

House Research Act Summary

CHAPTER: 179

SESSION: 2001 Regular Session

TOPIC: Administrative Rulemaking

Date: May 22, 2001

Analyst: Mark Shepard

This publication can be made available in alternative formats upon request. Please call 651-296-6753 (voice); or the Minnesota State Relay Service at 1-800-627-3529 (TTY) for assistance. Summaries are also available on our website at: www.house.mn/hrd.

Overview

This act makes a number of changes in the administrative rulemaking process. Among the changes are:

Creation of a new process relating to variances from agency rules;rules;

Authority for legislative committees to delay effective date of proposed rules;rules;

Creation of a new process for a person to challenge agency attempts to enforceenforce policies without going through rulemaking;

Establishment of a new process that agencies may use to repeal obsolete rules;rules;

Repeal of the sunset on the Governor's rule veto authority, and modification ofof some of the rule veto procedures.

- 1 **Veto of adopted rules.** Amends procedures relating to the Governor's veto of a proposed rule. Provides that the Governor must *submit* notice of veto to the State Register within 14 days of receiving a copy of the final rule (Under current law, the Governor must *publish* this notice in the State Register within 14 days). Provides that a veto is effective when the notice is submitted to the State Register. A later section repeals the sunset on the Governor's rule veto authority.
- 2 **Rule variances.**
 - Subd. 1. Authority.** Authorizes any person to petition an agency for a variance from a rule.
 - Subd. 2. General terms.** Provides that an agency granting a variance may attach conditions, and that these conditions are an enforceable part of the rule to which the variance is granted.

Provides that a variance has prospective effect only.

Subd. 3. Mandatory variances. Requires an agency to grant a variance if the agency finds that application of the rule, as applied to the petitioner, would not serve any of the purposes of the rule.

Subd. 4. Discretionary variances. Permits an agency to grant a variance if the agency finds that: (1) application of the rule would result in hardship or injustice; (2) variance would be consistent with the public interest; and (3) variance would not prejudice substantial legal or economic rights of any person.

Subd. 5. Rules. Permits an agency to adopt rules under an expedited process establishing general standards for granting variances. Permits an agency to grant variances based on standards specified in other law.

Subd. 6. When not applicable. Provides that this section and section 14.056 do not apply if another state or federal law or rule authorizes or requires the granting of variances.

3 **Variance procedures.**

Subd. 1. Contents of petition. State requires contents of a petition for a variance.

Subd. 2. Fees. Permits agencies to charge fees for processing variances. Provides for deposit and appropriation of fee revenues.

Subd. 3. Notice. Requires an agency to make reasonable efforts to ensure that persons who may be affected by the variance have notice of the variance request. Provides that the agency may require the petitioner to serve notice on any other person.

Subd. 4. Additional information. Permits an agency to request additional information from the petitioner.

Subd. 5. Order; timing. Requires an agency to issue a written order granting or denying a variance. Requires the agency to grant or deny a variance as soon as practicable, and within 60 days, unless the petitioner agree to a later date. Failure of the agency to act within 60 days constitutes approval.

Subd. 6. Order; delivery. Requires that within five days an agency send the variance order to the petitioner and to any other person entitled to notice under other law.

Subd. 7. Record. Requires an agency to maintain a record of orders granting and denying variances. Requires the records to be available for public inspection to the extent required by the data practices act.

4 **Notice to Legislature.** Modifies procedures for giving notice of proposed rules to certain legislators. Requires notice to ranking minority party members of committees with jurisdiction over the subject matter (current law requires notice to chairs of these committees).

Strikes language requiring notice to all sitting legislators who were main or supporting authors of the law granting the rulemaking authority. Replaces this by stating that if the rule notice is within two years of the law granting the rulemaking authority, the agency must make reasonable efforts to notify the chief house and senate authors. If an original bill granting rulemaking was folded into a larger bill, the agency must attempt to notify the original authors, rather than the chief authors of the larger bill.

5 **Committee authority over rule adoption.**

Subd. 1. Delay action. Provides that if both the House and Senate standing committees with jurisdiction over the subject matter of a rule vote to advise an agency that a rule should not be adopted as proposed, the agency may not adopt the rule until the legislature adjourns the annual legislative session that began after the vote of the committee.

Subd. 2. Vote. A vote under this section must be by a majority of a committee, and may occur

any time after publication of rulemaking notice and before final adoption of the rule. Requires a committee voting under this section to notify the agency, the revisor of statutes, and the chief administrative law judge, and to publish notice of the vote in the State Register.

6 **Rule effective.** Amends the law governing the effective date of rules to reference the possibility of delay due to legislative committee action.

7 **Deadline to complete rulemaking.** Under current law, an agency must complete rulemaking within 180 days of issuance of the administrative law judge's report. This section provides that the 180-day limit does not count days during which rule adoption has been delayed by action of legislative committees.

8 **Unadopted rules.**

Subd. 1. Petition. Authorizes a person to petition the office of administrative hearings seeking an order of an administrative law judge (ALJ) determining that an agency is enforcing or attempting to enforce a policy or similar pronouncement as if it were a rule. Requires the agency to respond within ten days. Permits the ALJ to order oral argument.

Subd. 2. Order. Provides that an ALJ must direct an agency to cease enforcement of an unadopted rule. The decision may be appealed to the Court of Appeals.

Subd. 3. Costs. Provides for the agency to pay office of administrative hearings costs associated with review of the petition. However, if the agency prevails, the agency may recover some or all costs from the petitioner unless the petitioner is entitled to proceed in forma pauperis or the administrative law judge determines that the petition was brought in good faith and that an assessment of costs would constitute an undue hardship for the petitioner. Provides that the administrative law may require a person filing a petition under this section to provide a bond or other guarantee in an amount the administrative law judge estimates is the cost for review of the petition.

9 **Process for repealing obsolete rules.**

Subd. 1. Application. Provides that an agency may use this section to repeal rules identified in the agency's annual report on obsolete rules, unless another law specifically requires another process, or unless 25 requests are received for a more complete process.

Subd. 2. Notice plan; prior approval. Requires an agency to draft a notice plan under which it will make reasonable efforts to notify people who may be significantly affected by the rule repeal. Requires the chief administrative law judge to approve the notice plan before notice of the repealer is published in the State Register.

Subd. 3. Notice and comment. Specifies required notice, including publication in the State Register, sending to the agency's rulemaking notice list, and notification of specified legislators. Requires the agency to allow 60 days for comment after publication in the State Register.

Subd. 4. Requests. Requires an agency to follow customary rulemaking procedures upon written request of 25 or more people.

Subd. 5. Adoption. Specifies procedure for final action repealing the rule.

Subd. 6. Legal review. Requires the chief administrative law judge to approve legality before the repeal takes effect.

10 **Expiration.** Provides that current section 14.05, subdivision 4, dealing with variances, expires July 1, 2002. Variances granted and rules adopted under that section remain in effect.

11 **Repealer.** Repeals Laws 1999, chapter 129, section 6, which is the June 30, 2001 sunset of the Governor's rule veto authority

12 **Effective date.** Most sections are effective July 1, 2001. Sections dealing with variances generally are effective July 1, 2002.

