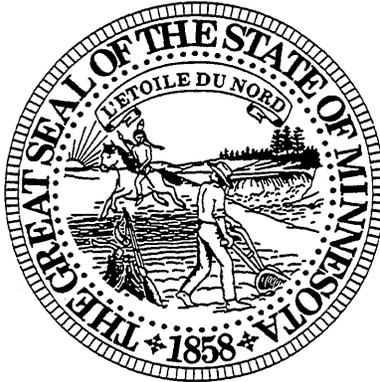


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# MINNESOTA



## LEGISLATIVE COMMISSION TO REVIEW ADMINISTRATIVE RULES

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### 1991 - 1992 BIENNIAL REPORT

**The Legislative Commission to Review Administrative Rules  
Biennial Report 1991 - 1992**

**Members**

Representative Peter Rodosovich, Chair  
Representative Phil Carruthers  
Representative Jim Farrell  
Representative Dave Gruenes  
Representative Ray Welker, replaced by  
Representative Peggy Leppik

Senator Phil Riveness, Vice-Chair  
Senator Betty Adkins  
Senator William Belanger  
Senator John Hottinger  
Senator Fritz Knaak

**Staff**

Maryanne Hruby, Executive Director  
Marjorie Duske, Research Assistant  
Michele Swanson, Secretary  
Paul Marinac, Counsel from the Office  
of the Revisor of Statutes

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## **PART I      INTRODUCTION AND MEMBERSHIP**

The Legislative Commission to Review Administrative Rules (LCRAR) was established in 1974 in Minnesota at a time when legislative oversight bodies were coming into being in most other states. The Legislature responded to the perception that state agencies were not sufficiently accountable to the public and to the Legislature when they adopted public policies through rules. Since it began, the Commission has focused on rule problems brought to its attention by legislators and unsatisfied members of the public.

The purpose of the LCRAR is statutorily defined in Sections 3.841 - 3.845 "to promote adequate and proper rules and an understanding on the part of the public respecting them."

The LCRAR has carried out this directive by investigating specific complaints about adopted rules, by monitoring the rulemaking process itself, by tracking delegations of rulemaking authority in bills and attempting to clarify them when possible, and by monitoring agency compliance with mandatory grants of rulemaking authority.

In addition, during this biennium, the Commission has placed more emphasis on the review of proposed rules. As a new area of oversight, it will evolve as the Commission becomes more expert at this kind of review.

This Biennial Report covers the period from March 1991 to February 1993, which coincides with the appointment and service of the following members to the Commission:

Representative Peter Rodosovich, Chair  
Representative Phil Carruthers  
Representative Jim Farrell  
Representative Dave Gruenes  
Representative Ray Welker  
Representative Peggy Leppik

Senator Phil Riveness, Vice-chair  
Senator Betty Adkins  
Senator William Belanger  
Senator John Hottinger  
Senator Fritz Knaak

During the biennium the full Commission held seven meetings; the Subcommittee on the Administrative Procedure Act met twice. The Commission received and investigated 90 complaints or inquiries; it conducted two formal rule reviews and heard 12 reports from agencies about rules in progress.

## **PART II**

## **LCRAR PROCEDURES**

### **A. Review of Existing Rules**

Complaints or inquiries about rules come to the Commission staff from Commission members, other legislators, individual citizens, or interest groups. Staff discuss the complaint or inquiry with the complainant and, if appropriate, with the agency whose rule is in question. Some preliminary research into the rule's history and statutory authority usually occurs at this early stage.

Sometimes the complaint can be handled with an explanatory phone call or letter from staff. At other times, if a complaint appears to raise issues that require the attention of the Commission, staff prepares a **preliminary assessment** to present at a Commission meeting. This report summarizes staff research and analysis to date and may recommend a course of action for the Commission. The Commission then meets to hear the staff presentation of the preliminary assessment and to take public testimony to assist the Commission to decide if the complaint is meritorious and worthy of attention.

Thereafter, the Commission has the option to hold a **public hearing** about the rule in question and related issues. A public hearing is generally held for the most controversial rules under review.

Subsequently, the Commission meets for a third time to decide its course of action. Staff prepares and presents a final **staff report** that summarizes the issues and offers recommendations. Many options are available. For example, the Commission may refer issues to legislative policy committees for consideration; it may request an agency to amend or adopt a rule; it may initiate the process of suspending a rule (see C. below); it may decide no LCRAR action is necessary; or it may have staff continue to monitor an agency's rulemaking progress.

### **B. Review of Proposed Rules**

The statutes governing the LCRAR (Minnesota Statutes, Sections 3.841 - 3.845) do not provide any specific procedures for legislative review of proposed rules. However, the Commission has chosen to pay closer attention to issues about proposed rules and has developed methods to conduct this kind of review.

On a regular basis, staff prepares reports for members listing all rules being proposed by agencies with an indication of the rules that will be the subject of a rulemaking hearing. These reports are intended to make it easy for members to be apprised of all current rulemakings.

As described further in part III, the Commission can hold public meetings to formally review proposed rules prior to a rulemaking hearing before an Administrative Law Judge. Staff then prepare a preliminary assessment which gives background information, facts, the statutes, the rules, and a history of any process to date. Members hear testimony and discuss recommendations for a course of action. The Administrative Procedure Act does not provide the LCRAR with a means to delay or obstruct proposed rules, but the LCRAR can use its influence with an agency to achieve more reasonable rules.

### **C. LCRAR Rule Suspension Process**

#### **Initiation of Suspension.**

A majority of the Commission must vote to initiate the suspension process, thereby requesting the Speaker of the House and the President of the Senate to refer the question of suspension to the appropriate policy committees in each house for committee recommendations. These recommendations are advisory only.

**Vote to Suspend.**

The Commission must wait until it receives the committees' recommendations, or until 60 days have elapsed since the question of suspension was referred to the Speaker of the House and the President of the Senate. Thereafter, the Commission meets to consider suspending the rule. A rule is suspended upon an affirmative vote of at least six members of the Commission.

**Legislative Affirmation of Suspension.**

As soon as possible after the Commission votes to suspend and after proper notice in the *State Register* is given, the Commission must place before the Legislature, at the next year's session, a bill to repeal the suspended rule. If the bill is passed by both houses and signed by the Governor, the suspension of the rule is affirmed and the rule is effectively repealed. Failure to enact the bill during the session reinstates the rule that the Commission had suspended.

**D. Advice and Comment of Proposed Rules: Section 14.15, subdivision 4**

When a proposed rule is subject to a public hearing, an agency must establish the need for and reasonableness of the proposed rule. The presiding Administrative Law Judge at the public hearing makes a determination of the need for and reasonableness of the rule and suggests actions to correct any defects found concerning the need for or reasonableness of the rule. Section 14.15, subdivision 4 states that if the chief Administrative Law Judge then determines that the need for or reasonableness of the rule has not been properly established, and if the agency elects to not follow the actions suggested by the ALJ to cure the defect, the agency must submit the proposed rule to the LCRAR for its advice and comment. The Commission's comments are advisory and not binding on the agency. The agency may not adopt the rule until it has received and considered the LCRAR's advice, with the LCRAR having 30 days to provide its advice and comment.

**E. LCRAR Procedural Rules**

During the summer of 1987 a Subcommittee on Procedural Rules drafted procedures for the Commission. The rules represent the past practice of the Commission and establish rules governing its operation, membership, officers, meetings, reports, and order of business. The complete rules were published in the *State Register* after adoption on August 13, 1987 and remain unchanged. They appear in Appendix B of this report.

### **PART III      RULE REVIEW**

The Commission held two formal rule reviews during the 1991 - 1992 biennium.

It was a new venture for the Commission to review a **proposed rule** (See A. below) days before it was the subject of a rulemaking hearing before an Administrative Law Judge. When reviewing an existing rule, the Commission may hold as many as three meetings before making a final decision.

In the case of a proposed rule, time is of the essence, forcing the Commission to condense its usual process. The Commission's timely review of the proposed Furniture Flammability rules served as an impetus for a long-awaited and reasonable solution to a serious public policy matter.

#### **A.      Furniture Flammability Rules of the Department of Public Safety, Minnesota Rules, Parts 7510.5500-5570 - PROPOSED RULES**

During the summer of 1992, Representative Vellenga asked LCRAR staff to research a matter brought by a constituent, an architect and designer of nursing homes, related to recently proposed rules of the Fire Marshall in the Department of Public Safety.

The rules provided a testing standard for the flammability of furniture used in public occupancies, such as jails, hospitals, nursing homes, child care centers, public auditoriums, and some public areas in hotels and motels. Complainants argued that the Fire Marshall's standards was too stringent, would be financially burdensome for local governments, and would be difficult to enforce. In short, they were unreasonable.

Since the rules had been proposed in May of 1992, the Fire Marshall's staff had resisted efforts by architects, designers, upholsterers, and operators of public occupancies to resolve these problems. LCRAR staff attended public meetings on the subject, but no progress in resolving these issues was apparent.

By September, Representative Vellenga was joined by LCRAR members Senators Belanger and Hottinger in asking the Commission to conduct a formal review of these proposed rules. The LCRAR met on September 17, a few days before the public rulemaking was held before an Administrative Law Judge (ALJ), as prescribed by chapter 14 for all controversial rules. The complainants asked the Commission to examine the reasonableness of the rules and to make recommendations to the Fire Marshall prior to the ALJ hearing on September 21st.

The LCRAR took testimony from numerous complainants and from the Fire Marshall, who was impressed with the legislative interest in this matter and was committed to working out a solution.

The Commission approved a motion to have staff attend the rulemaking hearing on September 21st, to schedule a subsequent LCRAR hearing if issues remained unresolved after the rulemaking hearing, and to forward a summary of the LCRAR's meeting minutes and actions to the ALJ for inclusion in the official rulemaking hearing record.

Due to the LCRAR's intervention, the Fire Marshall modified the proposed rules after the rulemaking hearing and adopted a less stringent and more workable standard that balanced public safety with practicality and reasonableness.

The rule reviewed and described below was adopted by the Department of Human Services after a recent rulemaking hearing. Pursuant to the Commission's discretion in the past it had at times chosen to forego a review of recently adopted rules on the grounds that the public has had sufficient due process to voice its concerns before the Administrative Law Judge at a rulemaking hearing. This case was unusual because the Commission was probing into modifications which were made by the department after the rulemaking hearing and which had been approved by the ALJ. Judicious use of its authority to review rules demonstrates the Commission's commitment to legislative oversight before, during, and after the rulemaking process.

**B. Mandatory Referrals to Psychiatrist or Physician in Rules of the Department of Human Services, Minnesota Rules, Part 9505.0323, Subpart 4, item 1, paragraph (5)**

Senator Hottinger requested a review of a newly adopted Department of Human Services (DHS) rule that required mental health professionals to refer to a psychiatrist or other physician all Medical Assistance (M.A.) recipients who have never had a psychiatric consultation or medication evaluation. Complainants were mental health professionals who had been members of the department's Rule Advisory Committee who were disturbed because this controversial change in policy had never been discussed in committee. DHS had received approval by the Administrative Law Judge (ALJ) to make this modification after the rulemaking hearing. The ALJ had summarily found that the policy change was not substantially different from the proposed rule and that it was needed and reasonable.

The Commission heard several hours of testimony from mental health professionals and the department. Witnesses objected to the rule change on many grounds, among them were that mandatory referral to psychiatrists was impractical; no fiscal note accompanied the rule; DHS presented no evidence that referrals under the current scheme were not being made appropriately; forcing women to undergo medical or psychiatric evaluations without a showing of need puts them at risk of receiving unnecessary and inappropriate treatment; and current rules already require referrals when necessary.

The department supported the rule in order to add a medical component to the diagnostic assessment; it was seeking coordination of care; it argued that perhaps therapy would be reduced in length and cost, if a biological assessment was made.

At the conclusion of the preliminary assessment, the Commission directed DHS to hold a rulemaking hearing within 90 days to revise the rule in question, and to give special consideration to language offered by the complainants to resolve their concerns. The Commission also forwarded minutes from this meeting to the appropriate policy committees.

The department complied with the Commission's directive and went to a hearing before an ALJ with a new proposed rule that reflected an agreement by the complainants. However, after the hearing, once again, the department proposed to modify the rule. The original complainants objected and submitted their objections to the ALJ. In his report issued May 7, 1993, the ALJ found that the LCRAR had directed DHS to reach a consensus, but that due to disagreements about the modifications, that consensus no longer existed. The proposed modifications, therefore, constituted a substantial change. He suggested it would be senseless to proceed to adopt a rule that would surely come back for review before the LCRAR. He found that the rules as proposed and discussed at the hearing were needed and reasonable and he approved them for adoption.

## **PART IV      GENERAL OVERSIGHT ACTIVITIES**

In addition to reviewing the formal complaints described in part III, the LCRAR heard reports from numerous agencies and staff about rules in progress or rule-related issues. Among them were:

1.      A report from the Department of Human Services (DHS) on its plans to develop "interpretive guidelines" to be used to explain certain rules to providers. Modeled after "Revenue Notices" which are exempt under chapter 14, DHS is seeking authority for interpretive guidelines to satisfy the demand by social service providers for clearer regulations. The Commission is interested in all agency policies that are not adopted through rulemaking because of the potential lack of due process and participation by the public.
2.      Reports from both the CORE Commission and the Office of the Legislative Auditor about their upcoming studies of rulemaking in Minnesota.
3.      An update from the Department of Natural Resources about its project to transform appropriate Commissioner's Orders into rules adopted under chapter 14.
4.      Regular updates from LCRAR staff about the application of the new "harmless error" standard provided in amendments to the Administrative Procedure Act in Laws, 1992.
5.      A report from the Pollution Control Agency on the use of their general rulemaking authority. The Commission began to examine whether broad rulemaking grants are being abused by state agencies.
6.      A report from the State Board of Education about a controversial rule on Elementary Teacher Preparation Time and subsequently issued memos explaining the rule.
7.      A report from Commission Counsel on the Commission's new subpoena power.
8.      A rule status report on two controversial areas:  
            Health Right, Departments of Health and Human Services and Workers' Compensation; and  
            Managed Care, Department of Labor and Industry.
9.      A discussion of a newly proposed rule of the Department Labor and Industry relating to the Waiver of Consultation and Rehabilitation Services.

## **PART V      THE ADMINISTRATIVE PROCEDURE ACT, CHAPTER 14**

In 1992 the LCRAR sponsored a bill to amend the APA. Laws 1992, Chapter 494 as enacted provides:

- authority for the Revisor to prepare a bill to clarify and correct administrative rules, similar to the annual Revisor's bill correcting minor errors in Minnesota Statutes and Laws. This provision would allow agencies to make minor technical amendments to rules without having to bear the cost and time of rulemaking;
- authority for the Attorney General and an Administrative Law Judge to find an agency's failure to comply with procedural requirements during rulemaking to be "harmless errors," if he or she finds the failure to comply did not deprive anyone of an opportunity to participate meaningfully in rulemaking, or if the agency took corrective action to cure the error so that no one was deprived of same;
- that the comment period after the hearing is extended from three business days to five working days in order to give the agency and interested persons a more reasonable time period to submit any new information for the rulemaking record;
- that the agency's notice of intent to adopt a rule that accompanies all proposed rules when published in the *State Register* must include the date on which the public comment period ends. This change is to make it easier for all parties to know which is the last day to submit comments;
- that an agency may publish a dual notice of its intention to adopt rules without a public hearing, or with a hearing if 25 or more persons request a hearing. This provision codifies current agency practice; and
- that the Attorney General shall adopt rules prescribing the form and content of dual notices.

## **PART VI      STATISTICS ON AGENCY RULEMAKING**

Under Minnesota rulemaking law, agencies must have statutory authority to adopt rules. Some agencies have been granted longstanding general authority by the Legislature to adopt all rules necessary to carry out their purposes. Others have been granted specific authority to adopt rules about certain subjects.

In 1991, there were a total of 174 provisions in law that required or authorized agencies to adopt permanent or emergency rules, or that exempted agencies from rulemaking. Of this total: there were 102 mandatory grants of rulemaking, 19 exemptions granted, and 11 provisions for emergency rules.

In 1992, there were a total of 157 provisions in law that required or authorized agencies to adopt permanent or emergency rules, or that exempted agencies from rulemaking. Of this total: there were 98 mandatory grants, 26 exemptions, and 9 emergency rulemaking grants.

Pursuant to directives from the Legislature, in 1991 state agencies as a whole adopted 132 sets of rules. In 1992, agencies adopted 124 sets of rules.

Finally, there were 263 sets of proposed rules reviewed during the biennium. Of these, 50 were the subject of a rulemaking hearing before an Administrative Law Judge. The remaining 213 were reviewed by the Attorney General.

## APPENDIX A

### LEGISLATIVE COMMISSION TO REVIEW ADMINISTRATIVE RULES

#### **3.841 LEGISLATIVE COMMISSION TO REVIEW ADMINISTRATIVE RULES; COMPOSITION; MEETINGS.**

A legislative commission for review of administrative rules, consisting of five senators appointed by the committee on committees of the senate and five representatives appointed by the speaker of the house of representatives shall be appointed. The commission shall meet at the call of its chair or upon a call signed by two of its members or signed by five members of the legislature. The office of chair of the legislative commission shall alternate between the two houses of the legislature every two years.

**History:** 1974 c 355 s 69; 1975 c 271 s 6; 1980 c 615 s 1; 1980 c 618 s 26; 1981 c 112 s 1,2; 1981 c 253 s 1; 1981 c 342 art 2 s 1; 1982 c 424 s 130; 1986 c 444; 1989 c 155 s 6

#### **3.842 REVIEW OF RULES BY COMMISSION.**

Subdivision 1. **Purpose.** The commission shall promote adequate and proper rules by agencies and an understanding upon the part of the public respecting them.

Subd. 2. **Jurisdiction.** The jurisdiction of the commission includes all rules as defined in section 14.02, subdivision 4. The commission also has jurisdiction of rules which are filed with the secretary of state in accordance with section 14.38, subdivisions 5, 6, 7, 8, 9, and 11 or were filed with the secretary of state in accordance with the provisions of section 14.38, subdivisions 5 to 9, which were in effect on the date the rules were filed.

The commission may periodically review statutory exemptions to the rulemaking provisions of this chapter.

Subd. 3. **Hearings.** The commission may hold public hearings to investigate complaints with respect to rules if it considers the complaints meritorious and worthy of attention. If the rules that are the subject of the public hearing were adopted without a rulemaking hearing, it may request the office of administrative hearings to hold the public hearing and prepare a report summarizing the testimony received at the hearing. The office of administrative hearings shall assess the costs of the public hearing to the agency whose rules are the subject of the hearing.

Subd. 4. **Suspensions.** The commission may, on the basis of the testimony received at the public hearings, suspend any rule complained of by the affirmative vote of at least six members provided the provisions of section 3.844 have been met. If any rule is suspended, the commission shall as soon as possible place before the legislature, at the next year's session, a bill to repeal the suspended rule. If the bill is not enacted in that year's session, the rule is effective upon adjournment of the session unless the agency has repealed it. If the bill is enacted, the rule is repealed.

Subd. 5. **Biennial report.** The commission shall make a biennial report to the legislature and governor of its activities and include its recommendations to promote adequate and proper rules and public understanding of the rules.

**History:** 1974 c 355 s 69; 1975 c 271 s 6; 1980 c 615 s 1; 1980 c 618 s 26; 1981 c 112 s 1,2; 1981 c 253 s 1; 1981 c 342 art 2 s 1; 1982 c 424 s 130; 1984 c 655 art 1 s 4; 1Sp1985 c 13 s 84; 1989 c 155 s 2,6

#### **3.843 PUBLIC HEARINGS BY STATE AGENCIES.**

By a vote of a majority of its members, the commission may request any agency issuing rules to hold a public hearing in respect to recommendations made pursuant to section 3.842, including recommendations made by the commission to promote adequate and proper rules by that agency and recommendations contained in the commission's biennial report. The agency shall give notice as provided in section 14.14, subdivision 1 of a hearing thereon, to be conducted in accordance with sections 14.05 to 14.36. The hearing shall be held not more than 60 days after receipt of the request or within any other longer time period specified by the commission in the request.

**History:** 1974 c 355 s 69; 1975 c 271 s 6; 1980 c 615 s 1; 1980 c 618 s 26; 1981 c 112 s 1,2; 1981 c 253 s 1; 1981 c 342 art 2 s 1; 1982 c 424 s 130; 1989 c 155 s 6

**3.844 REVIEW BY STANDING COMMITTEES.**

Before the commission suspends any rule, it shall request the speaker of the house and the president of the senate to refer the question of suspension of the given rule or rules to the appropriate committee or committees of the respective houses for the committees' recommendations. No suspension shall take effect until the committees' recommendations are received, or 60 days after referral of the question of suspension to the speaker of the house and the president of the senate. However, the recommendations shall be advisory only.

**History:** 1974 c 355 s 69; 1975 c 271 s 6; 1980 c 615 s 1; 1980 c 618 s 26; 1981 c 112 s 1,2; 1981 c 253 s 1; 1981 c 342 art 2 s 1; 1982 c 424 s 130; 1989 c 155 s 6

**3.845 NOTICE OF SUSPENSION.**

In addition to the other requirements of this section, no suspension shall take effect until notice has been published in compliance with section 14.38, subdivision 4. The commission shall send the notice to the State Register.

**History:** 1974 c 355 s 69; 1975 c 271 s 6; 1980 c 615 s 1; 1980 c 618 s 26; 1981 c 112 s 1,2; 1981 c 253 s 1; 1981 c 342 art 2 s 1; 1982 c 424 s 130; 1989 c 155 s 6

**APPENDIX B**

**RULES OF PROCEDURE**

**OF THE**

**LEGISLATIVE COMMISSION TO REVIEW ADMINISTRATIVE RULES**

**1. RULES OF OPERATION**

**1.1 [Controlling Authority.]** The commission is governed by the Minnesota Constitution, its enabling legislation, Minnesota Statutes, sections 14.39 to 14.43, and by these rules.

**1.2 [Mason's Manual.]** Except as otherwise provided by these rules or established custom and usage, the rules of parliamentary procedure contained in "Mason's Manual of Legislative Procedure" govern the commission.

**1.3 [Suspension of rules.]** The concurrence of six members of the commission is required to suspend, alter, or amend these rules.

**2. MEMBERSHIP**

**2.1 [Appointment.]** The commission consists of five senators appointed by the committee on committees of the senate and five representatives appointed by the speaker of the house of representatives.

**2.2 [Resignation.]** A member of the commission may resign by providing notice to the chair. Upon receiving notice of the resignation, the chair shall promptly inform the appointing authority of the house in which the resigning member serves, and request the appointment of a replacement.

**3. OFFICERS**

**3.1 [Election and term.]** The commission shall elect its own officers including a chair and a vice-chair by majority vote of the members present. Officers serve for a term of two years.

**3.2 [Chair and vice-chair.]** The office of chair of the commission shall alternate between a member of the senate and a member of the house. The office of vice-chair of the commission shall alternate between a member of the senate and a member of the house. The vice-chair shall not be a member of the house in which the chair serves.

**3.3 [Subcommittees.]** The commission may conduct business through subcommittees. The chair of the commission shall appoint the chair and members of any subcommittee. The senate and the house shall be represented on all subcommittees. The majority and minority caucuses of each house shall be represented on all subcommittees. The chair of the commission shall be an ex officio member of all subcommittees.

**4. MEETINGS**

**4.1 [Call.]** The commission shall meet at the call of the chair or upon a call signed by two members of the commission or signed by five members of the legislature.

**4.2 [Open to public.]** All meetings of the commission, and of any subcommittee, are open to the public.

**4.3 [Notice.]** The chair of the commission and any subcommittee shall, as far as practicable, give three days' notice of any meeting. The notice must include the date, time, place and agenda for the meeting.

**4.4 [Quorum.]** A majority of commission members constitutes a quorum. The commission may take testimony without a quorum present, but no question may be decided and no action may be taken in the absence of a quorum.

**4.5 [Roll-call vote.]** Any member may demand a roll-call vote on any motion before the commission or a subcommittee. Only upon a demand being made shall the roll be called and the vote of each member on the motion be recorded, together with the name of the members demanding the roll call.

**4.6 [Reconsideration.]** The commission may reconsider any action taken. A commission member need not have voted with the prevailing side in order to move reconsideration.

**4.7 [Minutes.]** The chair of the commission and any subcommittee shall cause minutes to be kept. The minutes must include:

- (a) The time and place of each hearing or meeting;
- (b) Commission members present;
- (c) The name of each person appearing, together with the name of the person, agency, or employee organization represented;
- (d) The language of each motion, the name of the members making the motion, and the result of any vote upon the motion, including the ayes and nays when a roll call is demanded; and
- (e) Other important matters related to the work of the commission or subcommittee.

Minutes shall be approved at the next regular meeting of the commission or subcommittee.

**4.8 [Excused absences.]** The chair may excuse any commission member from attending a commission meeting.

## **5. REPORTS**

**5.1 [Acceptance or rejection.]** The substantive provisions or recommendations of any report to the commission from a subcommittee shall be accepted or rejected, in whole or in part, by a majority of commission members present.

**5.2 [Minority report.]** Any minority report shall be made separately from the majority report. A minority report to the commission from a subcommittee shall be considered before the majority report. If the minority report is adopted, the majority report shall not be considered. If the minority report is not adopted, the majority report shall then be considered.

## **6. PRELIMINARY ASSESSMENT**

**6.1 [Purpose.]** The initial meeting to investigate a complaint with respect to a rule shall be known as a preliminary assessment. The purpose of this meeting is to determine whether the complaint is meritorious and worthy of attention.

**6.2 [Conduct.]** The preliminary assessment shall be conducted by the commission.

## 7. PUBLIC HEARING

**7.1 [Commission action.]** If the commission determines after a preliminary assessment that the complaint is meritorious and worthy of attention, the commission may hold a public hearing on the complaint. At the conclusion of the public hearing, the commission may take the following action:

- (a) If the rules that are the subject of the hearing were adopted without a rulemaking hearing, request the office of administrative hearings to hold a public hearing and prepare a report summarizing the testimony received at the hearing.
- (b) Direct the staff to continue to monitor the issues raised by the complaint.
- (c) Refer the complaint to the appropriate policy committees.
- (d) Request the agency issuing the rules to hold a public hearing on any recommendations made by the commission. The agency must give notice of the hearing as provided in Minnesota Statutes, section 14.14, subdivision 1. The hearing must be held not more than 60 days after receipt of the request or within any longer time period specified by the commission in the request.
- (e) Request the speaker of the house and the president of the senate to refer the question of whether or not the given rule or rules shall be suspended to the appropriate committee or committees of the respective houses for the committees' recommendations. The recommendations are advisory only.
- (f) Sponsor legislation to implement recommendations made by the commission.
- (g) Any other action the commission considers appropriate.

**7.2 [Majority vote required.]** All actions taken by the commission pursuant to rule 7.1, paragraphs (a) to (g) shall be by majority vote of the commission members present.

**7.3 [Suspension of rules.]** The commission may, at a subsequent public hearing, suspend any rule complained of by an affirmative vote of at least six members. The commission shall direct the executive director to publish notice of the suspension in the State Register. The suspension takes effect five working days after the notice is published, but in no event may the suspension take effect until the committees' recommendations referred to in rule 7.1, paragraph (e) are received by the commission, or 60 days after referral of the question of suspension under rule 7.1, paragraph (e).

If a rule is suspended, the commission shall as soon as possible place before the legislature, at the next year's session, a bill to repeal the suspended rule. During the meeting at which the vote to suspend was taken, the chair shall appoint a commission member who voted to suspend the rule to introduce the bill on the commission's behalf. If the bill is not enacted in that year's session, the rule is effective upon adjournment of the session unless the agency has repealed it. If the bill is enacted, the rule is repealed.

## 8. ADVICE AND COMMENT

**8.1 [Public hearing and subsequent meeting.]** The commission or a subcommittee may hold an initial public hearing to take testimony on a proposed rule submitted to it under rule 8.2. At the close of the public hearing, the commission or a subcommittee shall direct staff to prepare a staff report with recommendations for the commission's consideration at a subsequent meeting. The initial public hearing and the meeting to consider the staff report must be held within 30 days of receipt of the agency's submission.

**8.2 [Agency submission.]** If the chief administrative law judge determines that the need for or reasonableness of a proposed rule has not been established, and if the agency does not correct this defect in the manner suggested by the chief administrative law judge, the agency shall submit the rule to the commission for its advice and comment.

**8.3 [Effect of submission.]** The agency shall not adopt the rule until it has received and considered the commission's advice. However, the agency is not required to delay adoption longer than 30 days after the commission receives the agency's submission. Advice of the commission is not binding on the agency.

**9. ORDER OF BUSINESS**

**9.1 [Generally.]** The order of business at a duly called meeting of the commission is as follows:

1. Call to order.
2. Roll call.
3. Approval of the minutes of the last meeting.
4. Reports of subcommittees.
5. Unfinished business.
6. New business.
7. Announcements.
8. Adjournment.