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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 1433

02/20/2017 Authored by Kresha, Fabian, Ecklund, Heintzeman, Newberger and others
The bill was read for the first time and referred to the Committee on Government Operations and Elections Policy

A bill for an act

1.1 relating to state government; regulating rulemaking; providing for the review and
1.2 repeal of environmental assessment worksheets and impact statements; restricting
1.3 the implementation and enforcement of certain policies, guidelines, and statements;
1.4 increasing oversight of certain rules; modifying notice requirements; requiring an
1.5 impact analysis of certain rules; modifying SONAR requirements; amending
1.6 Minnesota Statutes 2016, sections 3.842, subdivision 4a; 14.002; 14.02, by adding
1.7 a subdivision; 14.05, subdivisions 1, 2, 6, 7, by adding subdivisions; 14.101,
1.8 subdivision 1; 14.116; 14.125; 14.127; 14.131; 14.14, subdivisions 1a, 2a; 14.19;
1.9 14.22, subdivision 1; 14.23; 14.25, subdivision 1; 14.26; 14.365; 14.381,
1.10 subdivision 3; 14.388, subdivisions 1, 2; 14.44; 14.45; 14.51; proposing coding
1.11 for new law in Minnesota Statutes, chapter 14; repealing Minnesota Statutes 2016,
1.12 section 14.05, subdivision 5.
1.13

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2016, section 3.842, subdivision 4a, is amended to read:

Subd. 4a. **Objections to rules or proposed rules.** (a) For purposes of this subdivision,
"committee" means the house of representatives policy committee or senate policy committee
with primary jurisdiction over state governmental operations. The commission or a committee
may object to a rule or proposed rule as provided in this subdivision. ~~If the commission or
a committee objects to all or some portion of a rule because the commission or committee
considers it to be~~ on the grounds that the rule or proposed rule: (1) is beyond the procedural
or substantive authority delegated to the agency, including a proposed rule submitted under
section 14.15, subdivision 4, or 14.26, subdivision 3, paragraph (e); (2) is inconsistent with
the enabling statute; (3) is unnecessary or redundant; (4) has a substantial economic impact
as defined in section 14.02, subdivision 5; (5) is not based on sound, reasonably available
scientific, technical, economic, or other information; (6) is not cost effective; (7) is unduly
burdensome; or (8) is more restrictive than the standard, limitation, or requirement imposed

2.1 by federal law or rule pertaining to the same subject matter. If the commission or committee
2.2 objects to all or some portion of a rule or proposed rule, the commission or committee may
2.3 shall file that objection in the Office of the Secretary of State. The filed objection must
2.4 contain a concise statement of the commission's or committee's reasons for its action. An
2.5 objection to a proposed rule submitted by the commission or a committee under section
2.6 14.15, subdivision 4, or 14.26, subdivision 3, paragraph (e), may not be filed before the rule
2.7 is adopted For a proposed rule, the objection must be filed within 30 days of receipt of the
2.8 notice under section 14.14, 14.22, 14.386, 14.388, 14.389, or 14.3895.

2.9 (b) The secretary of state shall affix to each objection a certification of the date and time
2.10 of its filing and as soon after the objection is filed as practicable shall electronically transmit
2.11 a ~~certified~~ copy of it to the agency issuing the rule in question and to the revisor of statutes.
2.12 The secretary of state shall also maintain a permanent register open to public inspection of
2.13 all objections by the commission or committee.

2.14 (c) The commission or committee shall publish and index an objection filed under this
2.15 section in the next issue of the State Register. The revisor of statutes shall indicate the
2.16 existence of the objection adjacent to the rule in question when that rule is published in
2.17 Minnesota Rules.

2.18 (d) Within 14 days after the filing of an objection by the commission or committee to a
2.19 rule or proposed rule, the issuing agency shall respond in writing to the objecting entity.
2.20 After receipt of the response, the commission or committee may withdraw or modify its
2.21 objection. After the filing of an objection that is not subsequently withdrawn, the agency
2.22 may not adopt the rule until the legislature adjourns the annual legislative session that began
2.23 after the objection was filed. If the commission files an objection that is not subsequently
2.24 withdrawn, the commission must, as soon as practical, make a recommendation on a bill
2.25 that approves the proposed rule, prohibits adoption of the proposed rule, or amends or repeals
2.26 the law governing a previously adopted rule for which an objection was filed.

2.27 (e) After the filing of an objection by the commission or committee that is not
2.28 subsequently withdrawn, the burden is upon the agency in any proceeding for judicial review
2.29 or for enforcement of the rule to establish that the whole or portion of the rule objected to
2.30 is valid and demonstrates that the objection raised under paragraph (a) is not justified, based
2.31 on the criteria for objecting to a rule under paragraph (a).

2.32 (f) The failure of the commission or a committee to object to a rule is not an implied
2.33 legislative authorization of its validity.

3.1 (g) In accordance with sections 14.44 and 14.45, the commission or a committee may
 3.2 petition for a declaratory judgment to determine the validity of a rule objected to by the
 3.3 commission or committee. The action must be started within two years after an objection
 3.4 is filed in the Office of the Secretary of State.

3.5 (h) The commission or a committee may intervene in litigation arising from agency
 3.6 action. For purposes of this paragraph, agency action means the whole or part of a rule, or
 3.7 the failure to issue a rule.

3.8 Sec. 2. Minnesota Statutes 2016, section 14.002, is amended to read:

3.9 **14.002 STATE REGULATORY POLICY.**

3.10 The legislature recognizes the important and sensitive role for administrative rules in
 3.11 implementing policies and programs created by the legislature. However, the legislature
 3.12 finds that some regulatory rules and programs have become overly prescriptive and inflexible,
 3.13 thereby increasing costs to the state, local governments, and the regulated community and
 3.14 decreasing the effectiveness of the regulatory program. Therefore, ~~whenever feasible~~, state
 3.15 agencies must develop rules and regulatory programs that emphasize superior achievement
 3.16 in meeting the agency's regulatory objectives and maximum flexibility for the regulated
 3.17 party and the agency in meeting those goals.

3.18 Sec. 3. Minnesota Statutes 2016, section 14.02, is amended by adding a subdivision to
 3.19 read:

3.20 Subd. 5. **Substantial economic impact.** A rule has a "substantial economic impact" if
 3.21 the rule would result in, or likely result in:

3.22 (1) an adverse effect or impact on the private-sector economy of the state of Minnesota
 3.23 of \$5,000,000 or more in a single year;

3.24 (2) a significant increase in costs or prices for consumers, individual private-sector
 3.25 industries, state agencies, local governments, individuals, or private-sector enterprises within
 3.26 certain geographic regions inside the state of Minnesota;

3.27 (3) significant adverse impacts on the competitiveness of private-sector Minnesota-based
 3.28 enterprises, or on private-sector employment, investment, productivity, or innovation within
 3.29 the state of Minnesota; or

3.30 (4) compliance costs, in the first year after the rule takes effect, of more than \$25,000
 3.31 for any one business that has fewer than 50 full-time employees, or for any one statutory
 3.32 or home rule charter city that has fewer than ten full-time employees.

4.1 Sec. 4. Minnesota Statutes 2016, section 14.05, subdivision 1, is amended to read:

4.2 Subdivision 1. **Authority to adopt original rules restricted.** (a) Each agency shall
 4.3 adopt, amend, suspend, or repeal its rules: (1) in accordance with the procedures specified
 4.4 in sections 14.001 to 14.69, ~~and;~~ (2) only pursuant to authority delegated by law; and (3)
 4.5 in full compliance with its duties and obligations.

4.6 (b) If a law authorizing rules is repealed, the rules adopted pursuant to that law are
 4.7 automatically repealed on the effective date of the law's repeal unless there is another law
 4.8 authorizing the rules.

4.9 (c) Except as provided in ~~section~~ sections 14.055, 14.06, 14.388, 14.389, and 14.3895,
 4.10 sections 14.001 to 14.69 shall not be authority for an agency to adopt, amend, suspend, or
 4.11 repeal rules.

4.12 Sec. 5. Minnesota Statutes 2016, section 14.05, is amended by adding a subdivision to
 4.13 read:

4.14 Subd. 1a. **Limitation regarding certain policies, guidelines, and other interpretive**
 4.15 **statements.** An agency shall not seek to implement or enforce against any person a policy,
 4.16 guideline, or other interpretive statement that meets the definition of a rule under this chapter
 4.17 if the policy, guideline, or other interpretive statement has not been adopted as a rule in
 4.18 accordance with this chapter including but not limited to solid waste policy plan revisions
 4.19 authorized by other law. In any proceeding under chapter 14 challenging an agency action
 4.20 prohibited by this subdivision, the reviewing authority must independently and without
 4.21 reference to the agency determine if the agency has violated this subdivision. The agency
 4.22 must overcome the presumption that its action may not be enforced as a rule.

4.23 Sec. 6. Minnesota Statutes 2016, section 14.05, subdivision 2, is amended to read:

4.24 Subd. 2. **Authority to modify proposed rule.** (a) An agency may modify a proposed
 4.25 rule in accordance with the procedures of the Administrative Procedure Act. However, an
 4.26 agency may not modify a proposed rule so that it is substantially different from the proposed
 4.27 rule in the notice of intent to adopt rules or notice of hearing.

4.28 (b) A modification does not make a proposed rule substantially different if:

4.29 (1) the differences are within the scope of the matter announced in the notice of intent
 4.30 to adopt or notice of hearing and are in character with the issues raised in that notice;

4.31 (2) the differences are a logical outgrowth of the contents of the notice of intent to adopt
 4.32 or notice of hearing and the comments submitted in response to the notice; and

5.1 (3) the notice of intent to adopt or notice of hearing provided fair warning that the
5.2 outcome of that rulemaking proceeding could be the rule in question.

5.3 (c) In determining whether the notice of intent to adopt or notice of hearing provided
5.4 fair warning that the outcome of that rulemaking proceeding could be the rule in question
5.5 the following factors must be considered:

5.6 (1) the extent to which persons who will be affected by the rule should have understood
5.7 that the rulemaking proceeding on which it is based could affect their interests;

5.8 (2) the extent to which the subject matter of the rule or issues determined by the rule are
5.9 different from the subject matter or issues contained in the notice of intent to adopt or notice
5.10 of hearing; and

5.11 (3) the extent to which the effects of the rule differ from the effects of the proposed rule
5.12 contained in the notice of intent to adopt or notice of hearing.

5.13 (d) A modification makes a proposed rule substantially different if the modification
5.14 causes a rule that did not previously have a substantial economic impact to have a substantial
5.15 economic impact.

5.16 Sec. 7. Minnesota Statutes 2016, section 14.05, is amended by adding a subdivision to
5.17 read:

5.18 Subd. 5a. **Review and repeal of rules.** By December 1 of each odd-numbered year,
5.19 beginning December 1, 2017, an agency must submit to the governor, the Legislative
5.20 Coordinating Commission, the policy and funding committees and divisions with jurisdiction
5.21 over the agency, and the revisor of statutes, a list of any rules or portions of rules that are
5.22 obsolete, unnecessary, or duplicative of other state or federal statutes or rules. The list must
5.23 also include an explanation of why the rule or portion of the rule is obsolete, unnecessary,
5.24 or duplicative of other state or federal statutes or rules. The agency must either report a
5.25 timetable for repeal of the rule or portion of the rule, or must develop a bill for submission
5.26 to the appropriate policy committee to repeal the obsolete, unnecessary, or duplicative rule.
5.27 A report submitted under this subdivision must be signed by the person in the agency who
5.28 is responsible for identifying and initiating repeal of obsolete rules. The report also must
5.29 identify the status of any rules identified in the prior report as obsolete, unnecessary, or
5.30 duplicative. If none of an agency's rules are obsolete, unnecessary, or duplicative, an agency's
5.31 report must state that conclusion.

6.1 Sec. 8. Minnesota Statutes 2016, section 14.05, is amended by adding a subdivision to
6.2 read:

6.3 Subd. 5b. **Review and repeal of environmental assessment worksheets and impact**
6.4 **statements.** By December 1, 2017, and each odd-numbered year thereafter, the
6.5 Environmental Quality Board, Pollution Control Agency, Department of Natural Resources,
6.6 and Department of Transportation, after consultation with political subdivisions, shall submit
6.7 to the governor; the Legislative Coordinating Commission; the chairs of the house of
6.8 representatives and senate committees having jurisdiction over environment and natural
6.9 resources; and the revisor of statutes a list of mandatory environmental assessment worksheets
6.10 or mandatory environmental impact statements for which the agency or a political subdivision
6.11 is designated as the responsible government unit, and for each worksheet or statement, a
6.12 document including:

6.13 (1) intended outcomes of the specific worksheet or statement;

6.14 (2) the cost to state and local government and the private sector;

6.15 (3) the relationship of the worksheet or statement to other local, state, and federal permits;
6.16 and

6.17 (4) a justification for why the mandatory worksheet or statement should not be eliminated
6.18 and its intended outcomes achieved through an existing permit or other federal, state, or
6.19 local law.

6.20 Sec. 9. Minnesota Statutes 2016, section 14.05, subdivision 6, is amended to read:

6.21 Subd. 6. **Veto of adopted rules.** The governor may veto all or a severable portion of a
6.22 rule of an agency as defined in section 14.02, subdivisions 2 and 4, by submitting notice of
6.23 the veto to the State Register within 14 days of receiving a copy of the rule from the secretary
6.24 of state under section 14.16, subdivision 3, 14.26, subdivision ~~3~~ 7, ~~or~~ 14.386₂, or the agency
6.25 under section 14.389, subdivision 3, or section 14.3895. The veto is effective when the veto
6.26 notice is submitted to the State Register. This authority applies only to the extent that the
6.27 agency itself would have authority, through rulemaking, to take such action. If the governor
6.28 vetoes a rule or portion of a rule under this section, the governor shall notify the chairs of
6.29 the legislative committees having jurisdiction over the agency whose rule was vetoed.

6.30 Sec. 10. Minnesota Statutes 2016, section 14.05, subdivision 7, is amended to read:

6.31 Subd. 7. **Electronic documents permitted.** (a) If sections 14.05 to 14.3895 require an
6.32 agency to provide notice or documents to the public, the legislature, or other state agency,

7.1 the agency may send the notice or document, or a link to the notice or document, using any
 7.2 reliable method of electronic transmission.

7.3 (b) The agency must also send a paper copy of the notice or document if requested to
 7.4 do so by a member of the public, legislature, or other state agency.

7.5 (c) An agency may file rule-related documents with the Office of Administrative Hearings
 7.6 by electronic transmission in the manner approved by that office and the Office of the
 7.7 Revisor of Statutes by electronic transmission in the manner approved by that office.

7.8 Sec. 11. Minnesota Statutes 2016, section 14.101, subdivision 1, is amended to read:

7.9 Subdivision 1. **Required notice.** In addition to seeking information by other methods
 7.10 designed to reach persons or ~~classes~~ categories of persons who might be affected by the
 7.11 proposal, an agency, at least 60 days before publication of a notice of intent to adopt or a
 7.12 notice of hearing, shall solicit comments from the public on the subject matter of a possible
 7.13 rulemaking proposal under active consideration within the agency by causing notice to be
 7.14 published in the State Register. The notice must include a description of the subject matter
 7.15 of the proposal and the types of groups and individuals likely to be affected, and must
 7.16 indicate where, when, and how persons may comment on the proposal and whether and
 7.17 how drafts of any proposal may be obtained from the agency.

7.18 This notice must be published within 60 days of the effective date of any new or
 7.19 amendatory law requiring rules to be adopted, amended, or repealed.

7.20 An agency intending to adopt an expedited rule under section 14.389 is exempt from
 7.21 the requirements of this section.

7.22 Sec. 12. **[14.105] RULE NOTIFICATION.**

7.23 Subdivision 1. **Rule notification list.** (a) Each agency shall maintain a list of all persons
 7.24 who have registered with the agency for the purpose of receiving notice of rule proceedings.
 7.25 A person may register to receive notice of rule proceedings by submitting to the agency:

7.26 (1) the person's electronic mail address; or

7.27 (2) the person's name and United States mail address, along with a request to receive
 7.28 copies of the notices by mail.

7.29 (b) The agency shall post information on its Web site describing the registration process.

8.1 (c) The agency may inquire as to whether those persons on the list in paragraph (a) wish
 8.2 to remain on it and may remove persons for whom there is a negative reply or no reply
 8.3 within 60 days.

8.4 Subd. 2. **Additional notice.** (a) Each agency shall make reasonable efforts to notify
 8.5 persons or categories of persons who may be significantly affected by the rule being proposed
 8.6 by giving notice of its rule proceedings in newsletters, newspapers, or other publications,
 8.7 or through other means of communication.

8.8 (b) For each rulemaking, the agency shall develop an additional notice plan describing
 8.9 its efforts to provide additional notification to persons or categories of persons who may be
 8.10 affected by the proposed rule or must explain why these efforts were not made. The additional
 8.11 notice plan must be submitted to the administrative law judge with the other submissions
 8.12 required by section 14.14, subdivision 2a, or 14.26. The agency also may seek prior approval
 8.13 of the additional notice plan under the rules of the Office of Administrative Hearings.

8.14 Sec. 13. Minnesota Statutes 2016, section 14.116, is amended to read:

8.15 **14.116 NOTICE TO LEGISLATURE.**

8.16 (a) By January 15 each year, each agency must submit its current rulemaking docket
 8.17 maintained under section 14.366, ~~and the official rulemaking record required under section~~
 8.18 ~~14.365 for any rule adopted during the preceding calendar year,~~ to the chairs and ranking
 8.19 minority members of the legislative policy and budget committees with jurisdiction over
 8.20 the subject matter of the proposed rule and to the Legislative Coordinating Commission.
 8.21 Each agency must post a link to its rulemaking docket on the agency Web site home page.

8.22 (b) When an agency ~~mails~~ sends a notice of ~~intent to adopt rules~~ hearing under section
 8.23 14.14 or a notice of intent to adopt rules or dual notice under section 14.22, the agency must
 8.24 send a copy of the same notice ~~and a copy of the statement of need and reasonableness~~ to
 8.25 the chairs and ranking minority party members of the legislative policy and budget
 8.26 committees with jurisdiction over the subject matter of the proposed rules and to the
 8.27 Legislative Coordinating Commission.

8.28 ~~(c) In addition, if the mailing of the notice is within two years of the effective date of~~
 8.29 ~~the law granting the agency authority to adopt the proposed rules, the agency shall make~~
 8.30 ~~reasonable efforts to send a copy of the notice and the statement to all sitting legislators~~
 8.31 ~~who were chief house of representatives and senate authors of the bill granting the rulemaking~~
 8.32 ~~authority. If the bill was amended to include this rulemaking authority, the agency shall~~
 8.33 ~~make reasonable efforts to send the notice and the statement to the chief house of~~

9.1 ~~representatives and senate authors of the amendment granting rulemaking authority, rather~~
 9.2 ~~than to the chief authors of the bill.~~

9.3 Sec. 14. Minnesota Statutes 2016, section 14.125, is amended to read:

9.4 **14.125 TIME LIMIT ON AUTHORITY TO ADOPT, AMEND, OR REPEAL**
 9.5 **RULES.**

9.6 An agency shall publish a ~~notice of intent to adopt rules or a notice of hearing under~~
 9.7 section 14.14, or a notice of intent to adopt rules or dual notice under section 14.22, within
 9.8 18 months of the effective date of the law authorizing or requiring rules to be adopted,
 9.9 amended, or repealed. If the notice is not published within the time limit imposed by this
 9.10 section, the ~~authority for the rules expires. The agency shall not use other law in existence~~
 9.11 ~~at the time of the expiration of rulemaking authority under this section as authority to adopt,~~
 9.12 ~~amend, or repeal these rules~~ agency shall report to the Legislative Coordinating Commission,
 9.13 other appropriate committees of the legislature, and the governor its failure to publish a
 9.14 notice and the reasons for that failure.

9.15 ~~An agency that publishes a notice of intent to adopt rules or a notice of hearing within~~
 9.16 ~~the time limit specified in this section may subsequently amend or repeal the rules without~~
 9.17 ~~additional legislative authorization.~~

9.18 Sec. 15. Minnesota Statutes 2016, section 14.127, is amended to read:

9.19 **14.127 LEGISLATIVE APPROVAL REQUIRED.**

9.20 Subdivision 1. ~~Cost thresholds~~ **Substantial economic impact.** An agency must
 9.21 determine if the cost of complying with a proposed rule in the first year after the rule takes
 9.22 effect will exceed \$25,000 for: (1) any one business that has less than 50 full-time employees;
 9.23 or (2) any one statutory or home rule charter city that has less than ten full-time employees.
 9.24 For purposes of this section, "business" means a business entity organized for profit or as
 9.25 a nonprofit, and includes an individual, partnership, corporation, joint venture, association,
 9.26 or cooperative has a substantial economic impact, as defined in section 14.02, subdivision
 9.27 5.

9.28 Subd. 2. **Agency determination.** An agency must make the determination required by
 9.29 subdivision 1 before the close of the hearing record, or before the agency submits the record
 9.30 to the administrative law judge if there is no hearing. The administrative law judge must
 9.31 review and approve or disapprove the agency determination under this section agency gives
 9.32 notice under section 14.14, 14.22, 14.225, or 14.389.

10.1 Subd. 3. **Legislative approval required.** (a) If the agency determines that a proposed
10.2 rule has a substantial economic impact, the agency must request the legislative auditor to
10.3 convene a five-person peer review advisory panel to conduct an impact analysis of the
10.4 proposed rule. Within 30 days of receipt of the agency's request, the legislative auditor shall
10.5 convene a peer review advisory panel. The advisory panel must be made up of individuals
10.6 who have not directly or indirectly been involved in the work conducted or contracted by
10.7 the agency and who are not employed by the agency. The agency must pay each panel
10.8 member for the costs of the person's service on the panel, as determined by the legislative
10.9 auditor. The agency shall transfer an amount from the agency's operating budget to the
10.10 legislative auditor to pay for costs for convening the peer review advisory panel process.
10.11 The panel may receive written and oral comments from the public during its review. The
10.12 panel must submit its report within 60 days of being convened. The agency must receive a
10.13 final report from the panel before the agency conducts a public hearing on a proposed rule
10.14 or, if no hearing is held, before the rule is submitted to the administrative law judge. The
10.15 panel's report must include its conclusions on the extent to which the proposed rule:

10.16 (1) is based on sound, reasonably available scientific, technical, economic, or other
10.17 information or rationale; and

10.18 (2) is more restrictive than a standard, limitation, or requirement imposed by federal law
10.19 or rule pertaining to the same subject matter, and a justification based on sound, reasonably
10.20 available scientific, technical, economic, or other information and rationale that the more
10.21 stringent standard is necessary to protect the public's health, safety, or welfare.

10.22 (b) If the agency determines that a rule does not have a substantial economic impact,
10.23 the administrative law judge must review this determination. If the administrative law judge
10.24 determines that a rule may have a substantial economic impact, the agency must have the
10.25 legislative auditor arrange for the analysis required by paragraph (a), and the agency must
10.26 give new notice of intent to adopt the proposed rule after receiving this analysis. The
10.27 administrative law judge may make this determination as part of the administrative law
10.28 judge's report on the proposed rule, or at any earlier time after the administrative law judge
10.29 is assigned to the rule proceeding.

10.30 (c) If the agency determines that the ~~cost exceeds the threshold in subdivision 1~~ proposed
10.31 rule has a substantial economic impact, or if the administrative law judge disapproves the
10.32 agency's determination that the ~~cost rule~~ does not exceed the threshold in subdivision 1,
10.33 any business that has less than 50 full-time employees or any statutory or home rule charter
10.34 city that has less than ten full-time employees may file a written statement with the agency
10.35 claiming a temporary exemption from the rules. Upon filing of such a statement with the

11.1 ~~agency, the rules do not apply to that business or that city until the rules are~~ have a substantial
 11.2 economic impact, the agency or the administrative law judge shall deliver the determination
 11.3 and peer review advisory panel report to the Legislative Coordinating Commission and to
 11.4 the chairs and ranking minority members of the house of representatives and senate
 11.5 committees and divisions with jurisdiction over the subject matter of the rule, and the
 11.6 proposed rule does not take effect until the rule is approved by a law enacted after the agency
 11.7 determination or administrative law judge disapproval.

11.8 Subd. 4. **Exceptions.** ~~(a) Subdivision 3 does not apply if the administrative law judge~~
 11.9 ~~approves an agency's determination that the legislature has appropriated money to sufficiently~~
 11.10 ~~fund the expected cost of the rule upon the business or city proposed to be regulated by the~~
 11.11 ~~rule.~~

11.12 ~~(b)~~ (a) Subdivision 3 does not apply if the administrative law judge approves an agency's
 11.13 determination that the rule has been proposed pursuant to a specific federal statutory or
 11.14 regulatory mandate.

11.15 ~~(c)~~ (b) This section does not apply if the rule is adopted under section 14.388 or under
 11.16 another law specifying that the rulemaking procedures of this chapter do not apply.

11.17 ~~(d)~~ (c) This section does not apply to a rule adopted by the Public Utilities Commission.

11.18 ~~(e) Subdivision 3 does not apply if the governor waives application of subdivision 3.~~
 11.19 ~~The governor may issue a waiver at any time, either before or after the rule would take~~
 11.20 ~~effect, but for the requirement of legislative approval. As soon as possible after issuing a~~
 11.21 ~~waiver under this paragraph, the governor must send notice of the waiver to the speaker of~~
 11.22 ~~the house and the president of the senate and must publish notice of this determination in~~
 11.23 ~~the State Register.~~

11.24 Subd. 5. **Severability.** If an administrative law judge determines that part of a proposed
 11.25 rule ~~exceeds the threshold specified in subdivision 1~~ has a substantial economic impact, but
 11.26 that a severable portion of a proposed rule does not ~~exceed the threshold in subdivision 1~~
 11.27 have a substantial economic impact, the administrative law judge may provide that the
 11.28 severable portion of the rule that does not ~~exceed the threshold~~ have a substantial economic
 11.29 impact may take effect without legislative approval.

11.30 Sec. 16. [14.129] IMPACT ANALYSIS OF PROPOSED RULE.

11.31 (a) Within 30 days of receipt of the notice required under section 14.116, paragraph (b),
 11.32 a standing committee with jurisdiction over the subject matter of a proposed rule may request
 11.33 the legislative auditor to conduct an impact analysis of the proposed rule. The request must

12.1 be sent in writing to the legislative auditor and the agency. Upon receipt of the request, the
 12.2 agency may not proceed to adopt the proposed rule until it has received a positive declaration
 12.3 from the requesting standing committee. Within 60 days of receipt of a request, the legislative
 12.4 auditor shall convene a five-person peer review panel to review the proposed rule. The
 12.5 advisory panel must be made up of individuals who have not directly or indirectly been
 12.6 involved in work conducted or contracted by the agency and who are not employed by the
 12.7 agency. The panel may receive written and oral comments from the public during its review
 12.8 of the proposed rule. The panel must prepare a report that includes a conclusion on whether
 12.9 the proposed rule:

12.10 (1) is based on sound, reasonably available scientific, technical, economic, and other
 12.11 information and rationale; and

12.12 (2) if the proposed rule is more restrictive than a standard, limitation, or requirement
 12.13 imposed by federal law or rule pertaining to the same subject matter, a justification based
 12.14 on sound, reasonably available scientific, technical, economic, or other information and
 12.15 rationale that the more stringent standard is necessary to protect the public's health, safety,
 12.16 or welfare.

12.17 (b) Within 150 days of being convened, the panel must submit its report to the chairs
 12.18 and ranking minority members of the requesting committee and the legislative auditor.
 12.19 Within five days of receipt of the panel's report, the requesting standing committee shall
 12.20 send the report to the agency along with either:

12.21 (1) a positive declaration that the agency may proceed with the proposed rule; or

12.22 (2) a negative declaration that the agency may not proceed with the proposed rule in its
 12.23 current form.

12.24 (c) If the requesting standing committee issues a negative declaration to an agency under
 12.25 paragraph (b), clause (2), the agency may not adopt the rule until the legislature adjourns
 12.26 the annual legislative session that began after the issuance of the negative declaration.

12.27 Sec. 17. Minnesota Statutes 2016, section 14.131, is amended to read:

12.28 **14.131 STATEMENT OF NEED AND REASONABLENESS.**

12.29 By the date of the section 14.14, subdivision 1a, notice, the agency must prepare, review,
 12.30 and make available for public review a statement of the need for and reasonableness of the
 12.31 rule. The statement of need and reasonableness must be prepared under rules adopted by
 12.32 the chief administrative law judge and must include a citation to the most specific statutory

13.1 authority for the rule and the following to the extent the agency, through reasonable effort,
 13.2 can ascertain this information:

13.3 ~~(1) a description of the classes of persons who probably will be affected by the proposed~~
 13.4 ~~rule, including classes that will bear the costs of the proposed rule and classes that will~~
 13.5 ~~benefit from the proposed rule;~~

13.6 ~~(2) the probable costs to the agency and to any other agency of the implementation and~~
 13.7 ~~enforcement of the proposed rule and any anticipated effect on state revenues;~~

13.8 ~~(3) a determination of whether there are less costly methods or less intrusive methods~~
 13.9 ~~for achieving the purpose of the proposed rule;~~

13.10 ~~(4) a description of any alternative methods for achieving the purpose of the proposed~~
 13.11 ~~rule that were seriously considered by the agency and the reasons why they were rejected~~
 13.12 ~~in favor of the proposed rule;~~

13.13 ~~(5) the probable costs of complying with the proposed rule, including the portion of the~~
 13.14 ~~total costs that will be borne by identifiable categories of affected parties, such as separate~~
 13.15 ~~classes of governmental units, businesses, or individuals;~~

13.16 ~~(6) the probable costs or consequences of not adopting the proposed rule, including those~~
 13.17 ~~costs or consequences borne by identifiable categories of affected parties, such as separate~~
 13.18 ~~classes of government units, businesses, or individuals;~~

13.19 (1) a description of the persons or classifications of persons who will probably be affected
 13.20 by the proposed rule;

13.21 (2) the probable costs of the rule to affected persons and the agency, including those
 13.22 costs or consequences borne by identifiable categories of affected parties, such as separate
 13.23 classes of government units, businesses, or individuals, and the probable benefits of adopting
 13.24 the rule;

13.25 ~~(7)~~ (3) an assessment of any differences between the proposed rule and existing or
 13.26 proposed federal regulations standards and similar standards in relevant states bordering
 13.27 Minnesota or within Environmental Protection Agency Region 5 and a specific analysis of
 13.28 the need for and reasonableness of each difference; and

13.29 ~~(8)~~ (4) an assessment of the cumulative effect of the rule with other federal and state
 13.30 regulations related to the specific purpose of the rule. all rules adopted by the agency or any
 13.31 other agency, and all federal regulations and local ordinances or regulations, related to the
 13.32 specific purpose for which the rule is being adopted; and

14.1 (5) the agency's findings and conclusions that support its determination that the proposed
 14.2 rule is based on sound, reasonably available scientific, technical, economic, or other
 14.3 information and rationale; and if the proposed rule is more restrictive than a standard,
 14.4 limitation, or requirement imposed by federal law or rule pertaining to the same subject
 14.5 matter, a justification based on sound, reasonably available scientific, technical, economic,
 14.6 or other information and rationale that the more stringent standard is necessary to protect
 14.7 the public's health, safety, or welfare.

14.8 The statement must describe how the agency, in developing the rules, considered and
 14.9 implemented the legislative policy supporting performance-based regulatory systems set
 14.10 forth in section 14.002 in a cost-effective and timely manner.

14.11 For purposes of clause ~~(8)~~ (4), "cumulative effect" means the impact that results from
 14.12 incremental impact of the proposed rule in addition to other rules, regardless of what state
 14.13 or federal agency has adopted the other rules. Cumulative effects can result from individually
 14.14 minor but collectively significant rules adopted over a period of time.

14.15 ~~The statement must also describe the agency's efforts to provide additional notification~~
 14.16 ~~under section 14.14, subdivision 1a, to persons or classes of persons who may be affected~~
 14.17 ~~by the proposed rule or must explain why these efforts were not made.~~

14.18 The statement must describe, with reasonable particularity, the scientific, technical, and
 14.19 economic information that supports the proposed rule.

14.20 The agency must consult with the commissioner of management and budget to help
 14.21 evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local
 14.22 government. The agency must send a copy of the statement of need and reasonableness to
 14.23 the Legislative Reference Library no later than when the notice of hearing is ~~mailed under~~
 14.24 ~~section 14.14, subdivision 1a~~ sent.

14.25 Sec. 18. Minnesota Statutes 2016, section 14.14, subdivision 1a, is amended to read:

14.26 Subd. 1a. **Notice of rule hearing.** (a) ~~Each agency shall maintain a list of all persons~~
 14.27 ~~who have registered with the agency for the purpose of receiving notice of rule proceedings.~~
 14.28 ~~Persons may register to receive notice of rule proceedings by submitting to the agency:~~

14.29 ~~(1) their electronic mail address; or~~

14.30 ~~(2) their name and United States mail address.~~

14.31 ~~The agency may inquire as to whether those persons on the list wish to remain on it and~~
 14.32 ~~may remove persons for whom there is a negative reply or no reply within 60 days. The~~

15.1 agency shall, at least 30 days before the date set for the hearing, give notice of its intention
15.2 to ~~adopt~~ hold a hearing on the proposed rules by United States mail or electronic mail to all
15.3 persons ~~on its list~~ who have registered with the agency under section 14.105, and by
15.4 publication in the State Register.

15.5 ~~The mailed notice must include either a copy of the proposed rule or an easily readable~~
15.6 ~~and understandable description of its nature and effect and an announcement that a free~~
15.7 ~~copy of the proposed rule is available on request from the agency. In addition, each agency~~
15.8 ~~shall make reasonable efforts to notify persons or classes of persons who may be significantly~~
15.9 ~~affected by the rule being proposed by giving notice of its intention in newsletters,~~
15.10 ~~newspapers, or other publications, or through other means of communication. The notice~~
15.11 in the State Register must include the proposed rule or an amended rule in the form required
15.12 by the revisor under section 14.07, together with an easily readable and understandable
15.13 summary of the overall nature and effect of the proposed rule, a citation to the most specific
15.14 statutory authority for the proposed rule, a statement of the place, date, and time of the
15.15 public hearing, a statement that a free copy of the proposed rule and the statement of need
15.16 and reasonableness may be requested from the agency, a statement that persons may register
15.17 with the agency for the purpose of receiving notice of rule proceedings ~~and notice that the~~
15.18 ~~agency intends to adopt a rule~~ and other information required by law or rule. When an entire
15.19 rule is proposed to be repealed, the agency need only publish that fact, along with an easily
15.20 readable and understandable summary of the overall nature of the rules proposed for repeal,
15.21 and a citation to the rule to be repealed.

15.22 The mailed notice of hearing must be the same as the notice published in the State
15.23 Register, except that the mailed notice may omit the text of the proposed rule if it includes
15.24 an announcement of where a copy of the proposed rule may be obtained.

15.25 (b) The chief administrative law judge may authorize an agency to omit from the notice
15.26 of rule hearing the text of any proposed rule, the publication of which would be unduly
15.27 cumbersome, expensive, or otherwise inexpedient if:

15.28 (1) knowledge of the rule is likely to be important to only a small class of persons;

15.29 (2) the notice of rule hearing states that a free copy of the entire rule is available upon
15.30 request to the agency; and

15.31 (3) the notice of rule hearing states in detail the specific subject matter of the omitted
15.32 rule, cites the statutory authority for the proposed rule, and details the proposed rule's purpose
15.33 and motivation.

16.1 Sec. 19. Minnesota Statutes 2016, section 14.14, subdivision 2a, is amended to read:

16.2 Subd. 2a. **Hearing procedure.** When a hearing is held on a proposed rule, it shall be
 16.3 conducted by an administrative law judge assigned by the chief administrative law judge.
 16.4 The administrative law judge shall ensure that all persons involved in the rule hearing are
 16.5 treated fairly and impartially. The agency shall submit into the record the jurisdictional
 16.6 documents, including the statement of need and reasonableness, comments and hearing
 16.7 requests received, and any written exhibits in support of the proposed rule. The agency may
 16.8 also present additional oral evidence. Interested persons may present written and oral
 16.9 evidence. The administrative law judge shall allow questioning of agency representatives
 16.10 or witnesses, or of interested persons making oral statements, in order to explain the purpose
 16.11 or intended operation of a proposed rule, or a suggested modification, or for other purposes
 16.12 if material to the evaluation or formulation of the proposed rule. The administrative law
 16.13 judge may limit repetitive or immaterial oral statements and questioning.

16.14 Sec. 20. Minnesota Statutes 2016, section 14.19, is amended to read:

16.15 **14.19 DEADLINE TO COMPLETE RULEMAKING.**

16.16 Within 180 days after issuance of the administrative law judge's report or that of the
 16.17 chief administrative law judge, the agency shall submit its notice of adoption, amendment,
 16.18 or repeal to the State Register for publication. If the agency has not submitted its notice to
 16.19 the State Register within 180 days, the rule is automatically withdrawn. The agency may
 16.20 not adopt the withdrawn rules without again following the procedures of sections 14.05 to
 16.21 14.28, with the exception of section 14.101, if the noncompliance is approved by the chief
 16.22 administrative law judge. The agency shall report to the Legislative Coordinating
 16.23 Commission, other appropriate committees of the legislature, and the governor its failure
 16.24 to adopt rules and the reasons for that failure. The 180-day time limit of this section does
 16.25 not include:

16.26 (1) any days used for review by the chief administrative law judge or the commission
 16.27 if the review is required by law; or

16.28 (2) days during which the rule cannot be adopted, because of votes by legislative
 16.29 committees under section 14.126; ~~or.~~

16.30 ~~(3) days during which the rule cannot be adopted because approval of the legislature is~~
 16.31 ~~required under section 14.127.~~

17.1 Sec. 21. Minnesota Statutes 2016, section 14.22, subdivision 1, is amended to read:

17.2 Subdivision 1. **Contents.** (a) ~~Unless an agency proceeds directly to a public hearing on~~
 17.3 ~~a proposed rule and gives the notice prescribed in section 14.14, subdivision 1a, the agency~~
 17.4 ~~shall give notice of its intention to adopt a rule without public hearing. The agency shall~~
 17.5 give the notice required by this section, unless the agency gives notice of a hearing under
 17.6 section 14.14 or a notice under section 14.389, subdivision 2. The agency shall give notice
 17.7 ~~must be given~~ of its intention to adopt a rule by publication in the State Register and by
 17.8 United States mail or electronic mail to persons who have registered their names with the
 17.9 agency under section ~~14.14, subdivision 1a~~ 14.105. ~~The mailed notice must include either~~
 17.10 ~~a copy of the proposed rule or an easily readable and understandable description of its nature~~
 17.11 ~~and effect and an announcement that a free copy of the proposed rule is available on request~~
 17.12 ~~from the agency. In addition, each agency shall make reasonable efforts to notify persons~~
 17.13 ~~or classes of persons who may be significantly affected by the rule by giving notice of its~~
 17.14 ~~intention in newsletters, newspapers, or other publications, or through other means of~~
 17.15 ~~communication.~~ The notice in the State Register must include the proposed rule or the
 17.16 amended rule in the form required by the revisor under section 14.07₂; an easily readable
 17.17 and understandable summary of the overall nature and effect of the proposed rule₂; a citation
 17.18 to the most specific statutory authority for the proposed rule₂; a statement that a free copy
 17.19 of the statement of need and reasonableness may be requested from the agency; a statement
 17.20 that persons may register with the agency ~~for the purpose of receiving~~ to receive notice of
 17.21 rule proceedings ~~and notice that a rule has been submitted to the chief administrative law~~
 17.22 ~~judge;~~₂ and other information required by law or rule. When an entire rule is proposed to
 17.23 be repealed, the notice need only state that fact, along with an easily readable and
 17.24 understandable summary of the overall nature of the ~~rules~~ rule proposed for repeal, and a
 17.25 citation to the rule to be repealed. The notice must include a statement advising the public:

17.26 (1) that the public has at least 30 days in which to submit comment in support of or in
 17.27 opposition to the proposed rule and that comment is encouraged;

17.28 (2) that each comment should identify the ~~portion~~ part and subpart, if any, of the proposed
 17.29 rule addressed, the reason for the comment, and any change proposed;

17.30 (3) that the requester is encouraged to propose any change desired;

17.31 ~~(3)~~ (4) that if 25 or more persons submit a written request for a public hearing within
 17.32 the ~~30-day~~ comment period, a public hearing will be held and the agency will use the process
 17.33 under section 14.14;

18.1 ~~(4)~~ (5) of the manner in which persons must request a public hearing on the proposed
 18.2 rule, including the requirements contained in section 14.25 relating to a written request for
 18.3 a public hearing; and

18.4 ~~(5) of the requirements contained in section 14.25 relating to a written request for a~~
 18.5 ~~public hearing, and that the requester is encouraged to propose any change desired;~~

18.6 (6) that the agency may modify the proposed rule ~~may be modified~~ if the modifications
 18.7 are supported by the data and views submitted; ~~and.~~

18.8 ~~(7) that if a hearing is not required, notice of the date of submission of the proposed rule~~
 18.9 ~~to the chief administrative law judge for review will be mailed to any person requesting to~~
 18.10 ~~receive the notice.~~

18.11 In connection with the statements required in clauses (1) and ~~(3)~~ (4), the notice must
 18.12 also include the date on which the ~~30-day~~ comment period ends. The mailed notice of intent
 18.13 to adopt a rule must be the same as the notice published in the State Register, except that
 18.14 the mailed notice may omit the text of the proposed rule if it includes an announcement of
 18.15 where a copy of the proposed rule may be obtained.

18.16 (b) The chief administrative law judge may authorize an agency to omit from the notice
 18.17 of intent to adopt the text of any proposed rule, the publication of which would be unduly
 18.18 cumbersome, expensive, or otherwise inexpedient if:

18.19 (1) knowledge of the rule is likely to be important to only a small class of persons;

18.20 (2) the notice of intent to adopt states that a free copy of the entire rule is available upon
 18.21 request to the agency; and

18.22 (3) the notice of intent to adopt states in detail the specific subject matter of the omitted
 18.23 rule, cites the statutory authority for the proposed rule, and details the proposed rule's purpose
 18.24 and motivation.

18.25 Sec. 22. Minnesota Statutes 2016, section 14.23, is amended to read:

18.26 **14.23 STATEMENT OF NEED AND REASONABLENESS.**

18.27 By the date of the section 14.22 notice, the agency shall prepare a statement of need and
 18.28 reasonableness, which must be available to the public. The statement of need and
 18.29 reasonableness must include the analysis information required in section 14.131. ~~The~~
 18.30 ~~statement must also describe the agency's efforts to provide additional notification under~~
 18.31 ~~section 14.22 to persons or classes of persons who may be affected by the proposed rules~~
 18.32 ~~or must explain why these efforts were not made. For at least 30 days following the notice,~~

19.1 ~~the agency shall afford the public an opportunity to request a public hearing and to submit~~
 19.2 ~~data and views on the proposed rule in writing.~~

19.3 The agency shall send a copy of the statement of need and reasonableness to the
 19.4 Legislative Reference Library no later than when the notice of intent to adopt is ~~mailed~~ sent.

19.5 Sec. 23. Minnesota Statutes 2016, section 14.25, subdivision 1, is amended to read:

19.6 Subdivision 1. **Requests for hearing.** If, during the ~~30-day~~ period allowed for comment
 19.7 under section 14.22, 25 or more persons submit to the agency a written request for a public
 19.8 hearing of the proposed rule, the agency shall proceed under the provisions of sections 14.14
 19.9 to 14.20. The written request must include: (1) the name and address of the person requesting
 19.10 the public hearing; ~~and (2) the portion or portions~~ part or subpart, if any, of the rule to which
 19.11 the person objects ~~or a statement that the person opposes the entire rule. If not previously~~
 19.12 ~~published under section 14.22, subdivision 2, a notice of the public hearing must be published~~
 19.13 ~~in the State Register and mailed to those persons who submitted a written request for the~~
 19.14 ~~public hearing. Unless the agency has modified the proposed rule, the notice need not include~~
 19.15 ~~the text of the proposed rule but only a citation to the State Register pages where the text~~
 19.16 ~~appears; and (3) the reasons for the objection to each portion of the rule identified.~~

19.17 A written request for a public hearing that does not comply with the requirements of
 19.18 this section is invalid and may not be counted by the agency for purposes of determining
 19.19 whether a public hearing must be held. A written request for a public hearing is not invalid
 19.20 due to failure of the request to correctly identify the portion of the rule to which the person
 19.21 objects if the agency reasonably can determine which portion of the rule is the basis for the
 19.22 objection.

19.23 Sec. 24. Minnesota Statutes 2016, section 14.26, is amended to read:

19.24 **14.26 ADOPTION OF PROPOSED RULE; SUBMISSION TO ADMINISTRATIVE**
 19.25 **LAW JUDGE.**

19.26 Subdivision 1. **Submission.** If no hearing is required, the agency shall submit to an
 19.27 administrative law judge assigned by the chief administrative law judge the proposed rule
 19.28 and notice as published, the rule as adopted, any written comments received by the agency,
 19.29 and a statement of need and reasonableness for the rule. The agency shall give notice to all
 19.30 persons who requested to be informed that these materials have been submitted to the
 19.31 administrative law judge. This notice must be given on the same day that the record is
 19.32 submitted. If the proposed rule has been modified, the notice must state that fact, and must
 19.33 also state that a free copy of the proposed rule, as modified, is available upon request from

20.1 the agency. The rule and these materials must be submitted to the administrative law judge
 20.2 within 180 days of the day that the comment period for the rule is over or the rule is
 20.3 automatically withdrawn. The agency may not adopt the withdrawn rules without again
 20.4 following the procedures of sections 14.05 to 14.28, with the exception of section 14.101,
 20.5 if the noncompliance is approved by the chief administrative law judge. The agency shall
 20.6 report its failure to adopt the rules and the reasons for that failure to the Legislative
 20.7 Coordinating Commission, other appropriate legislative committees, and the governor.

20.8 ~~Subd. 2. **Resubmission.** Even if the 180-day period expires while the administrative~~
 20.9 ~~law judge reviews the rule, if the administrative law judge rejects the rule, the agency may~~
 20.10 ~~resubmit it after taking corrective action. The resubmission must occur within 30 days of~~
 20.11 ~~when the agency receives written notice of the disapproval. If the rule is again disapproved,~~
 20.12 ~~the rule is withdrawn. An agency may resubmit at any time before the expiration of the~~
 20.13 ~~180-day period. If the agency withholds some of the proposed rule, it may not adopt the~~
 20.14 ~~withheld portion without again following the procedures of sections 14.14 to 14.28.~~

20.15 Subd. 3. **Review.** ~~(a)~~ Within 14 days of receiving a submission under subdivision 1, the
 20.16 administrative law judge shall approve or disapprove the rule as to its legality and its form
 20.17 to the extent that the form relates to legality, including the issues of whether the rule if
 20.18 modified is substantially different, as determined under section 14.05, subdivision 2, from
 20.19 the rule as originally proposed, whether the agency has the authority to adopt the rule, and
 20.20 whether the record demonstrates a rational basis for the need for and reasonableness of the
 20.21 proposed rule. ~~If the rule is approved, the administrative law judge shall promptly file four~~
 20.22 ~~paper copies or an electronic copy of the adopted rule in the Office of the Secretary of State.~~
 20.23 ~~The secretary of state shall forward one copy of each rule to the revisor of statutes, to the~~
 20.24 ~~agency, and to the governor.~~ If the rule is disapproved, the administrative law judge shall
 20.25 state in writing the reasons for the disapproval and make recommendations to overcome
 20.26 the defects.

20.27 Subd. 4. **Harmless error.** The administrative law judge shall disregard any error or
 20.28 defect in the proceeding due to the agency's failure to satisfy any procedural requirements
 20.29 imposed by law or rule if the administrative law judge finds:

20.30 (1) that the failure did not deprive any person or entity of an opportunity to participate
 20.31 meaningfully in the rulemaking process; or

20.32 (2) that the agency has taken corrective action to cure the error or defect so that the
 20.33 failure did not deprive any person or entity of an opportunity to participate meaningfully
 20.34 in the rulemaking process.

21.1 Subd. 5. Correction of defects. ~~(b)~~ (a) The written disapproval must be submitted to
 21.2 the chief administrative law judge for approval. If the chief administrative law judge approves
 21.3 of the findings of the administrative law judge, the chief administrative law judge shall send
 21.4 the statement of the reasons for disapproval of the rule to the agency, the Legislative
 21.5 Coordinating Commission, the house of representatives and senate policy committees with
 21.6 primary jurisdiction over state governmental operations, and the revisor of statutes and
 21.7 advise the agency and the revisor of statutes of actions that will correct the defects. The rule
 21.8 may not be filed in the Office of the Secretary of State, nor be published, until the chief
 21.9 administrative law judge determines that the defects have been corrected or, if applicable,
 21.10 that the agency has satisfied the rule requirements for the adoption of a substantially different
 21.11 rule.

21.12 (b) The agency may resubmit the disapproved rule under paragraph (a) to the chief
 21.13 administrative law judge after correcting the defects. If the 180-day period expires while
 21.14 the chief administrative law judge is reviewing the rule, the agency may resubmit the rule
 21.15 within 30 days of the date the agency received written notice of disapproval. In all other
 21.16 cases, the agency may resubmit the rule at any time before the expiration of the 180-day
 21.17 period in subdivision 1. If the resubmitted rule is disapproved by the chief administrative
 21.18 law judge, the rule is withdrawn. If the agency does not resubmit a portion of the rule, it
 21.19 may not adopt that portion of the rule without again following the procedures of sections
 21.20 14.14 to 14.28.

21.21 Subd. 6. Need or reasonableness not established. ~~(c)~~ If the chief administrative law
 21.22 judge determines that the need for or reasonableness of the rule has not been established,
 21.23 and if the agency does not elect to follow the suggested actions of the chief administrative
 21.24 law judge to correct that defect, then the agency shall submit the proposed rule to the
 21.25 Legislative Coordinating Commission and to the house of representatives and senate policy
 21.26 committees with primary jurisdiction over state governmental operations for advice and
 21.27 comment. The agency may not adopt the rule until it has received and considered the advice
 21.28 of the commission and committees. However, the agency need not wait for advice for more
 21.29 than 60 days after the commission and committees have received the agency's submission.

21.30 ~~(d) The administrative law judge shall disregard any error or defect in the proceeding~~
 21.31 ~~due to the agency's failure to satisfy any procedural requirements imposed by law or rule~~
 21.32 ~~if the administrative law judge finds:~~

21.33 ~~(1) that the failure did not deprive any person or entity of an opportunity to participate~~
 21.34 ~~meaningfully in the rulemaking process; or~~

22.1 ~~(2) that the agency has taken corrective action to cure the error or defect so that the~~
 22.2 ~~failure did not deprive any person or entity of an opportunity to participate meaningfully~~
 22.3 ~~in the rulemaking process.~~

22.4 Subd. 7. **Filing.** If the rule is approved, the chief administrative law judge shall promptly
 22.5 file four paper copies or an electronic copy of it in the Office of the Secretary of State. The
 22.6 secretary of state shall forward one copy of the rule to the revisor of statutes, one copy to
 22.7 the agency, and one copy to the governor.

22.8 ~~Subd. 3a. **Filing.** If the rule is approved, the administrative law judge shall promptly~~
 22.9 ~~file four paper copies or an electronic copy of the adopted rule in the Office of the Secretary~~
 22.10 ~~of State. The secretary of state shall forward one copy of each rule to the revisor of statutes,~~
 22.11 ~~to the agency, and to the governor.~~

22.12 ~~Subd. 4. **8. Costs.** The Office of Administrative Hearings shall assess an agency for the~~
 22.13 ~~actual cost of processing rules under this section. Each agency shall include in its budget~~
 22.14 ~~money to pay the assessment. Receipts from the assessment must be deposited in the~~
 22.15 ~~administrative hearings account created in section 14.54.~~

22.16 Sec. 25. Minnesota Statutes 2016, section 14.365, is amended to read:

22.17 **14.365 OFFICIAL RULEMAKING RECORD.**

22.18 The agency shall maintain the official rulemaking record for every rule adopted under
 22.19 sections 14.05 to ~~14.389~~ 14.3895. The record must be available for public inspection. The
 22.20 record required by this section constitutes the official and exclusive agency rulemaking
 22.21 record with respect to agency action on or judicial review of the rule. The record must
 22.22 contain:

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

22.24 (2) all written petitions, and all requests, submissions, or comments received by the
 22.25 agency or the administrative law judge after publication of the notice of intent to adopt or
 22.26 the notice of hearing in the State Register pertaining to the rule;

22.27 (3) the statement of need and reasonableness for the rule;

22.28 (4) any report prepared by the peer review panel pursuant to section 14.129;

22.29 ~~(4)~~ (5) the official transcript of the hearing if one was held, or the tape recording of the
 22.30 hearing if a transcript was not prepared;

22.31 ~~(5)~~ (6) the report of the administrative law judge, if any;

23.1 ~~(6)~~ (7) the rule in the form last submitted to the administrative law judge under sections
 23.2 14.14 to 14.20 or first submitted to the administrative law judge under sections 14.22 to
 23.3 14.28;

23.4 ~~(7)~~ (8) the administrative law judge's written statement of required modifications and
 23.5 of approval or disapproval by the chief administrative law judge, if any;

23.6 ~~(8)~~ (9) any documents required by applicable rules of the Office of Administrative
 23.7 Hearings;

23.8 ~~(9)~~ (10) the agency's order adopting the rule;

23.9 ~~(10)~~ (11) the revisor's certificate approving the form of the rule; and

23.10 ~~(11)~~ (12) a copy of the adopted rule as filed with the secretary of state.

23.11 Sec. 26. Minnesota Statutes 2016, section 14.381, subdivision 3, is amended to read:

23.12 Subd. 3. **Costs.** The agency is liable for all Office of Administrative Hearings costs
 23.13 associated with review of the petition. If the administrative law judge rules in favor of the
 23.14 agency, the agency may recover all or a portion of the costs from the petitioner unless the
 23.15 petitioner is entitled to proceed in forma pauperis under section 563.01 or the administrative
 23.16 law judge determines that the petition was brought in good faith and that an assessment of
 23.17 the costs would constitute an undue hardship for the petitioner. ~~If an agency has reason to~~
 23.18 ~~believe it will prevail in the consideration of a petition, and that an effort to recover costs~~
 23.19 ~~from the petitioner will be unsuccessful, it may request the chief administrative law judge~~
 23.20 ~~to require the petitioner to provide bond or a deposit to the agency in an amount the chief~~
 23.21 ~~administrative law judge estimates will be the cost to the Office of Administrative Hearings~~
 23.22 ~~to review the petition.~~

23.23 Sec. 27. Minnesota Statutes 2016, section 14.388, subdivision 1, is amended to read:

23.24 Subdivision 1. **Requirements.** If an agency for good cause finds that the rulemaking
 23.25 provisions of this chapter are unnecessary, impracticable, or contrary to the public interest
 23.26 when adopting, amending, or repealing a rule to:

23.27 (1) address a serious and immediate threat to the public health, safety, or welfare;

23.28 (2) comply with a court order or a requirement in federal law in a manner that does not
 23.29 allow for compliance with sections 14.14 to 14.28;

23.30 (3) incorporate specific changes set forth in applicable statutes when no interpretation
 23.31 of law is required; or

24.1 (4) make changes that do not alter the sense, meaning, or effect of a rule,
 24.2 the agency may adopt, amend, or repeal the rule after satisfying the requirements of
 24.3 subdivision 2 and section 14.386, paragraph (a), clauses (1) to (4). The agency shall
 24.4 incorporate its findings and a brief statement of its supporting reasons in its order adopting,
 24.5 amending, or repealing the rule.

24.6 After considering the agency's statement and any comments received, the Office of
 24.7 Administrative Hearings shall determine whether the agency has provided adequate
 24.8 justification for its use of this section.

24.9 Rules adopted, amended, or repealed under ~~clauses~~ clause (1) ~~and (2)~~ are effective for
 24.10 a period of two years from the date of publication of the rule in the State Register.

24.11 Rules adopted, amended, or repealed under clause (2), (3), or (4) are effective upon
 24.12 publication in the State Register.

24.13 Sec. 28. Minnesota Statutes 2016, section 14.388, subdivision 2, is amended to read:

24.14 Subd. 2. **Notice.** An agency proposing to adopt, amend, or repeal a rule under this section
 24.15 must give notice to the chairs and ranking minority members of the legislative policy and
 24.16 budget committees with jurisdiction over the subject matter of the proposed rules and to
 24.17 the Legislative Coordinating Commission, must give electronic notice of its intent in
 24.18 accordance with section 16E.07, subdivision 3, and must give notice by United States mail
 24.19 or electronic mail to persons who have registered their names with the agency under section
 24.20 14.14, subdivision 1a. The notice must be given no later than the date the agency submits
 24.21 the proposed rule to the Office of Administrative Hearings for review of its legality and
 24.22 must include:

24.23 (1) the proposed rule, amendment, or repeal;

24.24 (2) an explanation of why the rule meets the requirements of the good cause exemption
 24.25 under subdivision 1; and

24.26 (3) a statement that interested parties have five business days after the date of the notice
 24.27 to submit comments to the Office of Administrative Hearings.

24.28 Sec. 29. Minnesota Statutes 2016, section 14.44, is amended to read:

24.29 **14.44 DETERMINATION OF VALIDITY OF RULE.**

24.30 (a) The validity of any rule, or the validity of any agency policy, guideline, bulletin,
 24.31 criterion, manual standard, or similar pronouncement that the petitioner believes is a rule

25.1 as defined in section 14.02, subdivision 4, may be determined upon the petition for a
 25.2 declaratory judgment thereon, addressed to the Court of Appeals, when it appears that the
 25.3 rule or pronouncement, or its threatened application, interferes with or impairs, or threatens
 25.4 to interfere with or impair the legal rights or privileges of the petitioner. The agency shall
 25.5 be made a party to the proceeding. The declaratory judgment may be rendered whether or
 25.6 not the petitioner has first requested the agency to pass upon the validity of the rule in
 25.7 question, whether or not the petitioner has petitioned the Office of Administrative Hearings
 25.8 under section 14.381, and whether or not the agency has commenced an action against the
 25.9 petitioner to enforce the rule.

25.10 (b) If the subject of the petition is an agency policy, guideline, bulletin, criterion, manual
 25.11 standard, or similar pronouncement, the agency must cease enforcement of the
 25.12 pronouncement upon filing of the petition until the Court of Appeals rules on the matter.
 25.13 The agency is liable for all costs associated with review of the petition. If the Court of
 25.14 Appeals rules in favor of the agency, the agency may recover all or a portion of the cost
 25.15 from the petitioner unless the petitioner is entitled to proceed in a forma pauperis under
 25.16 section 563.01, or the court determines that the petition was brought in good faith or the
 25.17 assessment of the costs would constitute an undue hardship for the petitioner.

25.18 Sec. 30. Minnesota Statutes 2016, section 14.45, is amended to read:

25.19 **14.45 RULE DECLARED INVALID.**

25.20 In proceedings under section 14.44, the court shall declare the rule or agency policy,
 25.21 guideline, bulletin, criterion, manual standard, or similar pronouncement invalid if it finds
 25.22 that it violates constitutional provisions or exceeds the statutory authority of the agency or
 25.23 if the rule was adopted or the policy, guideline, bulletin, criterion, manual standard, or
 25.24 similar pronouncement was improperly implemented without compliance with statutory
 25.25 rulemaking procedures. Any party to proceedings under section 14.44, including the agency,
 25.26 may appeal an adverse decision of the Court of Appeals to the Supreme Court as in other
 25.27 civil cases.

25.28 Sec. 31. Minnesota Statutes 2016, section 14.51, is amended to read:

25.29 **14.51 PROCEDURAL RULES.**

25.30 The chief administrative law judge shall adopt rules to govern: (1) the procedural conduct
 25.31 of all hearings, relating to both rule adoption, amendment, suspension or repeal hearings,
 25.32 contested case hearings, and workers' compensation hearings, and to govern the conduct of
 25.33 voluntary mediation sessions for rulemaking and contested cases other than those within

26.1 the jurisdiction of the Bureau of Mediation Services; and (2) the review of rules adopted
26.2 without a public hearing. The chief administrative law judge may adopt rules to govern the
26.3 procedural conduct of other hearings conducted by the Office of Administrative Hearings.
26.4 The procedural rules shall be binding upon all agencies and shall supersede any other agency
26.5 procedural rules with which they may be in conflict. The procedural rules shall include in
26.6 addition to normal procedural matters provisions relating to the procedure to be followed
26.7 when the proposed final rule of an agency is substantially different, as determined under
26.8 section 14.05, subdivision 2, from that which was proposed. The procedural rules shall
26.9 establish a procedure whereby the proposed final rule of an agency shall be reviewed by
26.10 the chief administrative law judge on the issue of whether the proposed final rule of the
26.11 agency is substantially different than that which was proposed or failure of the agency to
26.12 meet the requirements of chapter 14. The rules must also provide: (1) an expedited procedure,
26.13 consistent with section 14.001, clauses (1) to (5), for the adoption of substantially different
26.14 rules by agencies; and (2) a procedure to allow an agency to receive prior binding approval
26.15 of its plan regarding the additional notice contemplated under sections 14.101, 14.131,
26.16 14.14, 14.22, ~~and 14.23~~, and 14.389. Upon the chief administrative law judge's own initiative
26.17 or upon written request of an interested party, the chief administrative law judge may issue
26.18 a subpoena for the attendance of a witness or the production of books, papers, records or
26.19 other documents as are material to any matter being heard by the Office of Administrative
26.20 Hearings. The subpoenas shall be enforceable through the district court in the district in
26.21 which the subpoena is issued.

26.22 Sec. 32. **REPEALER.**

26.23 Minnesota Statutes 2016, section 14.05, subdivision 5, is repealed.

26.24 Sec. 33. **EFFECTIVE DATE; APPLICATION.**

26.25 This act is effective August 1, 2017, and applies to rules for which a notice of hearing
26.26 under Minnesota Statutes, section 14.14; a notice of intent to adopt under Minnesota Statutes,
26.27 section 14.22; or a dual notice under Minnesota Statutes, section 14.225, is published in the
26.28 State Register on or after that date.

APPENDIX
Repealed Minnesota Statutes: 17-1075

14.05 GENERAL AUTHORITY.

Subd. 5. **Review and repeal of rules.** By December 1 of each year, an agency must submit to the governor, the Legislative Coordinating Commission, the policy and funding committees and divisions with jurisdiction over the agency, and the revisor of statutes, a list of any rules or portions of rules that are obsolete, unnecessary, or duplicative of other state or federal statutes or rules. The list must also include an explanation of why the rule or portion of the rule is obsolete, unnecessary, or duplicative of other state or federal statutes or rules. By December 1, the agency must either report a timetable for repeal of the rule or portion of the rule, or must develop a bill for submission to the appropriate policy committee to repeal the obsolete, unnecessary, or duplicative rule. Such a bill must include proposed authorization to use the expedited procedures of section 14.389 to repeal or amend the obsolete, unnecessary, or duplicative rule. A report submitted under this subdivision must be signed by the person in the agency who is responsible for identifying and initiating repeal of obsolete rules. The report also must identify the status of any rules identified in the prior year's report as obsolete, unnecessary, or duplicative. If none of an agency's rules are obsolete, unnecessary, or duplicative, an agency's December 1 report must state that conclusion.