

ADMINISTRATIVE PROCEDURES ACT/

ALTERNATIVE DISPUTE RESOLUTION

ISSUE TEAM

In 1983, the Governor initiated an "issue team" approach as a way of developing policy recommendations in several critical issue areas. The Administrative Procedures Act/Alternative Dispute Resolution (APA/ADR) issue team was created in response to the identified need to cut back on the time, cost and complexity that had come to be associated with the Administrative Procedures Act. At the time the issue team was created, the State Bar Association's Administrative Law Committee, comprised of membership from private industry, from the Bar, and the Attorney General's Administrative Law Committee, had already embarked on a marathon examination of the APA. Since the State Bar's Administrative Law Committee was already in motion, it was decided that they would serve as the vehicle for making recommendations to the Executive Branch as to needed legislative changes to the APA. The role of the issue team was to provide review and comment on those proposed amendments. The APA issue team essentially endorsed the legislation with a few reservations. The bill, its summary and the problems it responded to are included in this report.

In its final recommendation, the issue team suggested that an Executive Branch Administrative Law Committee be created to meet on an on-going basis. There was a recognized need for the State agencies to meet collectively to discuss their concerns regarding the APA. To date, they have relied upon their Assistant Attorney Generals to speak on their behalf. Speaking from consensus, the State agencies will then be able to intelligently enter into negotiations with members of regulated industry, the private bar, and the Attorney General's office regarding future administrative and legislative changes to the APA.

Dan McInerney, Department of Health, has been appointed by Mr. Triplett to serve as the Executive Branch Administrative Law Committee's first chair. Chair responsibilities will then be rotated as the committee sees fit. A letter was sent to Agency heads inviting them to appoint the appropriate agency personnel to serve on the committee. The first meeting will be scheduled sometime in June 1984. The creation of this on-going Executive Branch Administrative Law Committee completes the task associated with the Administrative Procedures Act/Alternative Dispute Resolution issue team. Discussion will now shift to the broader subject of alternative dispute resolution and a new issue team is being reconstituted.

SUMMARY OF THE PROVISIONS
OF LAWS OF MINNESOTA 1984
CHAPTER 640
(AMENDMENTS TO THE MINNESOTA APA)

- Section 1. This section amends MS 14.03 subd. 2 by adding an exemption from the contested case procedures of the APA for the social security disability determination program in the Department of Economic Security. This amendment is the result of a requirement of the United States Department of Health and Human Services under a potential program for disability cases.
- Section 2. This amends MS 14.07 subd. 2 by changing "temporary" to "emergency" as it applies to certain rules and clarifies the fact that the section also applies to amendments or modifications of proposed emergency rules. Problem Statement: Agencies were using temporary rulemaking too often and not always in the right circumstances. "Emergency" implies an immediacy requiring spare useage.
- Section 3. This amends MS 14.07 subd. 4 by removing the requirement that the Revisor of Statutes consult with the Chief Hearing Examiner prior to allowing incorporation by reference. It also adds language, tracking the federal provisions, which requires agencies to clearly indicate when they are incorporating certain materials by reference so that the reader of the rules will have notice of the incorporation by reference. The rules must also identify the materials incorporated and other requirements. Problem Statement: Some rules did not clearly indicate when they were incorporating materials by reference.
- Section 4. This amends MS 14.08. These amendments clarify citations, clarify some language, and give new procedures for obtaining the Revisor of Statutes' approval of the form of rules after adoption. As the Attorney General is no longer involved in rule adoption where a hearing has been required, Clause (b) specifies the requirement that the agency must submit the rule to the Revisor rather than the Attorney General as occurred in the past.
- Section 5. This amends MS 14.10 and is a technical amendment only.
- Section 6. This amends MS 14.12. It is a technical change of a citation.
- Section 7. This is a new section to be codified as MS 14.131. It requires an agency to prepare its statement of need and reasonableness prior to the time the agency has ordered the publication of a rulemaking notice. This section only applies to those cases where a rulemaking hearing is going to be conducted. (Previously, the statement of need and reasonableness did not have to be prepared until 25 days prior to the hearing.) Problem Statement: Some agencies were going to hearings without understanding the need for the rule. Problem was more related to citizens boards.

Section 8. This amends MS 14.14 subd. 1 to clarify that the sections only apply when a hearing is required under subsequent sections of the law. This is the first of several changes necessary to change the emphasis in rulemaking in Minnesota from a process whereby a hearing is the norm to a process whereby notice and comment is the norm. These amendments, while important, are technical clarifications and do not contain any new substantive requirements.

Section 9. This amends MS 14.14 by adding an entirely new subdivision 2A. It is a procedural section which spells out the procedures to be followed and gives the hearing examiner direction in the conduct of the hearing. The intent of this legislation is to put into statute what has been past practice in rule-making hearings, including the authority of the hearing examiner to allow questions of all witnesses. Problem Statement: There was excessive cross-examination and repetitive statements made which sometimes lengthened the process unnecessarily.

Section 10. This amends MS 14.15 subd.1 by giving the public the same right as was previously given to agencies with respect to having an additional three days to respond, in writing, to new information which was submitted during the official, preceeding comment period. It limits the additional information to be submitted to responses as opposed to new evidence. Problem Statement: Hearing Examiners weren't getting enough information from the agencies about their reaction to public comments.

Section 11. This amends MS 14.16 to clarify the provisions relating to the review of rules by a hearing examiner and the chief hearing examiner. There are no substantive changes in the procedures. Rather, the amendments are intended to be a clarification of previous language. The only exception is that in lieu of agencies informing the public of the date on which rules are filed with the Attorney General, they must now give this notice that the rules have been adopted and filed with the Secretary of State because the Attorney General is no longer involved in rules where a hearing was required. This section also gives the specific direction to agencies to file two copies of the rule with the Secretary of State in lieu of the Attorney General filing them. Problem Statement: The Chief Hearing Examiners review process was unclear and needed clarifying.

Section 12.

This amends MS 14.22 in several ways. First, it is a continuation of the shifting of the emphasis in rulemaking from hearing to non-hearing, or notice and comment. It also changes from 7 to 25 the number of people required to compel a hearing when an agency has published a notice of intent to adopt rules without a hearing. It also gives direction to persons submitting comments or objections regarding what should (but is not required) be included in their comment. Finally, it provides that if no hearing has been requested, persons who have requested to be so informed will be given notice of the date on which the rules have been submitted to the Attorney General for approval. Problem Statement: Agencies felt that people were requesting hearings without specifying their objections to the rule. The possibility of people with potentially frivolous objections pushing the agency into a costly hearing was too great.

Section 13.

This amends MS 14.23. This is a technical, non-substantive amendment.

Section 14.

This amends MS 14.25. The amendment again changes the number of persons required to force a hearing. It also contains technical and clarification amendments.

Section 15.

This amends MS 14.26 in several ways. This section relates to rules adopted without a hearing. The first change is a requirement that, when notifying interested persons of the date on which rules are submitted to the Attorney General, if the agency has modified the rules, they must give notice of that fact and provide a free copy of the proposed rules, as modified, upon request. Secondly, it details the review requirements for the Attorney General. It spells out that the Attorney General is to review legality, the form to the extent the form relates to legality, the question of "substantial change" whether the agency has authority to adopt the rule, and whether or not the record demonstrates a rational basis for the need and reasonableness of the proposed rule. Finally, the Attorney General is to make recommendations to correct deficiencies in the rules and prohibits the rule from being adopted until the deficiencies have been corrected. Problem Statement: The public was not receiving adequate notice of modifications to proposed rules. Also, there was an inadequate review for need and reasonableness by the Attorney General.

Section 16. This amends MS 14.29. This section relates to emergency rules and thus makes the change from the former "temporary" to the new "emergency" terminology. It is referred to as the "use it (authority) or lose it" provision. It places a limit on the time an agency is allowed to adopt emergency rules. This limit is 180 days after the effective date of the statutory authority for the adoption of the emergency rules. If the agency fails to act within that time, they lose the emergency rulemaking authority. It provides for an extension of this period if the rules are being reviewed by the Attorney General and thereafter require modification. If this is the case, even if the 180 day period has expired, the agency may continue to modify the rule within five working days and still be allowed to adopt the rules. However, if the rules are disapproved a second time, the authority is withdrawn. Finally, it creates an exemption from the 180 day limitation for those agencies (without specifically being named, it was intended to be the Housing Finance Agency and the programs at the Department of Energy) which are authorized to issue bonds. Problem Statement: Agencies were not using the emergency rulemaking within a reasonable time period given the "emergency" nature of the issue.

Section 17. This amends MS 14.30 by changing the word "temporary" to "emergency" and also adds a requirement that the notice of adoption of these rules must provide notice that a free copy of the rule is available upon request as well as the requirement of mailing notice to any persons desiring to know when the rules have been submitted to the Attorney General. Problem Statement: There was inadequate notice given to the public about the availability of a free copy of the rule and of the date of submission to the Attorney General. The comment period for the public was too short.

Section 18. This amends MS 14.31 by changing "temporary" to "emergency".

Section 19. This amends MS 14.32 relating to emergency rules. It requires the agency to give notice to all interested persons that the rule has been submitted to the Attorney General and requires that the notice be given on the same day as the rules are submitted. It also requires that if the proposed emergency rules have been modified, the notice to interested persons must state that fact and must also state that a free copy of the emergency rule, as modified, is available upon request. It increases the length of time the Attorney General is allowed to review the rules from five working days to ten working days. Problem Statement: There was inadequate notice of the proposed submission of the proposed emergency rule to the Attorney General by the agency.

- Section 20. This amends MS 14.33 by extending the effective date of emergency rules for five working days after approval by the Attorney General as opposed to the rules becoming effective immediately upon approval of the Attorney General. It also corrects the length of time the Attorney General has to review the rules from five to ten working days. Problem Statement: Emergency rules were becoming effective before people knew about it.
- Section 21. This amends MS 14.35 by changing "temporary" to "emergency" and correcting citations.
- Section 22. This amends MS 14.36 by changing "temporary" to "emergency".
- Section 23. This is a new section to be codified MS 14.365. This new section requires agencies to maintain the official rulemaking record for public inspection and details what is to be contained in the record. It also makes the record the official and exclusive agency rulemaking record which means that an agency is bound, in its rulemaking action, to what is contained in the record. Problem Statement: The contents of the official rulemaking record had never been clearly specified and it was unclear if the agencies could go outside of the record to support their rules.
- Section 24. This section amends MS 14.38 subd. 1 by making clarification amendments. Problem Statement: The Attorney General's review was thought to be a duplicative process which added time and expense to the process.
- Section 25. This is a new section to be codified as MS 14.385. This section prohibits any rule from having the force and effect of law as of January 1, 1985, unless the rule had been submitted to the Revisor for publication in Minnesota Rules prior to that time, even though the rules may have been exempt from the rulemaking provisions of the APA. This is a broad provision which will impact any rules which are specifically exempted from the APA. Problem Statement: Agencies exempt from the APA were enforcing some unpublished rules. Rules exempt from the APA were technically unenforceable if they were not published.
- Section 26. This amends MS 14.44 by clarifying that appeals from agency rulemaking proceedings go to the Court of Appeals rather than to the district court and allows the appeals whether or not the agency has commenced an action against a petitioner to enforce the rule. Problem Statement: The statutes were in conflict as to what court, the public/agencies could appeal a rule.

- Section 27. This amends MS 14.45 by again clarifying the fact that rulemaking appeals are to the Court of Appeals rather than the district courts. Problem Statement: The statutes were in conflict as to what court, public/agencies could appeal a rule.
- Section 28. This is a section which may not be codified. The amendment allows the Commissioners of Health and Welfare to continue to amend existing temporary (emergency) rules while those rules remain in effect. The section is limited to certain rules, the authority for which was granted during the 1983 legislative session.
- Section 29. This amends MS 43A.08 subd. 1a by adding the Office of Administrative Hearings to the list of agencies allowed to create, with the approval of the Commissioner of Employee Relations, unclassified positions.
- Section 30. This is an additional requirement relating to the limitation on the adoption of emergency rules. It provides that agencies which have previously obtained emergency rulemaking authority, have 180 days to exercise that authority following the effective date of this law. This is part of the "use it or lose it" provision relating to emergency rulemaking but it relates to authority given by legislation adopted prior to March 1, 1984. Problem Statement: There was an abuse/overuse of temporary rulemaking authority.
- Section 31. This section aids in the construction of terms by making it clear that grants of temporary rulemaking authority are deemed to be grants of emergency rulemaking authority.
- Section 32. This includes instructions to the Revisor of Statutes whereby the term "temporary rule" is changed to "emergency rule". It also changes the name "Hearing Examiner" to "Administrative Law Judge." Problem Statement: There was a public misperception that hearing examiners were agency employees.
- Section 33. This is the repealer section. It repeals the following sections of the 1982 Statutes or 1983 Supplement:
1. MS 1982 14.13. This was the procedure by which agencies made a determination of the controversial nature of their rules. Because we are doing away with the concept of "controversial" vs. "non-controversial" rules, and because other provisions now take care of this problem, it was not necessary.

2. MS 1983 Supp. 14.07 subd. 5. This removes the prohibition on duplication of statutory language. Previously, an agency could not duplicate statutory language unless the hearing examiner determined that it was necessary. This prohibition has been deleted in its entirety and has not been replaced.

3. MS 1983 Supp. 14.17. This section previously spoke to the issue of the Attorney General's review. As the review provisions are now found in other sections of the statute, this single section is no longer necessary.

4. MS 1983 Supp. 14.21. This is the section which previously related to non-controversial rules and the procedures to be followed. As the section is no longer necessary, it has been repealed.

Section 34. This is the effective date section. It makes the appeals sections effective immediately. The rest of the bill, with one exception, is effective for all rulemaking proceedings for which the notice of rulemaking is published following the signing of the bill.

AN ACT

S.F. 1864
CHAPTER No.
640

1
2 relating to state government; providing for
3 unclassified positions; amending the Administrative
4 Procedure Act; amending Minnesota Statutes 1982,
5 sections 14.03, subdivision 2; 14.10; 14.14, by adding
6 a subdivision; 14.16; 14.23; 14.25; 14.29; 14.30;
7 14.31; 14.33; 14.35; 14.36; 14.38, subdivision 1; and
8 14.44; Minnesota Statutes 1983 Supplement, sections
9 14.07, subdivisions 2 and 4; 14.08; 14.12; 14.14,
10 subdivision 1; 14.15, subdivision 1; 14.22; 14.26;
11 14.32; 14.45; and 43A.08, subdivision 1a; proposing
12 new law coded in Minnesota Statutes, chapter 14;
13 repealing Minnesota Statutes 1982, section 14.13; and
14 Minnesota Statutes 1983 Supplement, sections 14.07,
15 subdivision 5; 14.17; and 14.21.
16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
18 Section 1. Minnesota Statutes 1982, section 14.03,
19 subdivision 2, is amended to read:
20 Subd. 2. [CONTESTED CASE PROCEDURE.] The contested case
21 procedures of the administrative procedure act provided in
22 sections 14.57 to 14.70 do not apply to (a) the Minnesota
23 municipal board, (b) the corrections board, (c) the unemployment
24 insurance program and the social security disability
25 determination program in the department of economic security,
26 (d) the director of mediation services, (e) the workers'
27 compensation division in the department of labor and industry,
28 (f) the workers' compensation court of appeals, (g) the board of
29 pardons, or (h) the public employment relations board.
30 Sec. 2. Minnesota Statutes 1983 Supplement, section 14.07,

1 subdivision 2, is amended to read:

2 Subd. 2. [APPROVAL OF FORM.] No agency decision to adopt a
3 rule or temporary emergency rule, including a decision to amend
4 or modify a proposed rule or proposed emergency rule, shall be
5 effective unless the agency has presented the rule to the
6 revisor of statutes and the revisor has certified that its form
7 is approved.

8 Sec. 3. Minnesota Statutes 1983 Supplement, section 14.07,
9 subdivision 4, is amended to read:

10 Subd. 4. [INCORPORATIONS BY REFERENCE.] (a) An agency may
11 incorporate by reference into its rules the text from Minnesota
12 Statutes, Minnesota Rules, United States Statutes at Large,
13 United States Code, Laws of Minnesota, Code of Federal
14 Regulations, the Federal Register, and other publications and
15 documents which are determined by the revisor of statutes, after
16 ~~consultation with the chief hearing examiner,~~ to be conveniently
17 available to the public. ~~The agency must provide information~~
18 ~~necessary for the revisor's determination of~~ If the rule
19 incorporates by reference other publications and documents, the
20 rule must contain a statement of incorporation. The statement
21 of incorporation by reference must include the words
22 "incorporated by reference"; must identify by title, author,
23 publisher, and date of publication the standard or material to
24 be incorporated; must state whether the material is subject to
25 frequent change; and must contain a statement of availability.
26 When presented with a rule for certification pursuant to
27 subdivision 2 and this subdivision, the revisor of statutes
28 should indicate in the certification that the rule incorporates
29 by reference text from other publications or documents. If the
30 revisor certifies that the form of a rule is approved, that
31 approval constitutes the revisor's finding that the publication
32 or other document other than one listed by name in this
33 subdivision, and which is incorporated by reference into the
34 rules, is conveniently available to the public.
35 (b) For the purposes of paragraph (a), "conveniently
36 available to the public" means available for loan or inspection

1 and copying to a person living anywhere in Minnesota through a
 2 statewide interlibrary loan system or in a public library
 3 without charge except for reasonable copying fees and mailing
 4 costs.

5 Sec. 4. Minnesota Statutes 1983 Supplement, section 14.08,
 6 is amended to read:

7 14.08 [REVISOR OF STATUTE'S APPROVAL OF RULE FORM.]

8 ~~(a) For the purpose of obtaining the revisor's certificate~~
 9 ~~of approval of the form of a rule prior to filing the rule with~~
 10 ~~the secretary of state, Two copies of the a rule adopted~~
 11 pursuant to the provisions of section 14.26 or 14.32 shall be
 12 submitted by the agency to the attorney general. The attorney
 13 general shall send one copy of the rule to the revisor on the
 14 same day as it is submitted by the agency to the attorney
 15 general as required by sections 14.26, under section 14.26, and
 16 or 14.32. Within five days after receipt of the rule, excluding
 17 weekends and holidays, the revisor shall either return the rule
 18 with a certificate of approval of the form of the rule to the
 19 attorney general or notify the attorney general and the agency
 20 that the form of the rule will not be approved.

21 ~~(b) If the attorney general disapproves the a rule, the~~
 22 ~~agency may modify it. After the chief hearing examiner's~~
 23 ~~review, if any, and the agency shall submit two copies of the~~
 24 ~~modified rule to the attorney general who shall send a copy to~~
 25 ~~the revisor for approval as to form as described in this~~
 26 ~~paragraph (a).~~

27 (b) One copy of a rule adopted after a public hearing shall
 28 be submitted by the agency to the revisor for approval of the
 29 form of the rule. Within five working days after receipt of the
 30 rule, the revisor shall either return the rule with a
 31 certificate of approval to the agency or notify the agency that
 32 the form of the rule will not be approved.

33 (c) If the revisor refuses to approve the form of any rules
 34 the rule, the revisor's notice to the agency and the attorney
 35 general shall indicate the reason for the refusal and specify
 36 the modifications necessary so the form of the rules rule will

1 be approved.

2 Sec. 5. Minnesota Statutes 1982, section 14.10, is amended
3 to read:

4 14.10 [SOLICITATION OF OUTSIDE INFORMATION.]

5 When an agency seeks to obtain information or opinions in
6 preparing to propose the adoption, amendment, suspension, or
7 repeal of a rule from sources outside of the agency, the agency
8 shall publish notice of its action in the state register and
9 shall afford all interested persons an opportunity to submit
10 data or views on the subject of concern in writing or orally.
11 Such notice and any written material received by the agency
12 shall become a part of the hearing rulemaking record to be
13 submitted to the attorney general or hearing examiner under
14 ~~section-14.16~~ sections 14.14, 14.26, or 14.32.

15 Sec. 6. Minnesota Statutes 1983 Supplement, section 14.12,
16 is amended to read:

17 14.12 [DEADLINE TO PUBLISH NOTICE.]

18 The agency shall, within 180 days after the effective date
19 of a law requiring rules to be promulgated, unless otherwise
20 specified by law, publish an appropriate notice of intent to
21 adopt a rule in accordance with sections ~~14.04~~ 14.05 to 14.36.
22 If an agency has not given this notice, it shall report to the
23 legislative commission to review administrative rules, other
24 appropriate committees of the legislature, and the governor its
25 failure to do so, and the reasons for that failure.

26 Sec. 7. [14.131] [STATEMENT OF NEED AND REASONABLENESS.]

27 Subdivision 1. [CONTENT OF STATEMENT.] Before the agency
28 orders the publication of a rulemaking notice required by
29 section 14.14, subdivision 1a, the agency must prepare, review,
30 and make available for public review a statement of the need for
31 and reasonableness of the rule. The statement of need and
32 reasonableness must be prepared under rules adopted by the chief
33 hearing examiner.

34 Sec. 8. Minnesota Statutes 1983 Supplement, section 14.14,
35 subdivision 1, is amended to read:

36 Subdivision 1. [REQUIRED HEARING.] Except-as-otherwise

1 ~~provided-in-chapter-14,-no-rule-may-be-adopted-by-any-agency~~
2 ~~unless-the-agency-first-holds~~ When a public hearing is required
3 under section 14.25 or when an agency decides to proceed
4 directly to a public hearing, the agency shall proceed under the
5 provisions of sections 14.14 to 14.20 and hold a public hearing
6 affording all affected interests an opportunity to participate.

7 Sec. 9. Minnesota Statutes 1982, section 14.14, is amended
8 by adding a subdivision to read:

9 Subd. 2a. [HEARING PROCEDURE.] When a hearing is held on a
10 proposed rule, it shall be conducted by a hearing examiner
11 assigned by the chief hearing examiner. The hearing examiner
12 shall ensure that all persons involved in the rule hearing are
13 treated fairly and impartially. The agency shall submit into
14 the record the jurisdictional documents, including the statement
15 of need and reasonableness, and any written exhibits in support
16 of the proposed rule. The agency may also present additional
17 oral evidence. Interested persons may present written and oral
18 evidence. The hearing examiner shall allow questioning of
19 agency representatives or witnesses, or of interested persons
20 making oral statements, in order to explain the purpose or
21 intended operation of a proposed rule, or a suggested
22 modification, or for other purposes if material to the
23 evaluation or formulation of the proposed rule. The hearing
24 examiner may limit repetitive or immaterial oral statements and
25 questioning.

26 Sec. 10. Minnesota Statutes 1983 Supplement, section
27 14.15, subdivision 1, is amended to read:

28 Subdivision 1. [TIME OF PREPARATION.] After allowing
29 written material to be submitted and recorded in the hearing
30 record for five working days after the public hearing ends, or
31 for a longer period not to exceed 20 days if ordered by the
32 hearing examiner, the hearing examiner assigned to the hearing
33 shall write a report as provided for in section 14.50. Prior to
34 writing the report, the hearing examiner shall allow the agency
35 and interested persons three business days after the-closing-of
36 the hearing-record submission period ends to respond in writing

1 to any new information submitted. During the three-day period,
 2 the agency may indicate in writing whether there are amendments
 3 suggested by other persons which the agency is willing to
 4 adopt. The-agency-may-not-submit Additional information
 5 evidence may not be submitted during this three-day period. The
 6 written acceptance-of-other-amendments responses shall be added
 7 to the hearing rulemaking record.

8 Sec. 11. Minnesota Statutes 1982, section 14.16, is
 9 amended to read:

10 14.16 [ADOPTION OF RULE; MODIFICATIONS-OF-PROPOSED-RULE;
 11 ~~SUBMISSION-TO-ATTORNEY-GENERAL~~ CHIEF HEARING EXAMINER; FILING OF
 12 RULE.]

13 ~~if-after-completion-of-the-hearing-examiner's-report,-the~~
 14 ~~agency-adopts-the-rule-as-recommended-by-the-hearing-examiner,~~
 15 ~~the-rule-shall-be-submitted-with-the-complete-hearing-record-to~~
 16 ~~the-attorney-general,-who-shall-review-the-rule-as-to-its~~
 17 ~~legality-and-review-its-form-to-the-extent-the-form-relates-to~~
 18 ~~legality-~~

19 ~~if-the-agency-modifies-the-rule-in-a-manner-other-than-that~~
 20 ~~recommended-by-the-hearing-examiner,-it-shall-submit-the-rule-as~~
 21 ~~originally-proposed-and-as-modified-with-the-complete-hearing~~
 22 ~~record-to-the-chief-hearing-examiner-for-a-review-of-the~~
 23 ~~modifications-prior-to-adopting-the-modified-rule-and-submitting~~
 24 ~~it-to-the-attorney-general-for-review-~~

25 Subdivision 1. [REVIEW OF MODIFICATIONS.] If the report of
 26 the hearing examiner finds no defects, the agency may proceed to
 27 adopt the rule. After receipt of the hearing examiner's report,
 28 if the agency makes any modifications to the rule other than
 29 those recommended by the hearing examiner, it must return the
 30 rule to the chief hearing examiner for a review on the issue of
 31 substantial change. If the chief hearing examiner determines
 32 that the modified rule is substantially different from that
 33 which was originally proposed, the chief hearing examiner shall
 34 advise the agency of actions which will correct the defects.
 35 The agency shall not adopt the modified rule until the chief
 36 hearing examiner determines that the defects have been corrected.

1 The agency shall give notice to all persons who requested
 2 to be informed that the hearing-record rule has been submitted
 3 to-the-attorney-general adopted and filed with the secretary of
 4 state. This notice shall be given on the same day that the
 5 record-is-submitted rule is filed.

6 Subd. 2. [CORRECTION OF DEFECTS.] If the chief hearing
 7 examiner approves the hearing examiner's finding of a defect and
 8 advises the agency of actions which will correct the defect
 9 pursuant to subdivision 3 of section 14.15, the agency must
 10 either withdraw the rule or make the modifications required. The
 11 agency shall then resubmit the rule to the chief hearing
 12 examiner for a determination as to whether the defects have been
 13 corrected.

14 Subd. 3. [FILING.] After the agency has adopted the rule,
 15 the agency shall promptly file two copies of it in the office of
 16 the secretary of state. The secretary of state shall forward
 17 one copy of each rule filed to the revisor of statutes.

18 Sec. 12. Minnesota Statutes 1983 Supplement, section
 19 14.22, is amended to read:

20 14.22 [NOTICE OF PROPOSED ADOPTION OF RULES.]

21 Unless an agency proceeds directly to a public hearing on a
 22 proposed rule and gives the notice prescribed in section 14.14,
 23 subdivision 1a, the agency shall give notice of its intention to
 24 adopt a rule without public hearing. The notice shall be given
 25 by publication in the State Register and by United States mail
 26 to persons who have registered their names with the agency
 27 pursuant to section 14.14, subdivision 1a. The mailed notice
 28 shall include either a copy of the proposed rule or a
 29 description of the nature and effect of the proposed rule and an
 30 announcement that a free copy of the proposed rule is available
 31 on request from the agency. The notice in the State Register
 32 shall include the proposed rule or the amended rule in the form
 33 required by the revisor under section 14.07, and a citation to
 34 the most specific statutory authority for the proposed rule.
 35 When an entire rule is proposed to be repealed, the notice need
 36 only state that fact, giving the citation to the rule to be

1 repealed in the notice. The notice shall include a statement
2 advising the public:

3 (1) that they have 30 days in which to submit comment on in
4 support of or in opposition to the proposed rule and that
5 comment is encouraged;

6 (2) that ~~no public hearing will be held unless seven or~~
7 ~~more persons make a written request for a hearing within the 30~~
8 ~~day comment period~~ each comment should identify the portion of
9 the proposed rule addressed, the reason for the comment, and any
10 change proposed;

11 (3) that if 25 or more persons submit a written request for
12 a public hearing within the 30-day comment period, a public
13 hearing will be held;

14 (4) of the manner in which persons shall request a public
15 hearing on rules proposed pursuant to sections 14.21 to 14.28
16 the proposed rule; and

17 (5) that any person requesting a public hearing should
18 state his or her name and address, and is encouraged to identify
19 the portion of the proposed rule addressed, the reason for the
20 request, and any change proposed;

21 ~~+~~ (6) that the proposed rule may be modified if the
22 modifications are supported by the data and views submitted; and

23 (7) that if a hearing is not required, notice of the date
24 of submission of the proposed rule to the attorney general for
25 review will be mailed to any person requesting to receive the
26 notice.

27 Sec. 13. Minnesota Statutes 1982, section 14.23, is
28 amended to read:

29 14.23 [STATEMENT OF NEED AND REASONABLENESS.]

30 Before the date of the section 14.22 notice, the agency
31 shall prepare a statement of need and reasonableness which shall
32 be available to the public. For at least 30 days following the
33 notice, the agency shall afford all interested persons an
34 opportunity to ~~object to the lack of~~ request a public hearing
35 and to submit data and views on the proposed rule in writing.

36 Sec. 14. Minnesota Statutes 1982, section 14.25, is

1 amended to read:

2 14.25 [~~OBJECTIONS-TO-PROPOSED-RULE~~ PUBLIC HEARING
3 REQUIRED.]

4 If, during the 30 day period allowed for comment, seven 25
5 or more persons submit to the agency a written request for a
6 public hearing of the proposed rule, the agency shall proceed
7 under the provisions of sections ~~14.13~~ 14.14 to 14.20---if-a
8 ~~hearing-is-required,~~ and a notice of the public hearing shall be
9 published in the state register. Unless the agency has modified
10 the proposed rule, the notice need not include the text of the
11 proposed rule but only a citation to the state register pages
12 where the text appears.

13 Sec. 15. Minnesota Statutes 1983 Supplement, section
14 14.26, is amended to read:

15 14.26 [ADOPTION OF PROPOSED RULE; SUBMISSION TO ATTORNEY
16 GENERAL.]

17 If no hearing is required, the agency shall submit to the
18 attorney general the proposed rule and notice as published, the
19 rule as proposed for adoption, any written comments received by
20 the agency, and a statement of need and reasonableness for the
21 rule. The agency shall give notice to all persons who requested
22 to be informed that these materials have been submitted to the
23 attorney general. This notice shall be given on the same day
24 that the record is submitted. If the proposed rule has been
25 modified, the notice shall state that fact, and shall state that
26 a free copy of the proposed rule, as modified, is available upon
27 request from the agency. The rule and these materials shall be
28 submitted to the attorney general within 180 days of the day
29 that the comment period for the rule is over or the rule is
30 automatically withdrawn. The agency shall report its failure to
31 adopt the rules and the reasons for that failure to the
32 legislative commission to review administrative rules, other
33 appropriate legislative committees, and the governor.
34 Even if the 180-day period expires while the attorney
35 general reviews the rule, if the attorney general rejects the
36 rule, the agency may resubmit it after taking corrective

1 action. The resubmission must occur within 30 days of when the
 2 agency receives written notice of the disapproval. If the rule
 3 is again disapproved, the rule is withdrawn. An agency may
 4 resubmit at any time before the expiration of the 180-day
 5 period. If the agency withholds some of the proposed rule, it
 6 may not adopt the withheld portion without again following the
 7 procedures of sections ~~14.13~~ 14.14 to ~~14.28~~ 14.21 to 14.28, or
 8 14.29 to 14.36.

9 The attorney general shall approve or disapprove the rule
 10 as to its legality and its form to the extent the form relates
 11 to legality, including the issue of substantial change, and
 12 determine whether the agency has the authority to adopt the rule
 13 and whether the record demonstrates a rational basis for the
 14 need for and reasonableness of the proposed rule within 14
 15 days. If the rule is approved, the attorney general shall
 16 promptly file two copies of it in the office of the secretary of
 17 state. The secretary of state shall forward one copy of each
 18 rule to the revisor of statutes. If the rule is disapproved,
 19 the attorney general shall state in writing the reasons and make
 20 recommendations to overcome the deficiencies, and the rule shall
 21 not be filed in the office of the secretary of state, nor
 22 published until the deficiencies have been overcome. The
 23 attorney general shall send a statement of reasons for
 24 disapproval of the rule to the agency, the chief hearing
 25 examiner, the legislative commission to review administrative
 26 rules, and to the revisor of statutes.

27 Sec. 16. Minnesota Statutes 1982, section 14.29, is
 28 amended to read:

29 14.29 [AUTHORITY FOR USE OF TEMPORARY EMERGENCY RULES
 30 PROCEDURE; EXPIRATION OF AUTHORITY.]

31 Subdivision 1. When an agency is directed by statute,
 32 federal law or court order to adopt, amend, suspend or repeal a
 33 rule in a manner that does not allow for compliance with
 34 sections ~~14.13~~ 14.14 to 14.28, or if an agency is expressly
 35 required or authorized by statute to adopt temporary emergency
 36 rules, the agency shall adopt temporary emergency rules in

1 accordance with sections 14.29 to 14.36.

2 Subd. 2. Unless an agency is directed by federal law or
3 court order to adopt, amend, suspend, or repeal a rule in a
4 manner that does not allow for compliance with sections 14.14 to
5 14.28, no agency may adopt an emergency rule later than 180 days
6 after the effective date of the statutory authority, except as
7 provided in subdivision 3. If emergency rules are not adopted
8 within the time allowed, the authority for the rules expires.
9 The time limit of this section does not include any days used
10 for review by the attorney general. If the 180-day period
11 expires while the attorney general is reviewing the rule and the
12 attorney general disapproves the rule, the agency may resubmit
13 the rule to the attorney general after taking corrective
14 action. The resubmission must occur within five working days
15 after the agency receives written notice of disapproval. If the
16 rule is again disapproved by the attorney general, it is
17 withdrawn.

18 Subd. 3. Any agency which is authorized to issue bonds to
19 obtain funds for implementation of its programs and which is
20 authorized by other law to adopt temporary rules governing those
21 programs may continue to adopt those rules as emergency rules
22 without regard to the 180-day time limits specified in
23 subdivision 2 or section 30.

24 Sec. 17. Minnesota Statutes 1982, section 14.30, is
25 amended to read:

26 14.30 [NOTICE OF PROPOSED ADOPTION OF EMERGENCY RULE.]

27 The proposed temporary emergency rule shall be published
28 with a notice of intent to adopt temporary emergency rules in
29 the state register, and the same notice shall be mailed to all
30 persons registered with the agency to receive notice of any
31 rulemaking proceedings. The notice shall include a statement
32 advising the public that a free copy of the proposed rule is
33 available on request from the agency and that notice of the date
34 of submission of the proposed emergency rule to the attorney
35 general will be mailed to any person requesting to receive the
36 notice. For at least 20 25 days after publication the agency

1 shall afford all interested persons an opportunity to submit
2 data and views on the proposed temporary emergency rule in
3 writing.

4 Sec. 18. Minnesota Statutes 1982, section 14.31, is
5 amended to read:

6 14.31 [MODIFICATIONS OF PROPOSED EMERGENCY RULE.]

7 The proposed temporary emergency rule may be modified if
8 the modifications are supported by the data and views submitted
9 to the agency.

10 Sec. 19. Minnesota Statutes 1983 Supplement, section
11 14.32, is amended to read:

12 14.32 [SUBMISSION OF PROPOSED EMERGENCY RULE TO ATTORNEY
13 GENERAL.]

14 The agency shall submit to the attorney general the
15 proposed temporary emergency rule as published, with any
16 modifications. On the same day that it is submitted, the agency
17 shall mail notice of the submission to all persons who requested
18 to be informed that the proposed emergency rule has been
19 submitted to the attorney general. If the proposed emergency
20 rule has been modified, the notice shall state that fact, and
21 shall state that a free copy of the proposed emergency rule, as
22 modified, is available upon request from the agency. The
23 attorney general shall review the proposed temporary emergency
24 rule as to its legality, review its form to the extent the form
25 relates to legality, and shall approve or disapprove the
26 proposed temporary emergency rule and any modifications within
27 five-working-days on the tenth working day following the date of
28 receipt of the proposed emergency rule from the agency. The
29 attorney general shall send a statement of reasons for
30 disapproval of the rule to the agency, the chief hearing
31 examiner, the legislative commission to review administrative
32 rules, and to the revisor of statutes.

33 Sec. 20. Minnesota Statutes 1982, section 14.33, is
34 amended to read:

35 14.33 [EFFECTIVE DATE OF EMERGENCY RULE.]

36 The temporary emergency rule shall take effect upon five

1 working days after approval of by the attorney general. The
 2 attorney general shall file two copies of the approved emergency
 3 rule with the secretary of state. The secretary of state shall
 4 forward one copy of each approved and filed temporary emergency
 5 rule to the revisor of statutes. Failure of the attorney
 6 general to approve or disapprove a proposed emergency rule
 7 within five ten working days is approval.

8 Sec. 21. Minnesota Statutes 1982, section 14.35, is
 9 amended to read:

10 14.35 [EFFECTIVE PERIOD OF EMERGENCY RULE.]

11 Temporary Emergency rules adopted under sections 14.29 to
 12 14.36 shall be effective for the period stated in the notice of
 13 intent to adopt temporary emergency rules which may not be
 14 longer than 180 days. The temporary emergency rules may be
 15 continued in effect for an additional period of up to 180 days
 16 if the agency gives notice of continuation by publishing notice
 17 in the state register and mailing the same notice to all persons
 18 registered with the agency to receive notice of any rulemaking
 19 proceedings. The continuation shall not be effective until
 20 these notices have been mailed. No temporary emergency rule
 21 shall remain in effect on a date 361 days after its original
 22 effective date. The temporary emergency rules may not be
 23 continued in effect after 360 days without following the
 24 procedure of either sections ~~14.13~~ 14.14 to ~~14.20~~-or-sections
 25 ~~14.21~~-to 14.28.

26 Sec. 22. Minnesota Statutes 1982, section 14.36, is
 27 amended to read:

28 14.36 [APPROVAL OF FORM OF EMERGENCY RULE.]

29 No approved temporary emergency rule shall be filed with
 30 the secretary of state or published in the state register unless
 31 the revisor of statutes has certified that the emergency rule's
 32 form is approved.

33 Sec. 23. [14.365] [OFFICIAL RULEMAKING RECORD.]

34 The agency shall maintain the official rulemaking record
 35 for every rule adopted pursuant to sections 14.05 to 14.36. The
 36 record shall be available for public inspection. The record

1 required by this section constitutes the official and exclusive
 2 agency rulemaking record with respect to agency action on or
 3 judicial review of the rule. The record shall contain:

4 (1) copies of all publications in the State Register
 5 pertaining to the rule;

6 (2) all written petitions, requests, submissions, or
 7 comments received by the agency, the hearing examiner, or the
 8 attorney general pertaining to the rule;

9 (3) the statement of need and reasonableness for the rule,
 10 if any;

11 (4) the official transcript of the hearing if one was held,
 12 or the tape recording of the hearing if a transcript was not
 13 prepared;

14 (5) the report of the hearing examiner, if any;

15 (6) the rule in the form last submitted to the hearing
 16 examiner or first submitted to the attorney general;

17 (7) the attorney general's written statement of required
 18 modifications and of approval or disapproval, if any;

19 (8) any documents required by applicable rules of the
 20 office of administrative hearings or of the attorney general;

21 (9) the agency's order adopting the rule;

22 (10) the revisor's certificate approving the form of the
 23 rule; and

24 (11) a copy of the adopted rule as filed with the secretary
 25 of state.

26 Sec. 24. Minnesota Statutes 1982, section 14.38,
 27 subdivision 1, is amended to read:

28 Subdivision 1. [ORIGINAL RULES.] Every rule, regardless of
 29 whether it might be known as a substantive, procedural, or
 30 interpretive rule, which is ~~approved-by-the-attorney-general-and~~
 31 filed in the office of the secretary of state as provided in
 32 sections 14.05 to 14.36 shall have the force and effect of law
 33 five working days after its notice of adoption is published in
 34 the state register unless a later different date is required by
 35 statute or a later date is specified in the rule. The secretary
 36 of state shall keep a permanent record of rules filed with that

1 office open to public inspection.

2 Sec. 25. [14.385] [EFFECT OF NONPUBLICATION OF EXEMPT
3 RULES.]

4 No rule, as defined in section 14.02, subdivision 4, which
5 is exempt from the rulemaking provisions of this chapter has the
6 force and effect of law as of January 1, 1985, unless prior to
7 that date it has been submitted to the revisor for publication
8 in Minnesota Rules.

9 The revisor has the same editorial powers over these rules
10 as the revisor has over nonexempt rules.

11 Sec. 26. Minnesota Statutes 1982, section 14.44, is
12 amended to read:

13 14.44 [DETERMINATION OF VALIDITY OF RULE.]

14 The validity of any rule may be determined upon the
15 petition for a declaratory judgment thereon, addressed to the
16 ~~district-court-where-the-principal-office-of-the-agency-is~~
17 located court of appeals, when it appears that the rule, or its
18 threatened application, interferes with or impairs, or threatens
19 to interfere with or impair the legal rights or privileges of
20 the petitioner. The agency shall be made a party to the
21 proceeding. The declaratory judgment may be rendered whether or
22 not the petitioner has first requested the agency to pass upon
23 the validity of the rule in question, and whether or not the
24 agency has commenced an action against the petitioner to enforce
25 the rule.

26 Sec. 27. Minnesota Statutes 1983 Supplement, section
27 14.45, is amended to read:

28 14.45 [RULE DECLARED INVALID.]

29 In proceedings under section 14.44, the court shall declare
30 the rule invalid if it finds that it violates constitutional
31 provisions or exceeds the statutory authority of the agency or
32 was adopted without compliance with statutory rulemaking
33 procedures. Any party to proceedings under section 14.44,
34 including the agency, may appeal an adverse decision of the
35 district court of appeals to the supreme court of appeals as in
36 other civil cases.

1 Sec. 28. [EXTENSION OF TEMPORARY RULE AUTHORITY.]

2 Notwithstanding sections 16 and 30, the commissioners of
3 health and public welfare may amend the temporary rules
4 authorized by Laws of 1983, chapter 199 and the commissioner of
5 welfare may amend the temporary rules authorized by Laws of
6 1983, chapter 312 throughout the period these temporary rules
7 remain in effect by following the temporary rule procedure under
8 chapter 14. The temporary rules shall not remain in effect
9 beyond the periods authorized in Laws 1983, chapters 199 and 312.

10 Sec. 29. Minnesota Statutes 1983 Supplement, section
11 43A.08, subdivision 1a, is amended to read:

12 Subd. 1a. [ADDITIONAL UNCLASSIFIED POSITIONS.] Appointing
13 authorities for the following agencies may designate additional
14 unclassified positions according to this subdivision: the
15 departments of administration; agriculture; commerce;
16 corrections; economic security; education; employee relations;
17 energy and economic development; finance; health; human rights;
18 labor and industry; natural resources; office of administrative
19 hearings; public safety; public service; public welfare;
20 revenue; transportation; and veterans affairs; the housing
21 finance, state planning, and pollution control agencies; the
22 state board of investment; the offices of the secretary of
23 state, state auditor, and state treasurer; and the state board
24 of vocational technical education.

25 A position designated by an appointing authority according
26 to this subdivision must meet the following standards and
27 criteria:

28 (a) the designation of the position would not be contrary
29 to other law relating specifically to that agency;

30 (b) the person occupying the position would report directly
31 to the agency head or deputy agency head and would be designated
32 as part of the agency head's management team;

33 (c) the duties of the position would involve significant
34 discretion and substantial involvement in the development,
35 interpretation, and implementation of agency policy;

36 (d) the duties of the position would not require primarily

1 personnel, accounting, or other technical expertise where
2 continuity in the position would be important;

3 (e) there would be a need for the person occupying the
4 position to be accountable to, loyal to, and compatible with the
5 governor and the agency head, or the employing constitutional
6 officer;

7 (f) the position would be at the level of division or
8 bureau director or assistant to the agency head; and

9 (g) the commissioner has approved the designation as being
10 consistent with the standards and criteria in this subdivision.

11 Sec. 30. [EXPIRATION OF TEMPORARY RULEMAKING AUTHORITY.]

12 Except as provided in section 14.29, subdivision 3, no
13 agency may adopt an emergency or temporary rule pursuant to any
14 temporary rulemaking authority granted in a statute enacted
15 prior to March 1, 1984, later than 180 days after the effective
16 date of this section.

17 Sec. 31. [TERMS CONSTRUED.]

18 All grants of temporary rulemaking authority made prior to
19 or during the 1984 legislative session shall be construed to be
20 grants of emergency rulemaking authority.

21 Sec. 32. [INSTRUCTION TO THE REVISOR.]

22 The revisor of statutes shall change the term "temporary
23 rule," "temporary rulemaking," or similar terms to "emergency
24 rule," "emergency rulemaking," or similar terms wherever those
25 terms appear in Minnesota Statutes 1984.

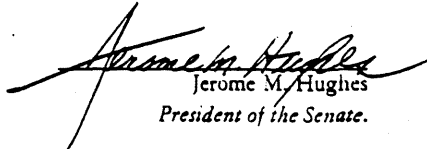
26 The revisor of statutes shall change the term "hearing
27 examiner" or similar terms to "administrative law judge" or
28 similar terms and the term "chief hearing examiner" or similar
29 terms to "chief administrative law judge" or similar terms
30 wherever those terms appear in Minnesota Statutes 1984 with
31 reference to personnel of the office of administrative hearings.

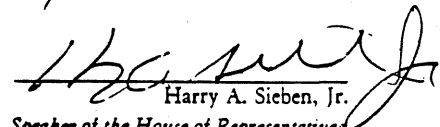
32 Sec. 33. [REPEALER.]

33 Minnesota Statutes 1982, section 14.13; and Minnesota
34 Statutes 1983 Supplement, sections 14.07, subdivision 5; 14.17;
35 and 14.21, are repealed.

36 Sec. 34. [EFFECTIVE DATE, APPLICATION.]

1 Sections 1 to 25, 28, and 30 to 33 are effective the day
2 following final enactment and shall apply to all rulemaking
3 proceedings for which the notice under section 14.14,
4 subdivision 1a, 14.22, or 14.30 is thereafter published.
5 Sections 26 and 27 are effective the day following final
6 enactment.


Jerome M. Hughes
President of the Senate.


Harry A. Sieben, Jr.
Speaker of the House of Representatives.

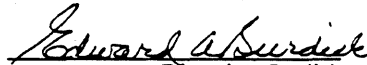
Passed the Senate this 24th day of April
nine hundred and eighty-four.

in the year of Our Lord one thousand

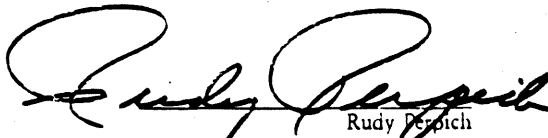

Patrick E. Flahaven
Secretary of the Senate.

Passed the House of Representatives this 19th day of April
one thousand nine hundred and eighty-four.

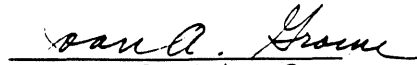
in the year of Our Lord


Edward A. Burdick
Chief Clerk, House of Representatives.

Approved
5/2/84


Rudy Perpich
Governor of the State of Minnesota.

Filed
5/3/84


Joan Anderson Grove
Secretary of State.