substantially similar to the authority that all departments have under Minn. Stat. § 14.06.

For all of the reasons set forth above, the department respectfully requests that the LCC Subcommittee recommend no legislative change to Minn. Stat. § 45.023.

Sincerely,

A handwritten signature in black ink, appearing to read "David B. Gruenes", written over the word "Sincerely,".

DAVID B. GRUENES  
Commissioner of Commerce  
DBG/mgs

MINNESOTA



Trade &  
**Economic  
Development**

November 2, 1998

Senator Don Betzold  
306 State Capitol Building  
75 Constitution Avenue  
St. Paul, MN 55155-1606

Dear Senator Betzold,

This letter is in response to your request on our views regarding the issue of rulemaking authority that cover an entire department, such as M.S. 116J.035, which governs the Department of Trade and Economic Development (DTED).

Your letter suggested statutory rulemaking delegation could look like a table of contents to an agency's rules. I would submit that DTED already has many of its rules under program specific grants of rulemaking authority (e.g. Export Finance Authority under M.S. 116J.9673, Urban Challenge Grants under M.S. 116M.18, Business Licensing under M.S. 116J.76 and Small Cities Development Grants under M.S. 116J. 403.) I can make this available if you would like.

Nonetheless, there are advantages to DTED having broad, general rulemaking authority. It provides for efficiency and efficacy in development of rules in cases where state legislation may be silent. This would also hold true when administering federal pass through funds where the ability of DTED to take speedy action in response to federal rule or program changes is enhanced by a broad grant of rulemaking authority. In fact, 60 percent of DTED's expenditures for the 1998-99 biennium came from federal funding. This was due in part to flood and tornado disaster relief.

This latter point regarding federal funding is central to my support of broad rulemaking authority. It allows for DTED to respond to changing and emerging economic conditions quickly with the ability to tailor our programs to a community's particular needs and circumstances. Your suggestion to replace broad delegation of rulemaking authority with specific statutory authority may only partially address the concerns of the Subcommittee. The Public Facilities Authority needs annual changes in statute in order to respond to new federal mandate changes to a program.

Please consider this final point when you discuss agencies adopting rules only in specific subject areas. For this biennium, 88.5 percent of DTED's expenditures fall under the category of grants and loans. If all of these grants and loans were subject to a strict delegation of rulemaking, our ability to make the best judgements for disbursing these funds could be weakened significantly. Thank you allowing me to respond to the questions posed by the members of this Subcommittee.

Sincerely,

Jay Novak  
Commissioner



# MINNESOTA BOARD OF MEDICAL PRACTICE

University Park Plaza 2829 University Avenue SE Suite 400 Minneapolis, MN 55414-3246

\*Telephone (612) 617-2130 \*Fax (612) 617-2166

MN Relay Service for Hearing Impaired (800) 627-3529

October 28, 1998

Mark Shepard  
House of Representatives Research Department  
600 State Office Building  
St. Paul, Minnesota 55155

Dear Mr. Shepard:

In response to a letter dated October 1, 1998, from Senator Don Betzold, I am forwarding proposed statutory language for replacing this Board's broad rulemaking authority with a subject-specific rulemaking authorization.

I would like to point out that, in my opinion, such a change in rulemaking authority might not only be unnecessary but hinder this Board's ability to serve the needs of its clientele; the public and the professions it regulates.

Although the Board of Medical Practice has a broad grant of rulemaking authority in statute, this authority is extremely limited in that it extends only to those rules "... necessary to carry out the purposes of this chapter." (Minnesota Statute Chapter 147.01, Subd. 3, the Medical Practice Act) I feel that this limitation already adequately limits the subject matter of the Board's rulemaking authority.

In addition, a limitation of authority may unnecessarily restrict this Board's flexibility in adapting to ever changing standards of professional practice as well as health care regulation.

If, however, the decision is made to restrict the rulewriting authority of the Boards to specific subject areas, my attached draft proposal for statutory language would probably provide the Board of Medical Practice with sufficient discretion and latitude to carry forward its regulatory responsibilities.

Sincerely,

A handwritten signature in cursive script that reads "Robert A. Leach".

ROBERT A. LEACH  
Executive Director

RAL:vp

Enc.

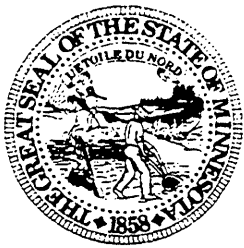
AS AMENDED

147.011 DEFINITION

Subdivision 1. For the purpose of this chapter, "regulated person" or "person regulated by the board" means a person licensed, registered, or regulated in any other manner by the board of medical practice.

ADD

Subdivision 2. Rules. The board may adopt, amend, or repeal rules needed to regulate the persons in Subdivision 1. in the following areas: qualifications for initial licensure and registration, education, temporary permit, temporary registration, locum tenens permit, residency permit, inactive status, emeritus registration, licensure by reciprocity, and licensure and registration renewal; application information requirements for initial licensure or registration, temporary permit, temporary registration, emeritus registration, inactive status, residency permit, reinstatement of licensure or registration, and licensure or registration renewal; expiration or cancellation of licensure or registration, denial of licensure or registration, voluntary termination of licensure or registration, suspension of licensure or registration, suspension of temporary registration or temporary permit; continuing education requirements for licensees and registrants and requirements for



# Minnesota Board of Chiropractic Examiners

Mark Shepard  
House of Representatives Research Department  
600 State Office Building  
St. Paul, MN 55155

Dear Mr. Shepard,

I am responding to your letter of October 1, 1998, asking for comments on the proposal to amend current law to authorize a board to adopt rules only in specific subject areas. I appreciate the legislature's concern about agencies having too much discretion in rulemaking. At the same time, I urge the legislature not to pursue proposals that would unduly restrict a board's rulemaking authority, which would have the unintended effect of impeding the board's ability to adequately protect the public from practitioners failing to comply with appropriate standards of practice or conduct.

As you know, the boards' statutory authority is already limited to the very narrow area of occupational regulation. Therefore, our ability to adopt, amend, or repeal rules is already confined to specific subject areas such as examinations for licensure, continuing education, requirements for license renewal, and grounds for discipline.

Restricting a board's statutory authority too narrowly could make it more difficult to change rules in response to changing standards of practice. Boards should not have to seek specific statutory authority to amend rules every time there is a change in standards. It is important to give a board flexibility so that out-of-date requirements do not unduly restrict professional practice or deprive the public of new technologies, procedures, and treatments.

The Board's duty is to carry out the authorities granted it by the legislature in order to protect the public from professional misconduct, incompetence, or substandard care. At times, this may mean taking tough stands against a professional or professionals who are unqualified to practice, or who may engage in behaviors harmful to the public. It would be a grave disservice to the public should this capacity be diminished. Moreover, it would be a disservice should such diminished capacity become exploitable for personal or professional gain. The end result of transferring such activity back to the legislature would place substantial hardship on an already overburdened body. Finally, absent any evidence of abuse of this discretion in the past, it is unclear why a process unbroken needs to be "fixed."



The rulemaking process has been valuable in making practice and behavioral standards clear and accessible to the profession and the public. Clarification of these standards through rulemaking provides an infrastructure for fair and equitable application of the approaches to complaint resolution. The MBCE contends that such improved clarification of these standards is directly responsible for a substantial and steady decline in complaints since 1993.<sup>1</sup> Additionally, the MBCE has established an ad hoc rules review committee which meets every 2-3 years. The purpose of this committee is to review rules which have been in place for a period of time, to assure that the rules are accomplishing their purpose, and not creating more problems than solutions and, if necessary, making recommendations for appropriate amendments.

In summary, I am urging the legislature to reject legislation which would impede the health licensing boards in carrying out their purpose. However, in the alternative (and as requested,) I am attaching my proposal for statutory language which authorizes the board to adopt rules only in specific subject areas but at the same time provides enough discretion to implement the policies and programs established by statute. In addition to the recommendations I make in the attachment, I urge you to consider including appropriate language in any proposed legislation to ensure that:

- Changes in the statutory authority for a board's rulemaking would not negate a board's existing rules; and
- Revising boards' existing rulemaking authority would not compel boards to abide by the time limits specified in Minnesota Statutes, section 14.125.

I have developed my proposed statutory language in consultation with the Executive Directors of the other health-related boards, to ensure that we are using uniform terminology. I want to emphasize, however, that using uniform terminology does not mean that we have uniform requirements. The standards and procedures vary from one board to the next, reflecting the differences in the occupations regulated. It is vital that each board have the ability to adopt rules appropriate for the occupations it regulates.

In consultation with the Executive Directors of the other health-related boards, I am also requesting that you restore the language stricken from Minnesota Statutes, section 214.06, subdivision 3. This provision, repealed in 1997, stated as follows:

Notwithstanding section 14.22, subdivision 1, clause (3), a public hearing is not required to be held when the health-related licensing boards need to raise fees to cover anticipated expenditures in a biennium. The notice of intention to adopt the rules, as required under section 14.22, must state no hearing will be held.

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<sup>1</sup>

Based on the number of complaints received through the end of October 1998, the MBCE projects a total receipt of 152 complaints in calendar 1998. This represents a 30% reduction over 1993, in which 218 complaints were received.

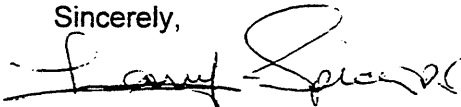
This provision was repealed with no hearing, no discussion, and probably little awareness on the part of legislators, as the repealer was buried in Minnesota Laws 1997, Chapter 187 (article 5, section 36). We believe that requiring a hearing to adjust fees is unnecessary, duplicative, time-consuming, and expensive. The interests of the public are amply protected through the following safeguards:

- The boards can adjust only fees that are authorized by statute.
- The statutes require that "the total fees collected by each board will as closely as possible equal anticipated expenditures during the fiscal biennium." Thus the boards do not have discretion to increase or decrease fees other than to approximate anticipated expenditures. A board's expenditures determine its fees.
- The statutes require that the commissioner of finance approve fee adjustments. This requirement ensures that fees will in fact approximate expenditures.
- Boards' appropriations must be approved by the legislature. Thus the legislature controls how much boards may spend, which in turns controls the amount of the boards' fees.

The current status creates a potentially untenable situation should the legislatures appropriation be unable to be met because the court denies the agency's ability to appropriately raise fees to meet expenditures. Again, we request that the legislature consider reinstating this provision.

If you have questions or comments regarding my response, please call me at 612-617-2227.

Sincerely,



Larry A. Spicer, DC  
Executive Director

enc.

Proposed language from the Minnesota Board of Chiropractic Examiners.

**148.08 RULES. Rules.** The board of chiropractic examiners shall ~~promulgate~~ adopt, amend, or repeal rules necessary to administer sections 148.01 to 148.105 to protect the health, safety, and welfare of the public, including rules governing the practice of chiropractic and defining any terms, whether or not used in sections 148.01 to 148.105, if the definitions are not inconsistent with the provisions of sections 148.01 to 148.105. The board may adopt, amend, or repeal rules needed to regulate chiropractic in the following areas:

1. qualifications for initial licensure and registration, education, examination, temporary permit, inactive status, emeritus licensure, licensure by reciprocity, and licensure or registration renewal;
2. application requirements for initial licensure and registration, temporary permit, inactive status, emeritus licensure, reinstatement of licensure or registration, and licensure or registration renewal;
3. expiration, cancellation, termination, suspension or other denial of a license, registration, temporary permit, or other credential;
4. continuing education requirements for licensees, registrants, permittees, or other regulated persons, and requirements for sponsors of continuing education programs;
5. requirements for academic institutions and programs offering courses for licensure;
6. license, registration, and other fees;
7. practice without a license or for other unlawful or unauthorized practice;
8. grounds for disciplinary or corrective action, including standards of practice and ethical conduct; and
9. processes for implementing the board's authority to resolve complaints
10. standards, policies, or procedures that are necessary to comply with federal requirements or that are necessary to avoid a denial of funds or services from the federal government that would otherwise be available to the state

Proposed language from the Minnesota Board of Chiropractic Examiners.

**148.08 RULES. Rules.** The board of chiropractic examiners shall ~~promulgate~~ adopt, amend, or repeal rules necessary to administer sections 148.01 to 148.105 to protect the health, safety, and welfare of the public, including rules governing the practice of chiropractic and defining any terms, whether or not used in sections 148.01 to 148.105, if the definitions are not inconsistent with the provisions of sections 148.01 to 148.105. The board may adopt, amend, or repeal rules needed to regulate chiropractic in the following areas:

1. qualifications for initial licensure and registration, education, examination, temporary permit, inactive status, emeritus licensure, licensure by reciprocity, and licensure or registration renewal;
2. application requirements for initial licensure and registration, temporary permit, inactive status, emeritus licensure, reinstatement of licensure or registration, and licensure or registration renewal;
3. expiration, cancellation, termination, suspension or other denial of a license, registration, temporary permit, or other credential;
4. continuing education requirements for licensees, registrants, permittees, or other regulated persons, and requirements for sponsors of continuing education programs;
5. requirements for academic institutions and programs offering courses for licensure;
6. license, registration, and other fees;
7. practice without a license or for other unlawful or unauthorized practice;
8. grounds for disciplinary or corrective action, including standards of practice and ethical conduct; and
9. processes for implementing the board's authority to resolve complaints
10. standards, policies, or procedures that are necessary to comply with federal requirements or that are necessary to avoid a denial of funds or services from the federal government that would otherwise be available to the state



STATE OF MINNESOTA  
BOARD OF NURSING

2829 University Avenue SE • Suite 500 • Minneapolis, Minnesota 55414 • (612) 617-2270 • Fax: (612) 617-2190

MN Relay for Hearing/Speech Impaired: 1-800-627-3529

October 30, 1998

Senator Don Betzold  
306 Capitol Building  
St. Paul, MN 55155

Dear Senator Betzold:

The attached is in response to your letter of October 1 asking for comments on the proposal to amend current law to authorize a board to adopt rules only in specific subject areas.

As you know, the Board of Nursing's statutory authority is already limited to the very narrow area of the regulation of nurses and nursing. The Board's authority to adopt, amend, or repeal rules is confined to specific subject areas such as licensure, licensure renewal, approval of nursing programs, public health nurse registration, prescribing authority, and nursing practice and discipline.

I urge you not to pursue legislation that would unduly restrict the Board's rulemaking authority. Restricting the Board's statutory authority too narrowly could make it more difficult to change rules in response to changing standards of practice and health care delivery. It is important for the Board to have flexibility so that out-of-date requirements do not restrict professional practice or deprive the public of new technologies, procedures, and treatments.

The attached proposal for statutory language authorizes the Board of Nursing to adopt rules only in specific subject areas and at the same time provides enough discretion to implement the policies and programs established by statute. As you are aware, sections of Chapter 214 also provide rulemaking authority. I have not repeated those authorities in our list.

I also urge you to include appropriate language in any proposed legislation to ensure that:

- Changes in the statutory authority for a board's rulemaking would not invalidate the board's existing rules; and
- Revising the board's existing rulemaking authority would not compel boards to comply with the time limits specified in Minnesota Statutes section 14.125.

I have developed the Board of Nursing's proposed statutory language in consultation with the Executive Directors of the other health-related boards to ensure that we are using uniform terminology. Using uniform terminology, however, does not mean that we have uniform requirements. The standards and procedures vary from board to board and reflect the differences in the occupations regulated. It is vital that each board have the ability to adopt rules appropriate for the professions it regulates.

Senator Don Betzold

Page 2

October 29, 1998

In consultation with the Executive Directors of the other health-related boards, I am also requesting that you restore the language stricken from Minnesota Statutes section 214.06, subdivision 3. This provision, repealed in 1997, stated as follows:

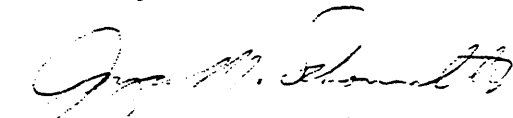
Notwithstanding section 14.22, subdivision 1, clause (3), a public hearing is not required to be held when the health-related licensing boards need to raise fees to cover anticipated expenditures in a biennium. The notice of intention to adopt the rules, as required under section 14.22, must state no hearing will be held.

The provision was repealed with no hearing, no discussion, no contact with the boards and probably little awareness on the part of legislators, as the repealer was buried in Minnesota Laws 1997, Chapter 187 (article 5, section 36). Representatives of the Department of Finance as well as the boards believe that requiring a hearing to adjust fees is unnecessary, duplicative, time-consuming, and expensive. The interests of the public are amply protected in the following ways.

- The boards can adjust only fees that are authorized by statute.
- The statutes (section 214.06 subd. 1) requires that “. . . total fees collected by each board will as closely as possible equal anticipated expenditures during the fiscal biennium . . . .” Thus the boards do not have discretion to increase or decrease fees other than to approximate anticipated expenditures. A board’s expenditures as authorized by the legislature determine its fees.
- All board appropriations must be approved by the legislature. Thus the legislature controls how much boards may spend, which in turn controls the amount of the boards’ fees.
- The statutes require that the commissioner of finance approve fee adjustments. The requirement ensures that fees will in fact approximate expenditures.

If you have questions or comments, please call me at 612-617-2295. I look forward to working with your staff on this issue.

Sincerely,



Joyce M. Schowalter  
Executive Director

Encl.

cc: Lora Schwartz, RN  
Board President

# MINNESOTA BOARD OF NURSING

## Proposed Wording for Rulemaking Power

### 148.191 OFFICERS; STAFF; POWERS.

Subdivision 1. **Officers; staff.** The board shall elect from its members a president, a vice-president, and a secretary-treasurer who shall each serve for one year or until a successor is elected and qualifies. The board shall appoint and employ an executive director and may employ such persons as may be necessary to carry on its work. A majority of the board, including one officer, shall constitute a quorum at any meeting.

Subd. 2. **Powers.** (a) The board is authorized to adopt, revise, and repeal rules not inconsistent with the law, as may be necessary to enable it to carry into effect the provisions of sections 148.171 to 148.285 and the regulation of nurses. Specifically the board's rulemaking authority includes the following: definition of terms, qualifications for initial licensure and registration by examination, initial licensure and registration by endorsement, examination, temporary permit, education, inactive status, registration renewal, registration of public health nurses and reregistration; application requirements and procedures for initial licensure and registration, temporary permit, registration of public health nurses, registration renewal, reregistration and verification of licensure and registration status; resolution of educational deficiencies; expiration, nullification, voluntary termination or denial of a license, registration renewal, reregistration or temporary permit; continuing education requirements and procedures including deferment and substantiation of participation; requirements for sponsors of continuing education programs; requirements and procedures pertaining to prescribing drugs and therapeutic devices by certified nurse midwives, certified nurse practitioners and certified clinical nurse specialists in psychiatric and mental health nursing; requirements and procedures for approval of nursing programs including initial approval, continuing approval, loss of approval, reinstatement of approval and advanced standing; practice of professional or practical nursing without a license or current registration or for other unlawful or unauthorized practice of nursing; grounds for and forms of disciplinary or corrective action including standards of practice and ethical conduct for the practice of nursing and the reissuance of a license or registration; advertising; reporting requirements and immunity provisions; cooperation with board investigations; requirements and processes for implementing the board's authority to resolve complaints against nurses; exemptions from licensure or registration; standards, policies and procedures necessary to comply with federal requirements or necessary to avoid denial of funds or services from the federal government that would otherwise be available to the state; licensure and other fees; dishonored checks; state boundary considerations; registration of professional corporations and firms; waivers and variances; and records retention by the board. The board shall prescribe by rule curricula and standards for schools and courses preparing persons for licensure under sections 148.171 to 148.285. It shall conduct or provide for surveys of such schools and courses at such times as it may deem necessary. It shall approve such schools and courses as meet the requirements of sections 148.171 to 148.285 and board rules. It shall examine, license, and renew the license of duly qualified applicants. It shall hold examinations at least once in each year at such time and place as it may determine. ~~It shall by rule adopt, evaluate, and periodically revise, as necessary, requirements for licensure and for~~

~~registration and renewal of registration as defined in section 148.231.~~ It shall cause the prosecution of all persons violating sections 148.171 to 148.285 and have power to incur such necessary expense therefor. It shall register public health nurses who meet educational and other requirements established by the board by rule, including payment of a fee. ~~Prior to the adoption of rules, the board shall use the same procedures used by the department of health to certify public health nurses.~~ It shall have power to issue subpoenas, and to compel the attendance of witnesses and the production of all necessary documents and other evidentiary material. Any board member may administer oaths to witnesses, or take their affirmation. It shall keep a record of all its proceedings.

(b) The board shall have access to hospital, nursing home, and other medical records of a patient cared for by a nurse under review. If the board does not have a written consent from a patient permitting access to the patient's records, the nurse or facility shall delete any data in the record that identifies the patient before providing it to the board. The board shall have access to such other records as reasonably requested by the board to assist the board in its investigation. Nothing herein may be construed to allow access to any records protected by section 145.64. The board shall maintain any records obtained pursuant to this paragraph as investigative data under chapter 13.

Subd. 3. Repealed, 1989 c 194 s 22





STATE OF MINNESOTA

## BOARD OF SOCIAL WORK

2829 University Avenue Southeast • Suite 340 • Minneapolis, Minnesota 55414-3239

(612) 617-2100 • Toll Free (888) 234-1320 • TTY (800) 627-3529

October 30, 1998

Mark Shepard  
House of Representatives -- Research Department  
600 State Office Building  
St. Paul MN 55155

Dear Mr. Shepard:

I am writing in response to Senator Betzold's October 1, 1998 letter concerning rulemaking authority.

I support the legislative decision to articulate specific rulemaking authority for agencies. Accordingly, I am attaching draft language to be added to Minnesota Statutes, section 148B.20.

As you know, all of the health licensing boards have discussed this issue, in an attempt to ensure that the general rulemaking powers across boards is consistent. I support the boards' request that the legislation ensure that 1) changes in the statutory authority for a board's rulemaking do not negate a board's existing rules, and 2) revising boards' existing rulemaking authority will not compel the boards to abide by the time limits for initiating rulemaking in these areas, as specified in Minnesota Statutes, section 14.125.

Also, I support the boards' request to restore the language stricken from Minnesota Statutes, section 214.07, subdivision 3. This provision, repealed in 1997, states as follows:

Notwithstanding section 14.22, subdivision 1, clause (3), a public hearing is not required to be held when the health-related licensing boards need to raise fees to cover anticipated expenditures in a biennium. The notice of intention to adopt the rules, as required under section 14.22, must state no hearing will be held.

As you know, health boards are required to raise sufficient revenues to cover their costs. The fees must be established to meet expenditures as closely as possible; thus, boards may not raise fees to a point that revenues would be excessively above anticipated expenditures. Any proposed fee increases are reviewed and approved by the Department of Finance. Further, a board's budget is approved by the Legislature, following the Governor's review and recommendation. This oversight, together with the opportunity for licensees and other interested persons to submit comment on any proposed fee increase, ensures that boards will raise fees only when it is necessary to do so.

Thank you for the opportunity to provide comment on this matter.

Sincerely,

Thomas M. McSteen  
Executive Director

Attachment

cc: Senator Don Betzold (with attachment)

# MINNESOTA BOARD OF SOCIAL WORK

## Suggested Language for Specific Rulemaking Authority

### Minnesota Statutes, section 148B.20

Subdivision 1. General. The board of social work shall: (a) Adopt and enforce rules for licensure of social workers and for regulation of their professional conduct. The rules must be designed to protect the public.

~~(b) Adopt rules establishing standards and methods of determining whether applicants and licensees are qualified under sections 148B.21 to 148B.24. The rules must make provision for examinations and must establish standards for professional conduct, including adoption of a code of professional ethics and requirements for continuing education. Specifically, the board may adopt, amend, or repeal rules needed to regulate social work practice in the following areas:~~

(1) qualifications for initial licensure, education, examination, temporary permit, inactive status, emeritus licensure, licensure by reciprocity, and licensure renewal;

(2) application requirements for initial licensure, temporary permit, inactive status, emeritus licensure, reinstatement or reactivation of licensure, and licensure renewal;

(3) expiration, cancellation, suspension, denial, or voluntary termination of a license or temporary permit;

(4) continuing education requirements for licensees and requirements for sponsors of continuing education programs;

(5) supervised practice requirements;

(6) license and other fees;

(7) the practice of social work without a license or for other unlawful or unauthorized practice of social work;

(8) grounds for disciplinary or corrective action, including standards of practice and ethical conduct for the practice of social work;

(9) processes for implementing the board's authority to resolve complaints against social work; and

(10) standards, policies, or procedures that are necessary to comply with federal requirements or that are necessary to avoid a denial of funds or services from the federal government that would otherwise be available to the state.

[renumber (c) to (i)]



## Board of Dentistry

EXECUTIVE OFFICE

2829 UNIVERSITY AVENUE SE • SUITE 450

MINNEAPOLIS, MINNESOTA 55414-3249

(612) 617-2250

MN RELAY SERVICE FOR HEARING/SPEECH IMPAIRED (800) 627-3529

October 30, 1998

Mark Shepard  
House of Representatives Research Department  
600 State Office Building  
St. Paul, MN 55155

Dear Mr. Shepard:

I am writing on behalf of the Minnesota Board of Dentistry in response to Senator Don Betzold's October 1, 1998 letter regarding amending rulemaking authorities granted to state agencies. I appreciate the concerns about agencies having too much discretion in their rulemaking authority. But, I urge the subcommittee not to pursue legislation that would have the unintended effect of "hamstringing" a health licensing board's ability to adequately protect the public from practitioners who fail to meet minimum licensure or registration requirements, or who violate the Dental Practice Act by providing substandard care.

Based on Senator Betzold's letter, I understand that the legislative subcommittee is examining the feasibility of replacing "agency-wide rulemaking delegations with delegations that would authorize adoption of rules only in specific subject areas within each agency." The Board of Dentistry's rulemaking authority is already limited to the very narrow area of dental practice as described in Minnesota Statutes 150A.01 to 150.12, and 150A.21. Moreover, the rulemaking process as defined by the legislature requires that agencies restrict their rulemaking to areas in which they have statutory authority. If the Board of Dentistry were to attempt to promulgate rules for which it had no statutory authority, the proposed rules would fail.

I respectfully ask that the subcommittee recognize that the Dental Practice Act could be decimated if it is "opened" in this way. While I realize that that is certainly not the intent of this subcommittee, there are those who may use this as an opportunity to restrict the Board's already limited statutory authority for personal or professional gain. The Board's duty is to carry out the authorities granted to it by the legislature—and sometimes that means performing such unpleasant functions as taking disciplinary action against professional licenses, refusing licensure to those who do not meet minimum qualifications, etc. It would be a grave disservice to the public to erode the Board's narrow statutory authority such that it can no longer function—particularly when its authorities have not been excessive or misused in the past.

THE BOARD OF DENTISTRY FAX: 012-7017-2200 NOV 5 1998 10:38 P.03  
Mark Shepard  
October 30, 1998  
Page 2

Restricting the Board's statutory rulemaking authority could make it even more difficult, time-consuming and expensive for the Board to make changes that would benefit the public. Boards should not have to seek specific statutory authority to amend rules every time there is a change in practice standards—and practice standards are ever changing.

In light of these concerns, I urge the subcommittee first to consider not changing the Board of Dentistry's rulemaking statute. In the event that the subcommittee concludes that such changes are warranted, then please consider including appropriate language in any proposed legislation to ensure that:

- Changes in statutory authority for the Board's rulemaking would not negate its existing rules, and
- Revising the Board's existing rulemaking authority would not compel the Board to abide by time limits specified in Minnesota Statutes, section 14.125.

As requested, I am attaching a proposal for statutory language that authorizes the Board to amend, adopt or repeal rules only in specific areas, but at the same time, provides enough discretion to implement the policies and programs established by statute.

I have developed my proposed statutory language in consultation with the executive directors of the other health-related licensing boards, in an effort to use uniform terminology where possible. I want to emphasize, however, that using uniform terminology does not mean that all boards have uniform requirements: practice requirements, standards and procedures vary from board to board, appropriately reflecting differences among the health professions regulated. It is vital that each board continue to have the authority to adopt, amend and repeal rules related to the profession(s) it regulates.

In consultation with the executive directors of the other health-related licensing boards, I am also requesting that the language stricken from Minnesota Statutes, section 214.06, subdivision 3, be restored. This provision, repealed in 1997, stated as follows:

Notwithstanding section 14.22, subdivision 1, clause (3), a public hearing is not required to be held when the health-related licensing boards need to raise fees to cover anticipated expenditures in a biennium. The notice of intention to adopt the rules, as required under section 14.22, must state no hearing will be held.

The provision was repealed with no hearing, no discussion, and probably little awareness on the part of legislators, as the repealer was buried in Minnesota Laws 1997, Chapter 187 (article 5, section 36). We believe that requiring a hearing to adjust fees is unnecessary, duplicative, time-consuming and expensive. The interests of the public are amply protected in the following ways:

- The boards can adjust only fees that are authorized by statute.

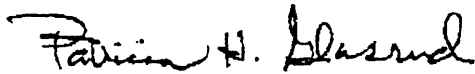
THE BOARD OF DENTISTRY FAX 012-011-2200 NOV 5 98 10:59 P.04

Mark Shepard  
October 30, 1998  
Page 3

- The statutes require that "the total fees collected by each board will as closely as possible equal anticipated expenditures during the fiscal biennium." Thus, the boards do not have the
- discretion to increase or decrease fees other than to approximate anticipated expenditures. A board's expenditures determine its fees.
- The statutes require that the commissioner of finance approve fee adjustments. The requirement ensures that fees will, in fact, approximate expenditures.
- Boards' appropriations must be approved by the legislature.

If you have any questions or comments, please feel free to contact me at 617-2257.

Very sincerely,



Patricia H. Glasrud  
Executive Director

cc: Cheryl Tietge, D.H., Board President



# Board of Dentistry

EXECUTIVE OFFICE

2829 UNIVERSITY AVENUE SE • SUITE 450  
MINNEAPOLIS, MINNESOTA 55414-3249

(612) 617-2250

MN RELAY SERVICE FOR HEARING/SPEECH IMPAIRED (800) 627-3529

October 30, 1998

TO: Senator Don Betzold

FROM: Patricia H. Glasrud <sup>PHG</sup>  
Executive Director, Board of Dentistry

RE: Draft Changes to Board of Dentistry's Rulemaking Authority

Below is a draft of proposed changes related to the Board of Dentistry's rulemaking authority, as you requested. If you have any questions, please don't hesitate to call me at 617-2257.

## 150A.04. RULES OF THE BOARD.

Subdivision 1. Repealed, 1976 c 222 s 209

Subd. 2. Repealed, 1976 c 222 s 209

Subd. 3. Repealed, 1976 c 222 s 209

Subd. 4. Repealed, 1976 c 222 s 209

Subd. 5. Rules. The board may promulgate adopt, amend or repeal rules as are necessary to carry out and make effective the provisions and purposes of sections 150A.01 to 150A.12, in accordance with Chapter 14. ~~The rules may specify training and education necessary for administering general anesthesia and intravenous conscious sedation.~~ needed to regulate dentistry, dental hygiene and dental assisting in the following areas:

(1) definitions;

(2) board membership;

(3) board meetings and officers;

(4) initial, renewal and reinstatement licensure and examination requirements for dentists, dental hygienists, faculty dentists, resident dentists, specialty dentists;

(5) initial, renewal and reinstatement registration and examination requirements for registered dental assistants;

(6) requirements for licensure by credential for dentists and dental hygienists;

(7) training and education necessary for administering general anesthesia, intravenous conscious sedation, and nitrous oxide inhalation analgesia;

(8) administrative termination of license or registration;

(9) voluntary termination of license or registration;

(10) exceptions and exemptions of certain practices and operations;

Senator Berzold  
October 30, 1998  
Page 2

- (11) license and other fees;
- (12) continuing education requirements for licensees and registrants and requirements for continuing education sponsors;
- (13) grounds for disciplinary or corrective action, including provisions related to reinstatement of license or registration; medical examinations; medical records; self-incrimination; disciplinary procedure related to temporary suspension of license or registration, and disciplinary procedure related to tax clearance certificates;
- (14) access to medical data;
- (15) advertising;
- (16) duties that may be delegated to allied dental personnel including dental hygienists, unregistered dental assistants, registered dental assistants, and dental technicians;
- (17) violation and defenses;
- (18) professional corporations, limited liability companies, limited liability partnerships;
- (19) removable dental prostheses and owner identification;
- (20) dental patient record keeping;
- (21) infection control;
- (22) standards, policies, or procedures that are necessary to comply with federal requirements or that are necessary to avoid a denial of funds or services from the federal government that would otherwise be available to the state.

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# MINNESOTA BOARD OF PHARMACY

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*An Equal Opportunity Employer*

2829 University Ave. SE., #530 • Minneapolis, MN 55414-3251 • Telephone: (612) 617-2201 • FAX: (612) 617-2212

MN RELAY SERVICE FOR HEARING/SPEECH IMPAIRED ONLY:  
Metro and Non-Metro: 800-627-3529

October 29, 1998

Senator Don Betzold  
306 Capitol Building  
St Paul MN 55155

Dear Senator Betzold:

I am responding to your letter of October 1<sup>st</sup> asking for comments on the proposal to amend current law to authorize a board to adopt rules only in specific subject areas. I appreciate your concern about agencies having too much discretion in rulemaking. At the same time, I urge you not to pursue legislation that would unduly restrict a board's rulemaking authority.

As you know, the boards' statutory authority is already limited to the very narrow area of occupational regulation. Therefore, our ability to adopt, amend, or repeal rules is already confined to specific subject areas such as examinations for licensure, continuing education, requirements for licensure renewal, standards for practice, and grounds for discipline.

Restricting a board's statutory authority too narrowly could make it more difficult to change rules in response to changing standards of practice. Boards should not have to seek specific statutory authority to amend rules every time there is a change in standards. It is important to give a board flexibility so that out-of-date requirements do not unduly restrict professional practice or deprive the public of new technologies, procedures, and treatments.

I am attaching my proposal for statutory language that authorizes the board to adopt rules only in specific areas but at the same time provides enough discretion to implement the policies and programs established by statute.

In addition to the recommendations I make in the attachment, I urge you to consider including appropriate language in any proposed legislation to ensure that:

- Changes in the statutory authority for a board's rulemaking would not negate a board's existing rules; and
- Revising boards' existing rulemaking authority would not compel boards to abide by the time limits specified in Minnesota Statutes, section 14.125.

I have developed my proposed statutory language in consultation with the Executive Directors of the other health-related boards, to ensure that we are using uniform terminology. I want to emphasize, however, that using uniform terminology does not



mean that we have uniform requirements. The standards and procedures vary from one board to the next, reflecting the differences in the occupations regulated. This is especially true in the case of the Board of Pharmacy in that we are charged with licensing and inspecting facilities ( pharmacies, drug wholesalers and drug manufacturers ) as well as individuals. It is vital that each board have the ability to adopt rules appropriate for the occupations it regulates.

In consultation with the Executive Directors of the other health-related boards, I am also requesting that you restore the language stricken from Minnesota Statutes, section 214.07, subdivision 3. This provision, repealed in 1997, stated:

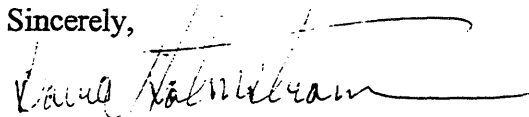
Notwithstanding section 14.22, subdivision 1, clause (3), a public hearing is not required to be held when the health-related licensing boards need to raise fees to cover anticipated expenditures in a biennium. The notice of intention to adopt the rules, as required under section 14.22, must state no hearing will be held.

The provision was repealed with no hearing, no discussion, and probably little awareness on the part of legislators, as the repealer was buried in Minnesota Laws 1997, Chapter 187 (article 5, section 36). We believe that requiring a hearing to adjust fees is unnecessary, duplicative, time consuming, and expensive. The interests of the public are amply protected in the following ways:

- The boards can adjust only fees that are authorized by the legislature.
- The statutes require that "the total fees collected by each board will as closely as possible equal anticipated expenditures during the fiscal biennium." Thus the boards do not have discretion to increase or decrease fees other than to approximate anticipated expenditures. A board's expenditures determine its fees.
- The statutes require that the commissioner of finance approve fee adjustments. This requirement ensures that fees will in fact approximate expenditures.
- Boards' appropriations must be approved by the legislature. Thus the legislature controls how much boards may spend, which in turn controls the amount of the boards' fees.

If you have questions or comments on my response, please call me at 612-617-2201.

Sincerely,



David E. Holmstrom  
Executive Director

**Minnesota Statutes 151.06 sub. 1 (c) is amended as follows:**

151.06 sub.1 (c). **Rules.** For the purposes aforesaid, it shall be the duty of the board to ~~make~~ adopt, amend, repeal and publish uniform rules not inconsistent herewith for carrying out and enforcing the provisions of this chapter. For purposes of implementing the provisions of MS 151 the board may regulate pharmacy practice and drug distribution by developing rules in the following areas: definitions; licensing pharmacists; licensing pharmacies; licensing drug wholesalers and drug manufacturers; registration of pharmacist interns and preceptors; registration of pharmacy technicians; registration of controlled substance researchers; registration of medical gas manufacturers, transfillers, wholesalers and distributors; examinations; fees; continuing education; standards and scope of practice; compounding and dispensing of drugs; packaging, labeling, security, distribution and recordkeeping of drugs; standards of operation for pharmacies, drug wholesalers, and drug manufacturers; unprofessional conduct; grounds for disciplinary action; disciplinary remedies and procedures; standards, policies, or procedures that are necessary to comply with federal requirements; and waivers and variances. The board shall adopt rules regarding prospective drug utilization review and patient counseling by pharmacists. A pharmacist in the exercise of the pharmacist's professional judgment, upon the presentation of a new prescription by a patient or the patient's caregiver or agent, shall perform the prospective drug utilization review required by rules issued under this subdivision.



# Board of Podiatric Medicine

2829 University Avenue Southeast #430 • Minneapolis, Minnesota 55414-3245  
(612) 617-2200 • Hearing/Speech Relay: 1-800-627-3529

October 30, 1998

Mark Shepard  
House of Representatives Research Department  
600 State Office Building  
St. Paul, MN 55155

Dear Mr. Shepard:

On behalf of the Board of Podiatric Medicine, I am responding to Senator Betzold's letter of October 1 asking for comments on the proposal to amend current law to authorize a board to adopt rules only in specific subject areas. Although I appreciate the subcommittee's concern about agencies having too much discretion in rulemaking, I urge them not to pursue legislation that would unduly restrict a board's rulemaking authority.

The Board's statutory authority is already limited to the very narrow area of occupational regulation. Our ability to adopt, amend, or repeal rules is already confined to specific subject areas such as examinations for licensure, continuing education, requirements for licensure renewal, and grounds for discipline. Boards should not have to seek specific statutory authority to amend rules every time there is a change in standards. It is important to give a board flexibility so that out-of-date requirements do not unduly restrict professional practice or deprive the public of new technologies, procedures, and treatments.

I am attaching my proposal for statutory language that authorizes the board to adopt rules only in specific subject areas but at the same time provides enough discretion to implement the policies and programs established by statute.

I also urge the subcommittee to consider including appropriate language in any proposed legislation to ensure that changes in the statutory authority for a board's rulemaking would not negate a board's existing rules; and revising board's existing rulemaking authority would not compel boards to abide by the time limits specified in Minnesota Statutes, section 14.125.

I have developed my proposed statutory language in consultation with the Executive Directors of the other health-related boards, to ensure that we are using uniform terminology. Using uniform terminology does not mean that we have uniform requirements. The standards and procedures vary from one board to the next, reflecting the differences in the occupations regulated. It is important that each board have the ability to adopt rules appropriate for the occupation(s) it regulates.

Following consultation with the Executive Directors of the other health-related boards, I am also requesting that you restore the language stricken from Minnesota Statutes, section 214.06, subdivision 3. This provision, repealed in 1997, stated as follows:

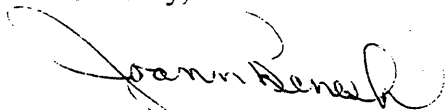
Notwithstanding section 14.22, subdivision 1, clause (3), a public hearing is not required to be held when the health-related licensing boards need to raise fees to cover anticipated expenditures in a biennium. The notice of intention to adopt the rules, as required under section 14.22, must state no hearing will be held.

The provision was repealed with no hearing, no discussion, and probably little awareness on the part of legislators, as the repealer was buried in Minnesota Laws 1997, Chapter 187 (article 5, section 36). We believe that requiring a hearing to adjust fees is unnecessary, duplicative, time-consuming, and expensive. With a board as small as this one, a hearing would cause a higher adjustment in order to pay for the cost of the hearing itself. The interests of the public are amply protected in the following ways.

- The boards can adjust only fees that are authorized by statute.
- The statutes require that "the total fees collected by each board will as closely as possible equal anticipated expenditures during the fiscal biennium." Thus the boards do not have discretion to increase or decrease fees other than to approximate anticipated expenditures. A board's expenditures determine its fees.
- The statutes require that the commissioner of finance approve fee adjustments. The requirement ensures that fees will in fact approximate expenditures.
- Boards' appropriations must be approved by the legislature. Thus the legislature controls how much boards may spend, which in turn controls the amount of the boards' fees.

If you have questions or comments on my response, please call me at 612-617-2200. Thank you for the opportunity for input.

Sincerely,



Joann Benesh  
Executive Director

Attachment

153.02 Board of Podiatric Medicine

The Board may adopt, amend, or repeal rules in the following areas as necessary to carry out the purposes of this chapter: 1) qualifications for initial licensure, education, examination, temporary permit, licensure by reciprocity, and licensure renewal; 2) application requirements for initial licensure, temporary permit, reinstatement of licensure, and licensure renewal; 3) expiration, cancellation, suspension, denial, voluntary termination of a license or temporary permit; 4) continuing education requirements for licensees and requirements for sponsors of continuing education programs; 5) requirements for academic institutions and programs offering courses for licensure; 6) license and other fees; 7) practice of podiatric medicine without a license or other unlawful or unauthorized practice of podiatric medicine; 8) grounds for disciplinary or corrective action, including standards of practice and ethical conduct for the persons practicing podiatric medicine; 9) processes for implementing the board's authority to resolve complaints against podiatric medicine; and 10) standards, policies, or procedures that are necessary to comply with federal requirements or that are necessary to avoid a denial of funds or services from the federal government that would otherwise be available to the state.



# MINNESOTA BOARD OF VETERINARY MEDICINE

2829 University Avenue SE # 540 • Minneapolis, MN 55414-3250

(612) 617-2170 (Voice) • (612) 617-2172 (Fax)

October 29, 1998

Mark Shepard  
House of Representatives Research Dept.  
600 State Office Building  
St. Paul, MN 55155

Dear Mr. Shepard:

I am responding to Senator Betzold's letter of October 1 asking for comments on the proposal to amend current law to authorize the Board of Veterinary Medicine to adopt rules only in specific subject areas. I appreciate the concern about agencies having too much discretion in rulemaking. At the same time, I urge the subcommittee not to pursue legislation that would unduly restrict our rulemaking authority.

As you know, the boards' statutory authority is already limited to the very narrow area of veterinary practice as described in M.S. 156.001 to 156.20. Therefore, our ability to adopt, amend, or repeal rules is already confined to specific subject areas such as examinations for licensure, continuing education, requirements for licensure renewal, and grounds for discipline.

Restricting a board's statutory authority too narrowly could make it more difficult to change rules in response to changing standards of practice and changing administrative procedures. Boards should not have to seek specific statutory authority to amend rules every time there is a change in practice standards or licensing procedure. It is important to give a board flexibility to act promptly so that out-of-date requirements do not unduly restrict professional practice, deprive the public of new technologies, procedures, and treatments, or force board staff and licensees to operate under outdated and irrelevant administrative procedures.

I am attaching my proposal for statutory language amending M.S. 156.01, Subd. 3, that authorizes the Board of Veterinary Medicine to adopt rules only in specific subject areas but at the same time provides some discretion to implement the policies and programs established by statute.

In addition to the recommendations in the attachment, I urge the subcommittee to consider including appropriate language in any proposed legislation to ensure that:

- Changes in the statutory authority for a board's rulemaking would not negate a board's existing rules; and

- Revising boards' existing rulemaking authority would not compel boards to abide by the time limits specified in Minnesota Statutes, section 14.125.

I have developed my proposed statutory language in consultation with the Executive Directors of the other health-related boards, to ensure that we are using uniform terminology. I want to emphasize, however, that using uniform terminology does not mean that we have uniform requirements. The standards and procedures vary from one board to the next, reflecting the differences in the occupations regulated. It is vital that each board have the ability to adopt rules appropriate for the occupations it regulates.

In consultation with the Executive Directors of the other health-related boards, I am also requesting that the language stricken from Minnesota Statutes, section 214.06, subdivision 3 be restored. This provision, repealed in 1997, stated as follows:


Notwithstanding section 14.22, subdivision 1, clause (3), a public hearing is not required to be held when the health-related licensing boards need to raise fees to cover anticipated expenditures in a biennium. The notice of intention to adopt the rules, as required under section 14.22, must state no hearing will be held.

The provision was repealed with no hearing, no discussion, and probably little awareness on the part of legislators, as the repealer was buried in Minnesota Laws 1997, Chapter 187 (article 5, section 36). We believe that requiring a hearing to adjust fees is unnecessary, duplicative, time-consuming, and expensive. The interests of the public are amply protected in the following ways.

- The boards can adjust only fees that are authorized by statute.
- The statutes require that "the total fees collected by each board will as closely as possible equal anticipated expenditures during the fiscal biennium." Thus the boards do not have discretion to increase or decrease fees other than to approximate anticipated expenditures. A board's expenditures determine its fees.
- The statutes require that the commissioner of finance approve fee adjustments. This requirement ensures that fees will in fact approximate expenditures.
- Boards' appropriations must be approved by the legislature. Thus the legislature controls how much boards may spend, which in turns controls the amount of the boards' fees.

If you have questions or comments on my response, please call me at 612-617-2170.

Sincerely,



Roland C. Olson, DVM  
Executive Director

## 156.01 STATE BOARD OF VETERINARY MEDICINE.

Subd. 3. **Officers.** The board shall elect from its number a president and such other officers as are necessary, all from within its membership. One person may hold the offices of both secretary and treasurer. The board shall have a seal and the power to subpoena witnesses, to administer oaths, and take testimony. It shall make, alter, or amend such rules as may be necessary to carry into effect the provisions of this chapter. Specifically, the board's rulemaking authority includes the following: qualifications for initial licensure, examination, temporary permit, inactive status, licensure by endorsement, and licensure renewal; application requirements for initial licensure, examination, temporary permit, inactive status, reinstatement of licensure, and licensure renewal; expiration, cancellation, suspension, denial, voluntary termination of a license or temporary permit; continuing education requirements for licensees and requirements for sponsors of continuing education programs; requirements for academic institutions and programs offering courses for licensure; license and other fees; practice of veterinary medicine without a license or for other unlawful or unauthorized practice of veterinary medicine; grounds for disciplinary or corrective action, including standards of practice and ethical conduct for the practice of veterinary medicine; processes for implementing the board's authority to resolve complaints against veterinarians; veterinary premises and facilities standards, inspection and licensure; and veterinary consultants. It shall hold examinations for applicants for license to engage in veterinary practice at a time and place of its own choosing. Notice of such examination shall be posted 90 days before the date set for an examination in all veterinary schools approved by the board in the state, and shall be published in the journal of the American Veterinary Medical Association. The board may hold such other meetings as it deems necessary; but no meeting shall exceed three days duration.



443 Lafayette Road  
St. Paul, Minnesota 55155  
www.doli.state.mn.us



612-296-6107  
TTY: 612-297-4198  
1-800-DIAL-DLI

October 9, 1998

Mark Shepard  
House of Representatives Research Department  
600 State Office Building  
St. Paul, MN 55155

RE: LCC Subcommittee on Broad Rulemaking Delegations

Dear Mr. Shepard:

I received Senator Betzold's request on behalf of the LCC subcommittee to provide suggestions for alternatives to our agency's broad rulemaking delegation.

Our agency currently has one "broad" delegation of rulemaking authority which the subcommittee has been looking at. This delegation is found at Minn. Stat. § 175.171, and it states, "The department of labor and industry shall have the following powers and duties: ... (2) to adopt reasonable and proper rules relative to the exercise of its powers and duties, and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings..."

Labor and Industry has a number of statutory chapters, covering a wide variety of topics, which individually have delegations which grant rulemaking authority for purposes specific to that chapter. These delegations cover most of our department's current rulemaking requirements. However, we have come across three areas under our department's jurisdiction for which repeal of the rulemaking portion of Minn. Stat. § 175.171 would present problems. We would be unable to conduct rulemaking in the following areas if this delegation was eliminated: (1) portions of our prevailing wage rules, (2) rules for our Fraud Investigation Unit to operate in areas other than workers' compensation, and (3) any future changes to the Labor Education Advancement Programs rules.

We suggest that in place of the broad delegation in Minn. Stat. § 175.171, we individually address each of these areas by adding specific delegation language to other portions of our statutory chapters that would grant us rulemaking authority for the three topics listed above. We have attached draft language that you can use as a guide if the subcommittee chooses to suggest eliminating the delegation authority in Minn. Stat. § 175.171.

This information can be provided to you in alternative formats (Braille, large print or audio tape).

An Equal Opportunity Employer



Mark Shepard  
October 9, 1998  
Page 2

I hope our suggestions are helpful to the subcommittee as they carry out their study. If you have any questions, please contact Beth Hargarten in our Legal Services unit at 297-7350.

Sincerely,

*Gretchen B. Maglich*

Gretchen B. Maglich  
Commissioner

GBM/bh

Enclosure

## SUGGESTED STATUTORY LANGUAGE

### **175.171 POWERS AND DUTIES, DEPARTMENT OF LABOR AND INDUSTRY.**

The department of labor and industry shall have the following powers and duties:

(1) to exercise all powers and perform all duties of the department consistent with the provisions of this chapter;

~~(2) to adopt reasonable and proper rules relative to the exercise of its powers and duties, and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings, which shall not be effective until ten days after their adoption, and a copy of these rules shall be delivered to every citizen making application therefor to adopt rules which govern the investigations, operations and determinations of the fraud investigative unit established under section 175.16;~~

(3) to collect, collate, and publish statistical and other information relating to the work under its jurisdiction, to keep records and to make public reports in its judgment necessary; and on or before October 1 in each even-numbered year the department shall report its doings, conclusions, and recommendations to the governor, which report shall be printed and distributed by November 15 of each even-numbered year to the legislature pursuant to section 3.195, and otherwise as the department may direct;

(4) to establish and maintain branch offices as needed for the conduct of its affairs; and

(5) to provide direct computer access to and electronic data interchange of public and nonpublic workers' compensation data and other data maintained by the department and to charge a reasonable fee for the access and electronic data interchange, except that in no circumstances may a fee be charged an employee or the employee's attorney seeking access and data interchange to information about the employee's claim or circumstances. Notwithstanding any other law to the contrary, the fee receipts for providing the computer access to and electronic data interchange of data shall be deposited in the special compensation fund. Access to and electronic data interchange of nonpublic data shall be only as authorized by the subject of the data, as authorized in chapter 13, or as otherwise authorized by law.

### **177.415 POWER TO MAKE RULES.**

The commissioner of labor and industry shall have the power to make rules to provide procedures to carry out the purposes of 177.41 to 177.44.

### **178.11 LABOR EDUCATION ADVANCEMENT GRANT PROGRAM.**

The commissioner shall establish the labor education advancement grant program for the purpose of facilitating the participation of minorities and women in apprenticeship trades and occupations. The commissioner shall award grants to community-based organization serving the targeted populations on a competitive request-for-proposal basis. Interested organizations shall

apply for the grants in a form prescribed by the commissioner. As part of the application process, applicants must provide a statement of need for the grant, a description of the targeted population and apprenticeship opportunities, a description of activities to be funded by the grant, evidence supporting the ability to deliver services, information related to coordinating grant activities with other employment and training programs, identification of matching funds, a budget, and performance objectives. Each submitted application shall be evaluated for completeness and effectiveness of the proposed grant activity. The commissioner of labor and industry shall have the power to make rules to govern the application process and criteria to be used in the selection of organizations as grant recipients.



STATE OF MINNESOTA  
PUBLIC UTILITIES COMMISSION

121 7th Place East ■ Suite 350 ■ St. Paul, Minnesota 55101-2147

612/296-712-  
FAX 612/297-7079  
TDD 612/297-1201

Senator Don Betzold  
Senate District 48  
306 State Capitol Building  
St. Paul, MN 55155

October 29, 1998

Dear Senator Betzold,

Enclosed please find the Minnesota Public Utilities Commission's proposal for amending Minnesota Statutes, sections 216B.08 and 237.10. These sections constitute our agency's broad delegations of rule making authority. The Commission would like to thank the subcommittee for asking for Commission input regarding this issue.

Our primary concern in drafting this proposal was that the amendments to these sections not call into question the validity or effectiveness of the Commission's current rules which rely on these sections for their statutory authority. We addressed this concern in two ways:

1. We propose that the current language of sections 216B.08 and 237.10 remain unchanged, thus avoiding the argument that amending the statutory authority for some of our current rules invalidates those rules.

In lieu of amending those sections, we propose adding a paragraph to both section 216B.08 and 237.10, stating that the Commission, pursuant to those rule making delegations may promulgate rules in certain specified areas. This language corresponds, we think, to the subcommittee's general direction to make these sections "look something like a table of contents" to our agency rules, by providing specific statutory authority for each of the general topics for which the Commission has promulgated rules.

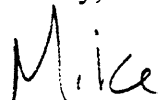
2. We propose including a "legislative intent" section in the legislation, which affirms the validity and effectiveness of the Commission's rules which were promulgated, in whole or in part, pursuant to the statutory authority in sections 216B.08 and 237.10.

The Commission believes that our proposal addresses both the subcommittee's concerns

regarding broad grants of rule making authority to state agencies, and our concerns regarding our rules promulgated under those broad grants. We hope you find this proposal useful and we stand ready to assist the subcommittee upon your request.

If you have any questions, please do not hesitate to call me.

Sincerely,

A handwritten signature in black ink that reads "Mike". The letters are cursive and somewhat stylized.

Michael J. Bull  
Senior Analyst & Legislative Liaison  
(651) 296-1337

BE IT ENACTED BY THE STATE OF MINNESOTA THAT:

1 Section 1. Minnesota Statutes 1997, section 216B.08, is amended to read:

2 [216B.08] [DUTIES OF COMMISSION.] (a) The commission is hereby vested with the  
3 powers, rights, functions, and jurisdiction to regulate in accordance with the provisions of Laws  
4 1974, chapter 429 every public utility as defined herein. The exercise of such powers, rights,  
5 functions, and jurisdiction is prescribed as a duty of the commission. The commission is  
6 authorized to make rules in furtherance of the purposes of Laws 1974, chapter 429.

7 (b) Pursuant to paragraph (a), the commission may prescribe rules in the following areas:

8 (1) utility customer service, including: customer information and complaints; temporary  
9 and extended service; service territories; disconnection of service, disconnection during cold  
10 weather and other disconnection requirements; access and billings; adjustments of gas and  
11 electric bills; deposits and guarantee requirements; public access to information; and delinquency  
12 charges;

13 (2) utility regulatory requirements, including: uniform system of accounts; depreciation  
14 and depreciation certification; capital structure and security issuance; acquisition of property;  
15 affiliated interests; automatic adjustment of charges; rate changes and rate adjustments; financial  
16 information; and annual reports;

17 (3) commission practice and procedure;

18 (4) intervenor compensation;

1           (5) cogeneration and small power production, including: filing and reporting  
2           requirements; conditions of service; rates; wheeling and exchange agreements; disputes;  
3           notification to customers; and interconnection guidelines;

4           (6) conservation improvement;

5           (7) resource planning;

6           (8) power plants, transmission lines, and gas storage and pipelines, including: criteria for  
7           assessment of need; applications for certificate of need; and modifications to certificates of need;

8           (9) oil and liquified petroleum gas storage facilities, petroleum pipelines and oil  
9           refineries, including: criteria for assessment of need; applications and information needed for  
10          certificates of need; and modifications to certificates of need; and

11          (10) energy facilities, including: criteria for assessment of need; applications and  
12          information needed for certificates of need; and modifications to certificates of need.

13           Sec. 2. Minnesota Statutes 1997, section 237.10, is amended to read:

14           [237.10] [UNIFORM RULES, CLASSIFICATIONS, PRACTICES; FORMS.] (a) It  
15           shall be the duty of the commission to prescribe uniform rules and classifications pertaining to  
16           the conduct of intrastate telephone business and a system of accounting to be used by telephone  
17           companies in transacting this business, and it shall prescribe and furnish blanks and forms for  
18           reports, all of which shall conform as nearly as practicable to the rules, classifications,  
19           accounting systems, and reports prescribed by the Federal Communications Commission for the  
20           interstate business of like size companies. The commission shall by correspondence or



1 conference where necessary use its best endeavors toward establishing uniformity in practice in  
2 all matters pertaining to regulation of the business of telephone companies between the federal  
3 government and state government of this and adjacent states.

4 (b) Pursuant to paragraph (a), the commission may prescribe rules in the following areas:  
5 records and reports; customer relations; disconnections of service and service delays; telephone  
6 directories; engineering and construction of telecommunications facilities; inspection, tests and  
7 service requirements; accounting; lobbying expenditures; filing requirements; tariffs, price lists  
8 and new services; changes to tariffs or rates; competitive services; classification and  
9 reclassification of services; the development, approval, modification and implementation of  
10 incentive plans or other alternative forms of regulation; interexchange calling; and telephone  
11 assistance.

12 Sec. 3. [LEGISLATIVE INTENT.]

13 The legislature affirms the validity of the rules promulgated by the Minnesota public  
14 utilities commission pursuant, in whole or in part, to the authority granted to the commission  
15 under Minnesota Statutes 1997, sections 216B.08 and 237.10 as of the date of enactment this act,  
16 and intends that these rules remain in effect and unaffected by these amendments to sections  
17 216B.08 and 237.10.

# BMS

BUREAU OF MEDIATION SERVICES

State of Minnesota

October 21, 1998

Senator Don Betzold  
306 State Capitol Building  
75 Constitution Avenue  
St. Paul, MN 55155-1606

Dear Senator Betzold:

This is in response to your letter of October 1, 1998, regarding delegations of rulemaking authority to state agencies (Laws 1998, chapter 303, section 5).

As you have indicated, present law gives the Bureau of Mediation Services a broad delegation of authority to adopt rules. (M.S. 179A.04, subd. 1, 6: "Adopt rules relating to the administration of this chapter and the conduct of hearings and elections".)

You asked us to consider the effects of a more narrow, topical approach to our rulemaking authority. Whether a broad or a narrow approach should be taken is, of course, a policy judgement for the legislature to make. However, as an administrative agency responsible for implementing certain state laws, our concern about detailed language for rulemaking authority would depend on the specificity of the language. Authority to make rules should be sufficiently general so that we can promulgate rules for new programs consistent with existing statutory direction, respond to changing circumstances, and efficiently carry out the purpose and provisions of the laws we administer. Too much specificity in the delegation language could complicate the overall process, and also run the risk of omitting an area for which rules might be appropriate.

Having said that, should the legislature wish to proceed along these lines, I would suggest language for the Bureau of Mediation Services such as the following:

**"Adopt rules relating to hearings, elections, representation and fair share; negotiation, mediation and strikes; arbitration; grievance procedures; and labor-management committee grants."**

Senator Don Betzold  
October 21, 1998  
Page Two

I believe the above language would be consistent with the idea of greater specificity and focus of legislative rulemaking direction, while at the same time ensuring that the Bureau of Mediation Services has sufficiently general rulemaking authority to effectively carry out the laws we administer.

I hope this response is helpful in your consideration of this matter.

Thank you for the opportunity to have input.

Sincerely,



Lance Teachworth  
Commissioner

LT:cc

cc: Mark Shepard  
House Research

# Minnesota Board on Aging

444 Lafayette Road  
St. Paul, Minnesota 55155-3843  
612/296-2770 1-800-882-6262 FAX 612/297-7855

October 26, 1998

Mark Shepard  
House of Representatives Research Department  
600 State Office Building  
St. Paul, Mn 55155

Dear Mr. Shepard:

In response to the letter from Senator Don Betzold of October 1, 1998 regarding rulemaking authority of state agencies, the Minnesota Board on Aging believes its statutory language to be sufficient. Since its members are appointed by the Governor and it does not regulate or license agencies, its rulemaking activity is very limited. The rules we have promulgated in the past pertain only to our grant programs. The proposal being considered by the Commission falls within our current need and past practice.

Sincerely,

  
James G. Varpness,  
Executive Secretary





# Minnesota Department of Economic Security

P.O. Box 1691 • St. Paul, Minnesota 55101  
(612) 296-3335 • TTY (612) 297-3944 • FAX (612) 297-2046

Office of the  
Commissioner's Representative

October 30, 1998

Mark Shepard  
House of Representatives Research Department  
600 State Office Building  
100 Constitution Avenue  
St. Paul, MN 55155

Dear Mark:

Commissioner R. Jane Brown has asked that I respond to Senator Don Betzold's October 1, 1998 correspondence regarding agency rulemaking authority.

Minn. Stat. §268.021 is the provision granting agency-wide rulemaking authority. That authority is granted not only to programs for which this department is responsible under state law, but also under federal law. In addition, Minn. Stat. §268.0122, subd. 5(a) provides general rulemaking authority for all the programs under Chapter 268.

The following are the specific provisions which grant the commissioner rulemaking authority (or require that rules be promulgated) and the programs or program areas to which that specific authority is applicable:

248.075, subd. 14a	Services to the Blind and Visually Disabled
268.0122(b)	Employment and Training Services under the Minnesota Family Investment Program (§256J.51)
268.105, subd. 1(b)	Reemployment Insurance Appeals
268.30, subd. 2	Youth Intervention Program
268.37	Coordination of Federal and State Weatherization Programs
268.552, subd. 10	Wage Subsidy Program
268.561, subd. 10	Minnesota Youth Program
268.60, subd. 4	Job Training
268.871, subd. 4a	Local Delivery of Employment and Training Programs
268.90, subd. 2(f)	Community Investment Program
268.90, subd. 3(1)	Community investment Program
268.975, subd. 3(4)	Dislocated Worker
268A.03(m)	Vocational Rehabilitation

• *Helping Minnesotans help themselves achieve economic security* •



November, 1998

Page 2

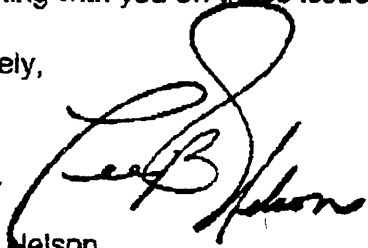
The Reemployment Insurance benefits and tax program areas operated by this department presently have administrative rules, enacted under the general authority, for which there is not corresponding specific authority. Suggested draft language for specific authority is as follows:

§268.03, subdivision 3. Rules. The commissioner is authorized to adopt rules in accordance with chapter 14 to administer the reemployment insurance program.

We do have concern that elimination of the general authority could well hamper this department in responding to federally-mandated changes in how we deliver services, such as those mandated under the recently enacted Workforce Investment Act. It is unclear at this time what rules, if any, may be necessary for implementation and administration of that federal legislation, as a number of state programs and program areas will be impacted.

If you have any questions, please feel free to contact me at 296-6110. We look forward to working with you on these issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Lee B. Nelson". The signature is written in a cursive, flowing style with a large loop at the top.

Lee B. Nelson...  
Attorney for the Commissioner

LBN:jrw

STATE OF MINNESOTA



Phone: (651) 296-2388  
FAX: (651) 297-5310  
TTY: 800-627-3529

85 EAST 7TH PLACE, SUITE #160  
SAINT PAUL, MINNESOTA 55101

BOARD OF ARCHITECTURE, ENGINEERING,  
LAND SURVEYING, LANDSCAPE ARCHITECTURE, GEOSCIENCE AND  
INTERIOR DESIGN

October 23, 1998

Senator Don Betzold  
306 State Capitol Bldg  
75 Constitution Ave  
St Paul, MN 55155-1606

Dear Senator Betzold:

Pursuant to your request of October 1, we have reviewed the Board's rulemaking delegation. Using the statutory language for the Board of Accountancy, we have developed the attached language.

While a number of Board members are comfortable with this language, I would ask that you and your subcommittee not make a final decision on this language until after the Board's next meeting which is November 18. At that time I will be able to obtain either their full approval or their approval with changes.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "George Iwan".

George Iwan  
Executive Secretary

GI:jr

326.06 General Powers and Duties of the Board.

...; shall make all rules, not inconsistent with law, governing administration of the board; examination, education and experience requirements for licensure and certification; professional conduct and discipline; unlicensed practice; continuing education; fees; and the definition and monitoring of practice in the case of licensees or of the use of a title in the case of those certified.  
~~Needed in performing its duties;~~





# State of Minnesota Board of Electricity

October 28, 1998

Legislative Coordinating Commission  
600 State Office Building  
Saint Paul, MN 55155

Re: Response to the Legislative Coordinating Commission Request for Comment Regarding Rulemaking Delegations.

Dear Committee Members:

I have reviewed the rules in Chapter 3800 and identified whether the statutory authority for each part is general or specific. A table summarizing this review is included for your information. I have found that of the 37 separate parts, 27 were adopted under specific statutory authority and 10 were adopted under general statutory authority. During this review, I became aware that, with limited exception, official publications identify section 326.241 as the section granting authority. Section 326.241 delegates general authority to the board and in most instances this reference is not completely accurate because the section granting specific authority is not listed. This may give those who are not familiar with all of the statute sections and associated rules the impression that most, if not all, of the rules are adopted under general delegated authority.

In comparing the statutes and rules within the authority of the board to those of other departments or agencies, it is apparent that those within the board's authority are fewer and narrower in scope. Including section 326.01, definitions, there are only 11 sections that are within the Electricity Board's authority. The scope of the board's authorities or powers is found in section 326.241, subdivision 2 and, other than general business activity, is limited to licensing of persons and companies that perform electrical work and inspection of electrical work performed.

Considering the limited scope of the board and the fact that in most instances the board has adopted rules by specific delegated authority, I feel there is neither need nor justification to replace the board's general delegated authority with specific delegated authority. In those instances where the board has adopted rules under its general delegated authority, those rules are specific to the related statute. Additionally, the provisions of chapter 14 and chapter 1400 provide reasonable measures to ensure that rules are not adopted outside of delegated authority or legislative intent.

Sincerely,

John A. Schultz  
Executive Secretary

## SUMMARY OF CHAPTER 3800 RULES AND ASSOCIATED STATUTORY AUTHORITY

Rule	Title	Statute	Comment
3800.2650	Uniform electrical violation citation	326.2461	Specific authority
3800.3500	Definitions	326.241	General authority; definitions of specific terms not defined in statute, rule, or technical standards referenced in section 326.243
3800.3510	Permitted work	326.01, subd. 4	Specific authority; defines scope of work of special electrician license categories
3800.3520	Examination; minimum experience requirements for licensure; experience acceptable to the board	326.242	Specific authority
3800.3530	Requirements for securing and maintaining an electrical contractor's license	326.241	General authority; some of the provisions of this rule fulfill requirements of other departments
3800.3540	Designation of responsible master electrician on contractor's license application	326.241	General authority; pertains to 326.242, subd. 6c
3800.3550	Designation of responsible master electrician, licensed maintenance electrician or electrical engineer by an employer	326.241	General authority; pertains to 326.242, subd. 1 and subd. 12
3800.3560	Advertising restrictions	326.241	General authority; pertains to 326.242, subd. 6, offer to perform electrical wiring
3800.3570	Marking of electrical contractor's vehicles	326.241	General authority; pertains to 326.242, subd. 6, pertains to enforcement of licensing and inspection statutes
3800.3580	Revocation of any license	326.242, subd. 9	Specific authority
3800.3590	Licenses; expiration and fees	326.242, subd. 8	Specific authority
3800.3600	Authority and purpose	214.12	Specific authority; parts 3800.3600 through 3800.3603 relate to continuing education as a condition of license renewal
3800.3601	Definitions	214.12	Specific authority
3800.3602	Requirements for renewal of electrician license	214.12	Specific authority
3800.3603	Credit for instruction	214.12	Specific authority
3800.3610	Exclusive administrative remedy	326.244	Specific authority
3800.3619	Definitions	326.241	General authority; parts 3800.3619 through 3800.3620 relate to means by which equipment may be approved

Summary of Chapter 3800

Page 2

Rule	Title	Statute	Comment
3800.3620	Approval of electrical equipment	326.241	General authority
3800.3630	Qualifications for inspectors	326.241	Specific authority; establishes bond amount
3800.3640	Forms for orders	326.244	Specific authority
3800.3650	Service of correction order	326.244	Specific authority
3800.3660	Condemnation of hazardous installations	326.244	Specific authority
3800.3670	Disconnection of hazardous installations	326.244	Specific authority
3800.3680	Correction of noncomplying installations	326.244	Specific authority
3800.3690	Disconnection of uncompleted or uninspected installations	326.244	Specific authority
3800.3700	Countermand of correction order	326.244	Specific authority
3800.3710	Appeals to board: stay of order	326.244	Specific authority
3800.3720	Condemnation or disconnect order stayed	326.244	Specific authority
3800.3730	Notice to all interested parties served with order	326.244	Specific authority
3800.3740	Requests for name of statutory bonding company	326.241	General authority; requires written request for information
3800.3750	Hearing and review	326.244	Specific authority
3800.3760	Request for inspection	326.244	Specific authority
3800.3770	Rough-in inspection of wiring to be concealed	326.244	Specific authority
3800.3780	Request for inspection certificates expiration	326.241	General authority; establishes expiration date of authority to install wiring under a request for inspection
3800.3790	Prorated fee for inspection of certain installations	326.244	Specific authority
3800.3800	Payment of inspection fees	326.244	Specific authority
3800.3810	Fee schedule	326.244	Specific authority

Summary of Chapter 3800

Page 2

Rule	Title	Statute	Comment
3800.3620	Approval of electrical equipment	326.241	General authority
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3800.3810	Fee schedule	326.244	Specific authority



Minnesota State Retirement System

October 29, 1998

Mr. Mark Shepard  
House Research Department  
600 State Office Building  
St. Paul, MN 55155

Dear Mark:

Senator Betzold asked me to respond to the Legislative Coordinating Commission's study of broad rulemaking authority. I offer the following suggestion for categories to be included under the rulemaking authority for the Minnesota State Retirement System.

Minnesota State Deferred Compensation Plan  
Membership Eligibility  
Board Elections  
Service Credit Eligibility  
Benefit Eligibility

I appreciate the opportunity to provide input into the process.

Feel free to call me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "David Bergstrom".

David Bergstrom  
Executive Director



**MINNESOTA  
HOUSING  
FINANCE  
AGENCY**

Post-it® Fax Note	7671	Date	11/4	# of pages	02
To	Mark Shepard	From	Tonia H. Ott		
Co./Dept.	House Research	Co.	MHFA		
Phone #	6-5051	Phone #	6-9880		
Fax #	6-9887	Fax #			

November 4, 1998

Mark Shepard  
House of Representative Research Department  
600 State Office Building  
St. Paul, MN 55155

Dear Mr. Shepard:

I am writing in response to Senator Betzold's letter regarding delegation of rulemaking authority to the Minnesota Housing Finance Agency (MHFA).

There are several reasons why we believe that the current rulemaking authority granted to the MHFA is appropriate.

The MHFA is not a regulatory agency. The powers of the MHFA, which are set out primarily in Minn. Stat. §462A.05 -.07, do not encompass any regulatory authority over any industry or activities of local units of government. In general, the Agency's powers are specific and limited to the ability to make various types of loans or grants, to engage in other financial activities, and to function as a public corporate body. The Agency's ability to make rules is limited to the areas in which the Agency has been given power.

The MHFA functions primarily as a banker and in that role, it does not set major policy. A review of the statutes establishing the MHFA's programs clearly show that the broad policy decision about who would be served by Agency programs and in what form that assistance should take are set forth in the governing statutes. Major policy issues simply are not left to Agency rulemaking. Because the Agency's rulemaking has historically been limited to fairly technical matters of loan structuring, to the best of my knowledge, none of the Agency's proposed rules have ever been treated as controversial rules necessitating a public hearing.

The MHFA currently administers approximately 60 programs, including federal housing programs. It is not uncommon for the legislature to appropriate funds to the Agency for 2 or more new purposes each session. In addition, federal housing programs are in a state of flux. The Agency's current rulemaking authority affords it an opportunity to respond to changing housing needs and directions. The MHFA could lose some flexibility in responding to changing environments if the rulemaking authority were changed.

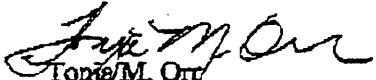
If the current rulemaking in Minn. Stat. §462A.06, Subd. 4 were replaced, I would suggest the following replacement language:

"It may make rules regarding the making and administration of grants and loans and the administration of programs for which it is assigned responsibility."

Thank you for the opportunity to express our thoughts about this important issue.

Please feel free to call me at 296-9820 if you have any questions.

Sincerely,



Tonje M. Orr  
Director of Government Affairs

**STATE OF MINNESOTA**  
**BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS**  
2829 University Avenue S.E., Suite 440  
Minneapolis, MN 55414-3245  
(612) 617-2117 FAX: (612) 617-2119  
TTY Relay (800) 627-3529

October 29, 1998

Mark Shepard  
House of Representatives Research Department  
600 State Office Building  
St. Paul, MN 55155

Dear Mr. Shepard:

I understand that Senator Betzold chairs a subcommittee of the Legislative Coordinating Commission that is studying broad delegations of rule-making authority to state agencies. He has asked that state agencies respond to you with their concerns on this matter. Our board's statute is broad and the board has relied on rules to govern and explain to the public much of its regulatory activity. I, therefore, wanted to bring our concerns to your attention.

In May of 1997, our board completed a revision of our entire rules chapter. The comment and review process we used was so inclusive as to permit us to publish our final rule without receiving a single request for public hearing. We think that this kind of history demonstrates that we have used our broad authority well and in the public interest. Nonetheless we understand the concern of the legislature on this matter and believe that we could operate effectively with a more explicit statute. We think that a statutory charge which is sufficiently specific to ensure general legislative intent can be developed without being so narrow as to impede reasonable flexibility within optimally defined areas. We urge your subcommittee to pursue such an approach and offer our suggestions on the attached sheet for how it might be used with the statute governing our board.

I have discussed this matter with the Executive Directors of other health-related licensing boards and join them in urging your committee to include in any proposed legislation, general provisions to ensure that changes in the statutory authority for a board's rulemaking neither negate a board's existing rules nor compel the board to abide by time limits specified in Minnesota Statutes, section 14.125.

I also join my fellow Executive Directors in requesting that the legislature restore the following language stricken from Minnesota Statutes, section 214.06, subdivision 3, in 1997:

Notwithstanding section 14.22, subdivision 1, clause (3), a public hearing is not required to be held when the health-related licensing boards need to raise fees to cover anticipated expenditures in a biennium. The notice of intention to adopt the rules, as required under section 14.22, must state no hearing will be held.

The provision was repealed with no hearing, no discussion, and probably little awareness on the part of legislators, as the repealer was buried in Minnesota Laws 1997, Chapter 187 (article 5, section 36). We believe that requiring a hearing to adjust fees is unnecessary, duplicative, time-consuming, and can be so expensive as to ultimately require a higher adjustment to fees merely to pay for the cost of the hearing itself. The interests of the public are amply protected in the following ways.

- The boards can adjust only fees that are authorized by statute.
- The statutes require that "the total fees collected by each board will as closely as possible equal

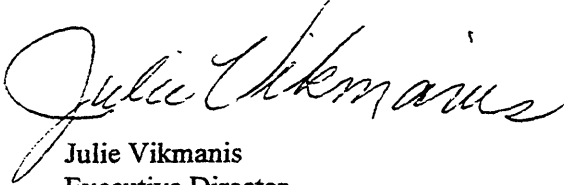


anticipated expenditures during the fiscal biennium.” Thus the boards do not have discretion to increase or decrease fees other than to approximate anticipated expenditures. A board’s expenditures determine its fees.

- The statutes require that the commissioner of finance approve fee adjustments. The requirement ensures that fees will in fact approximate expenditures.
- Boards’ appropriations must be approved by the legislature. Thus the legislature controls how much boards may spend, which in turns controls the amount of the boards’ fees.

If you have questions or comments on my response, please call me at 612 617-2117. Thank you for the opportunity to provide input.

Sincerely,



Julie Vikmanis  
Executive Director

**Possible revision to statutes to provide specific subject areas for rulemaking for Nursing Home Administrators Board**

**144A.24 Duties of the Board.**

The board of examiners shall:

[Continue current provisions a – g, then add the following:]

(h) Adopt, amend, or repeal rules as needed to regulate nursing home administration in the following areas: qualifications for initial licensure, education, examination, temporary permit, licensure by reciprocity, reinstatement of licensure and licensure renewal; application requirements for initial licensure, temporary permit, reinstatement of licensure, and licensure renewal; lapsing of a license; continuing education requirements for licensees and for sponsors of continuing education programs; requirements for academic institutions and programs offering courses for licensure; license and other fees; practice without a license or other unlawful or unauthorized practice; grounds for disciplinary or corrective action, including standards of practice and ethical conduct; processes for implementing the board's authority to resolve complaints; and standards, policies, or procedures that are necessary to comply with federal requirements or that are necessary to avoid a denial of funds or services from the federal government that would otherwise be available to the state.

# MINNESOTA BOARD OF PSYCHOLOGY

2829 University Avenue Southeast  
Suite #320  
Minneapolis, Minnesota 55414-3237  
(612) 617-2230; FAX (612) 617-2240



Minnesota Relay Service:  
1 (800) 627-3529

30 October 1998

Mark Shepard  
House of Representatives Research Department  
600 State Office Building  
St. Paul, Minnesota 55155

Dear Mr. Shepard:

The Board appreciates the opportunity to provide input in advance of the report of the subcommittee studying broad delegations of rulemaking authority to state agencies.

The information that the health Boards can contribute to the study may surely be helpful to the subcommittee, although it appears as though our delegation of rulemaking authority is far from broad. For example, appropriately, the legislature gives this Board the authority to adopt and enforce only those rules relating to regulation of the practice of psychology. Nevertheless, attached is a list of specific subject areas in which the Board of Psychology must be able to make rules. These areas are important because the Board must have flexibility so that out-of-date requirements do not unduly restrict the practice of psychology or deprive the public of new techniques and treatments.

Currently, the Board of Psychology has delegated responsibility to a committee of its members (the Rules Committee) to rewrite, when necessary, any and all of the agency's rules. The reasons for this ambitious undertaking are these:

- a. Many of the rules are not as explicit as they should be in conveying the standard of practice in the professional community;
- b. The rules do not address the implementation of some issues that have now been added to statute, such as guest licensure and licensure for the volunteer practice of psychology;
- c. The rules must be updated to reflect current standards of practice, such as the record keeping rule, which only lists four minimum requirements for a licensee's client records, although the practice standard is much higher;
- d. Some statutory changes have left the rules behind, such as the change in law which requires one year of post-degree supervised employment for licensure, while the rules still refer to the former two-year requirement;
- e. Some rules are no longer needed;
- f. Some subjects have now become a factor in practicing psychology, and the practicing community and the public needs to know what is expected of licensees in those areas, such as informed consent.

The Board has been working to update and upgrade its laws through several legislative sessions; now it has give priority to doing the same things for its rules. Frankly speaking, this agency's rules need a facelift. The above factors cannot be addressed if legislation further narrows the scope of our rulemaking. They cannot be addressed by allowing for the acquisition of rulemaking authority only through future legislation, because future legislation may not pertain to the subject matters that need to be fixed now.

Furthermore, the current rulemaking process is so involved and so expensive that a self-sustaining agency like this one does not have the resources to initiate rulemaking several times a year every year, as the need arises, in order to work on rule changes. That is why the current rule writing effort had to be planned for and undertaken when revenue and staff time allowed.

The Board of Psychology's rules echo the standard of care in the practicing community. The legislature can not be expected to take on the added burden of trying to pass legislation that can take the place of rules. For this reason, it is more effective to ask agencies, especially agencies that regulate a profession using a Board made up mostly of those professionals, to interpret their practice and licensure standards and to put them in rules. To narrow the number of subject areas on which this is possible would be a mistake.


In addition, all of the subject areas listed on the enclosure are important to the profession and to the public. In its current rule writing effort, this Board has assembled a Public Advisory Committee (PAC) consisting of licensees in various areas of practice, representatives of the legal community, and other public. This way, the public has input throughout the rulemaking process--at the initial writing stage and during any public hearings. The job of the PAC is to advise the Rules Committee on the advisability of language the Rules Committee offers in each subject area. In actual practice, the public does not have this much access to the language that eventually appears in statute, even though some access is available through hearings.

I concur with the request made by other health Boards that the legislature restore the language stricken from Minnesota Statutes, section 214.07, subdivision 3, which allowed for rulemaking to adjust fees without a public hearing. The reasons for this request are similar: such a hearing is expensive to the licensees, time-consuming, duplicative, and unnecessary, since it is unlikely that there could be a reversal of the proposed action because the Boards' fees can only be adjusted if approved by the Commissioner of Finance and only if a need has arisen. The legislature has already determined that there is a need to adjust fees so that revenue closely equals anticipated expenditures during any fiscal biennium.

In summary, further narrowing this agency's rulemaking authority seems to force the interpretation and setting of licensure and regulatory standards of a profession into the law making arena. This may have the unintentional effects of isolating the process from public access, overburdening the legislature, and diminishing the public protection aspect of a health licensing Board's mission by unduly restricting a Board's rulemaking authority.

Please do not hesitate to call me at (612) 617-2234, if you have any questions.

Sincerely,

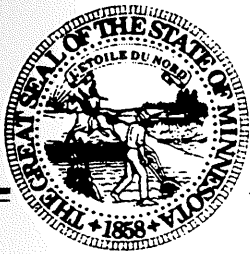


PAULINE WALKER-SINGLETON  
Executive Director

**SPECIFIC SUBJECT AREAS FOR RULEMAKING**

The Board shall adopt, amend, repeal, or otherwise modify rules to regulate the practice of psychology in the following areas:

1. Definitions
2. Steps to licensure, qualifications for admission to the examinations, qualifications for licensure, education, training and experience needed for licensure, application for licensure, requirements for licensure, examinations for licensure, denial of licensure, licensure by degrees from foreign institutions, degree majors, licensure for volunteer practice, reciprocity, guest licensure, licensure and other fees
3. Supervised professional employment, supervision
4. Fields of practice, areas of competence
5. Term of license, display of license, license renewal, termination of license, relicensure after termination, voluntary termination
6. Continuing education for licensees, requirements for sponsors of continuing education activities
7. Rules of conduct
8. Informed consent
9. Tests, assessments, reports
10. Grounds for and types of disciplinary actions and corrective actions, investigations, resolution of complaints, monitoring compliance with Board orders and actions, hearings before the Board
11. Presentation to the public, advertising, professional representation, disclosures
12. Duty to warn, mandatory reporting
13. Managing, maintaining, and client access to health records
14. Unauthorized, unqualified, unethical, unprofessional practice of psychology
15. Standards, policies, procedures that are necessary to comply with federal requirements or that are necessary to avoid a denial of funds or services from the federal government that would otherwise be available to the state
16. Professional corporations
17. Waivers and variances



# Minnesota Department of Human Rights

November 3, 1998

Mark Shepard  
House of Representatives Research  
600 State Office Building  
St. Paul, Minnesota 55155

Dear Mr. Shepard:

I am writing in response to Senator Betzold's October 1, 1998 letter about agency rulemaking authority. At his request, we have drafted the following proposed legislative language to replace this agency's current broad delegation of rulemaking authority:

"The commissioner may promulgate reasonable rules, not inconsistent with law, with respect to agency procedure; case processing; work sharing agreements; affirmative marketing plans to be developed by housing developers who receive more than \$50,000 in state or local funds; certificates of compliance for public contracts; and construction and non-construction contractors' affirmative action plans."

This list of categories was drawn from the table of contents of the agency's current rules, and includes categories of rulemaking the legislature specifically has directed the agency to promulgate. The proposed language would not hinder the agency's ability to carry out its responsibilities under the Minnesota Human Rights Act.

If the Committee has any questions, I would be happy to discuss this with them.

Sincerely,

  
Dolores H. Fridge  
Commissioner

AN EQUAL OPPORTUNITY EMPLOYER