



STATE OF MINNESOTA

Office of Governor Mark Dayton

130 State Capitol ♦ 75 Rev. Dr. Martin Luther King Jr. Boulevard ♦ Saint Paul, MN 55155

March 20, 2012

The Honorable Kurt Zellers
Speaker of the House
State Office Building, Room 463
100 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, Minnesota 55155

Dear Mr. Speaker:

I have vetoed and am returning Chapter 133, House File 1560, Senate File 993, a bill to transfer final decision-making authority in contested cases from Executive Branch Agency Heads to Administrative Law Judges (ALJs) at the Office of Administrative Hearings (OAH).

If enacted into law, HF 1560/SF 993 would confuse decision-making, lessen accountability, and needlessly increase the cost of government. It would do so without evidence of abuse in the present system.

Under current law, decision-making in contested cases is clear. If an agency is unable to settle a dispute with a party, agency staff brings a contested case before an ALJ. After a hearing, the ALJ makes findings of facts and a recommendation to an Agency Head or Board, such as the Public Utilities Commission. Before receiving cases, decision-makers are "walled off" from discussions or considerations involving the case. After due consideration, the decision-maker agrees or disagrees with the ALJ's recommendation, or makes changes to it.

The current system provides for accountability. Agency Heads are appointed by the Governor and are approved by the Senate. Consequently, if an Agency Head overreaches or otherwise acts inappropriately in deciding contested cases, the Governor can address the situation and, if necessary, remove the person. Alternatively, a Legislative Committee can review the matter.

If the decision-making authority were transferred to the OAH, that accountability would be eliminated. ALJs are appointed by the Chief ALJ without any further approval process and then given the protections of civil service. Thus, if decision-making were transferred to the OAH, decision-makers would no longer be accountable to the elected official responsible for the actions and decisions of executive agencies -- the Governor. Nor would they be accountable to the makers of agency policy -- the members of the Legislature.

A recurring problem with ALJs is their lack of familiarity with subject matter, since it is impossible for anyone to be knowledgeable across the vast array of state laws. By contrast, agencies and their decision-makers have deep subject matter expertise. Because of agencies' expertise in areas within their jurisdictions, appellate courts today give deference to their decisions. HF 1560/SF 993 would eliminate this precedent and upend decades of judicial decision-making.

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Our state's major energy companies and cooperatives: Center Point Energy, Great River Energy, Interstate Power & Light, Minnesota Energy Resources, Minnesota Power, Ottertail Power, and Xcel Energy have written me in opposition to this legislation. I am excerpting a couple paragraphs from their letter, which I believe are instructive.

"As you know, many of the complex matters that utilities take before the Public Utilities Commission (PUC) – rate cases, certificates of need, riders and resource planning, etc. – are referred to an ALJ. In those matters the ALJ develops a factual record which is the basis for the ultimate decisions. This method of creating the factual record has been successfully and efficiently used in Minnesota for many years and the utilities are accustomed to that process. At the end of that process, under current law, the ALJ makes a recommendation on the outcome of the case, but the ultimate decision rests with the PUC.

"While the ALJs do an exemplary job in preparing the factual record and their recommendations in these cases, giving them the final decision as proposed in H.F. 1560 would be a sea change in how PUC cases are handled. This change would remove the PUC Commissioners and staff from the final decision process. Expertise and experience on the PUC, and a long history of precedent, could be lost with the loss of PUC involvement in the final decision.

"The current system has served Minnesota well and should not be changed."

I agree with that assessment. The Administrative Procedures Act, which governs contested case proceedings in Minnesota, has been in existence for over 65 years. During that entire period, agencies have had the authority to make final decisions in contested case proceedings. Why does that widely accepted past practice now need such radical revision?

I cannot support this legislation.

Sincerely,

Mark Dayton
Governor

cc: Senator Michelle L. Fischbach, President of the Senate
Senator David Senjem, Senate Majority Leader
Senator Thomas Bakk, Senate Minority Leader
Senator Scott J. Newman
Representative Paul Thissen, House Minority Leader
Representative Doug Wardlow
The Honorable Mark Ritchie, Secretary of State
Mr. Cal R. Ludeman, Secretary of the Senate
Mr. Albin A. Mathiowetz, Chief Clerk of the House of Representatives