

**STATE OF MINNESOTA**  
**OFFICE OF ADMINISTRATIVE HEARINGS**

100 Washington Square, Suite 1700  
100 Washington Avenue South  
Minneapolis, Minnesota 55401-2138

November 15, 2000

Rep. Gene Pelowski, Jr.  
Chair, Rules Task Force  
100 Constitution Avenue. Ste. 295  
St. Paul, MN 55155

RE: Rules Task Force

Dear Rep. Pelowski:

This letter responds to your request for changes to the rule-making requirements of the Administrative Procedures Act. As you know, OAH is responsible for conducting rulemaking hearings and for legal review of agency rules before they become effective. We have observed that the best and most easily enforced rules are those that have attracted wide public comment. We do occasionally receive complaints about a lack of notice.

At present agencies must give notice of rulemaking in the State Register (which has relatively few subscribers) and to a "rulemaking list", of interested persons (which not everyone knows about.) The Administrative Procedure Act (APA) also encourages agencies to make "reasonable efforts" to notify others affected through newsletters, newspapers or other publications.

Here are some changes to the APA that will improve notice:

1. Require agencies to have a web site and to publish all rule notices and documents on it. The proposed rules and the statement of need and reasonableness should be downloadable. [The internet is the most easily accessible notice for those who are online.]

2. If an agency decides not to appoint an advisory committee to comment on the rules, explain why in the Statement of Need and Reasonableness.

[Advisory committees, with membership drawn from all interest groups increase awareness of the rulemaking and often result in pre-rulemaking compromises that shorten the rulemaking process.]

3. Authorize the Governor's office (or OAH) to maintain a state rulemaking docket that will show all pending rule proceedings, with the agency

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Rep. Gene Pelowski, Jr.  
10/29/99  
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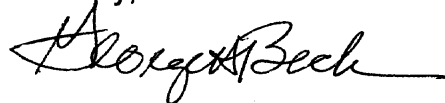
web site and staff telephone numbers. Require that all newspapers be notified of the docket so that they can download it for publication. [Perhaps community newspapers would regularly publish a state rulemaking docket].

4. Require information about how to be put on the agency rulemaking list to be included in notices of intent to adopt rules and on the agency web site. [Publicizing the existence of agency rulemaking lists will improve notice.]

Also enclosed for the consideration of the Task Force is a copy of H.F. 1268/S.F. 994, sponsored by Senator Betzold in the last legislative session. This bill makes technical changes to the APA that will clarify and expedite the rulemaking process. We believe it is noncontroversial. With it are some suggested changes to the bill submitted by Dave Orren. We agreed with most of his suggestions.

Please let me know if we can provide any further help.

Sincerely,



GEORGE A. BECK  
Administrative Law Judge

Telephone: 612/341-7601

GAB:cr

cc: Chief ALJ Ken Nickolai  
Rules Task Force



**STATE OF MINNESOTA**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
 100 Washington Square, Suite 1700  
 100 Washington Avenue South  
 Minneapolis, Minnesota 55401-2138

*File Copy*

November 19, 1999

Paul Marrinac  
 Deputy Revisor of Statutes  
 100 Constitution Avenue, Suite 700  
 St. Paul, MN 55155

*651-296-0948*

RE: H.F. 1268/S.F. 994

Dear Paul:

We have recently received approval from Minnesota Planning to have the above legislation included this coming session as a Governor's bill.

Enclosed are some changes suggested by Dave Orren at Health last March. We are in agreement with all of these suggested changes except for the changes recommended to Sections 6, Other comment to Section 9, and Section 14.

Would you please include the remaining changes in the new bill? Thanks.

*pls Paul's idea  
 of file agreed  
 was w/ sec. 8 st.*

Sincerely,

GEORGE A. BECK  
 Administrative Law Judge

Telephone: 612/341-7601

GAB:cr  
 Encl.

cc: Ken Nickolai  
 Dave Orren



MINNESOTA DEPARTMENT OF HEALTH

Health Policy and Systems Compliance Division

Memorandum

RECEIVED  
ADMINISTRATIVE HEARINGS

Judge Beck,  
FYI  
Dave Orren

3/12/99 AM 9:23

**DATE:** March 12, 1999  
**TO:** Senator Don Betzold and Representative Mindy Greiling  
**FROM:** Dave Orren *Dave Orren*  
**PHONE:** 651-282-6310  
**SUBJECT:** Suggestions and Comments on Office of Administrative Hearings Bill, Senate File 994 and House File 1268

**Section 1, amending MS14.05, subdivision 3, on reducing time period for Request for Comments when withdrawing and reproposing rules.** A phrase should be added to make this subdivision consistent with the changes made in sections 11 and 15 to MS14.19 and 14.26. On page 1, line 24, before the period, add:  
with the exception of section 14.101, if the noncompliance is approved by the chief administrative law judge

**Section 4, amending MS14.101, subdivision 1, on the Request for Comments.** Additional notice should be encouraged, not eliminated, at the Request for Comments stage. The language on page 3, lines 11 to 13 should be reinstated.

**Section 6, amending MS14.101 by adding a subdivision on reducing time period for Request for Comments for good cause.** The Chief Administrative Law Judge should be allowed to use judgment to reduce the time period without limit, even to zero days when appropriate. On page 4, lines 2 to 4, delete the new language and replace it with:  
Subd. 4. [REDUCTION OF TIME PERIOD.] The chief administrative law judge shall reduce the time period before publication for good cause.

**Section 8, amending MS14.14, subdivision 1a, on Notice of Rule Hearing.** The sentence on page 5, lines 32 to 35, beginning with "Each" and ending with "proposed" is redundant. The sentence following this sentence encompasses all the requirements of the sentence on lines 32 to 35 and states these requirements better. The sentence on page 5, lines 32 to 35 should be deleted, rather than amended.

**Section 9, amending MS14.15, subdivision 1, regarding the post-hearing comment and rebuttal periods.** The terms "comment period" and "rebuttal period" would be greatly clarified if the amendment on page 6, line 30, to page 7, line 9, was replaced by the following:

Subdivision 1. [TIME OF PREPARATION.] After allowing a comment period in which written material to may be submitted and recorded in the hearing record for five working days after the public hearing ends, or for a longer period not to exceed 20 days if ordered by the administrative law judge, the administrative law judge assigned to the hearing shall write a report as provided for in section 14.50. Prior to writing the report, the administrative law judge shall allow the agency and interested persons a rebuttal period of five working days after the submission comment period ends to respond in writing to any new information submitted. During the comment period and five-day rebuttal period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. Additional evidence may not be submitted during this five-day rebuttal period. The written responses shall be added to the rulemaking record.

**Other comment to section 9.** I have heard from rules staff who work for multimember boards that the post-hearing time periods present problems when working with the Open Meeting Law. If this were to be addressed, you could add a sentence at the end of the current amendment to say:

The administrative law judge may also extend the time for the comment period and rebuttal period for a multimember board if the board demonstrates the need for this in order to comply with the Open Meeting Law.

**Section 12, amending MS14.22, subdivision 1, on Notice of Intent to Adopt Rules.** Identical to my comment regarding section 8, the sentence on page 8, lines 28 to 31, beginning with "Each" and ending with "proposed" is redundant. The sentence following this sentence encompasses all the requirements of the sentence on lines 28 to 31 and states these requirements better. The sentence on page 8, lines 28 to 31 should be deleted, rather than amended.

**Section 14, amending MS14.25, subdivision 2, limiting the time to cancel a rules hearing.** Refer to page 11, lines 21 and 22. I disagree with the proposed prohibition on canceling a hearing within three working days of the hearing. There is no sufficient reason for preventing the interested parties and the agency from canceling on the courthouse steps, or even part way through the hearing, as was done in the tobacco trial. If there is agreement among all the interested parties, it is a pointless and expensive exercise to continue the hearing to the end. Moreover, the ALJ must still review the cancellation of the hearing to determine if it is consistent with the purposes of the APA stated in MS14.001, clauses (2), (4), and (5).

**Section 17, amending MS14.365, on the Official Rulemaking Record.** The word "notice" on page 14, line 20, is ambiguous as it could refer to the Request for Comments AND to the Notices of Intent to Adopt Rules. Past practice has been that only the latter notice is included in this requirement. To clarify this, on page 14, line 20, after "notice" insert :  
of intent to adopt or the notice of hearing

**Section 18, amending MS14.38, subdivision 2, on retroactive application.** Rules in the past have been approved by either the Office of Administrative Hearings or the Attorney General's Office, even though the OAH is now the only agency approving rules. On page 15, line 15, the words "attorney general" should be reinstated and the word "or" should be added before adding the words "office of administrative hearings"

**Section 19, amending MS14.386, on adopting exempt rules.** On page 15, line 29, it would be clearer to delete the underlined language and replace it with:  
the person authorized to adopt the rule on behalf of the agency signs an order adopting rule

**Section 20, amending MS14.388, on good cause exemption.** The reference to section 14.386, paragraph (a), clause (3) should refer instead to clause (4) because a fourth clause was added to section 14.386, paragraph (a). To make this change, on page 17, line 11, do the following:  
(3) (4)