MINNESOTA

LEGISLATIVE COMMISSION TO REVIEW ADMINISTRATIVE RULES

1993 - 1994 BIENNIAL REPORT

February 1995

Pursuant to Minn. Stat. 3.965 Subd. 2
Minn. Stat. 14.40; Minn. Stat.
3.842 Subd. 5

LCRAR

Legislative Commission
to Review Administrative Rules

Senator John Hottinger
Chair

Representative Wayne Simoneau
Vice Chair

55 State Office Building
St. Paul, Minnesota 55155-1201

Maryanne Hruby, Director

February 10, 1995

Members of the Legislature:

We respectfully submit the 1993-1994 Biennial Report of the Legislative Commission to Review Administrative Rules, as required by Minnesota Statutes, § 3.842, subdivision 5.

Since 1974 when it was created, the Commission continues to "promote adequate and proper rules and an understanding on the part of the public respecting them" (§ 3. 842). Our primary goals are to promote public participation in agency rulemaking, legislative accountability for rules adopted pursuant to the rulemaking authority we delegate, and executive branch accountability for rulemaking.

The following report describes the procedures used and actions taken on complaints brought before the Commission from February 1993 through January 1995.

We are proud of the service we perform for the legislature and encourage you to bring us your concerns and questions about agency rules.

Sincerely,

Senator John Hottinger, Chair

Representative Wayne Simoneau, Vice-chair

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LCRAR Members and Staff
February 1993 through January 1995

Members

Senator John Hottinger, Chair
Senator Ellen Anderson,
replacing Senator Charles Berg
Senator Don Betzold
Senator Pat Pariseau
Senator Linda Runbeck

Representative Dave Gruenes (retired effective 1/1/95)
Representative Peggy Leppik
Representative Tom Rukavina,
replacing Representative James Farrell
Representative Wayne Simoneau
Representative Ted Winter,
replacing Representative Phil Carruthers

Staff

Maryanne Hruby, Executive Director
Karin Batchelder, Assistant Director
Deanne Gueblaoui, Secretary,
replacing Michele Swanson
Paul Marinac, Counsel from the Office
of the Revisor of Statutes

EXECUTIVE SUMMARY

During the 1993-1994 Biennium, the LCRAR continued to fulfill its statutory purpose "to promote adequate and proper rules and an understanding on the part of the public respecting them" (Minnesota Statutes, § 3.842). This vague language does not do justice to the level of attention the Commission has paid to each and every complaint it has received from legislators and the public about rules.

1. During the 1993 interim, much of the Commission's efforts was spent examining the rulemaking provisions in the Administrative Procedure Act (APA) . After conducting a comprehensive rulemaking study that the 1993 Legislature required, the LCRAR approved nineteen recommendations for change, which then became the basis of a major APA bill during the 1994 session. The areas of particular interest to the Commission were: rulemaking delegations, rule impact statements, rulemaking exemptions, fees, and the coordination of rulemaking in the executive branch.

2. In 1994 the LCRAR adopted a set of principles for evaluating rulemaking reform proposals. These principles reflect the Commission's interest that rulemaking by agencies be subject to adequate legislative and executive branch oversight, and that the public has ample opportunity to participate in agency rulemaking.

3. In addition to the special emphasis on the rulemaking process itself, during the latest two-year period, the LCRAR responded to almost 50 complaints or inquiries from legislators or the public. It held nine full Commission meetings and four Subcommittee meetings.

4. The Commission became very involved when numerous complaints arose about the Department of Human Services rules and practices governing the prior authorization of services for persons receiving Medical Assistance. Members sponsored a bill in 1994 to address the problems. The bill became part of the 1994 Omnibus Health and Human Services bill passed by the Legislature but subsequently vetoed by the governor.

While the LCRAR has several tools for performing legislative oversight, the tool most commonly and effectively used is its ability to hold hearings to investigate specific rules brought to the Commission by legislators on behalf of constituents. Through this oversight function, the Commission monitors agency rulemaking, its results and often the enabling legislation.

The work of the LCRAR requires both specific attention to rule complaints and general attention to the process by which rules are adopted. All the legislative oversight efforts of the Commission are aimed at protecting the public's right to participate in agency policy-making through rules. When the legislature delegates rulemaking authority to agencies, it expects compliance with that authority. The LCRAR exists to support and promote that expectation.

PART I INTRODUCTION

The Legislative Commission to Review Administrative Rules (LCRAR) was created in 1974 (Laws 1974, Chapter 355, § 69), when legislative oversight bodies were coming into being across the country. The Minnesota Legislature was responding to the perception that state agencies were not sufficiently accountable to the public and to the Legislature when they adopted public policies through rules. The Commission was designed to address complaints about administrative rules, especially when they arose during the interim.

The purpose of the LCRAR is provided in M.S. Section 3.842. It is "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 complaints about proposed, adopted, and emergency rules; monitoring the rulemaking process itself; tracking delegations of rulemaking authority including emergency and exempt rules in bills; sponsoring legislation to amend the Administrative Procedure Act; monitoring agency compliance with mandatory grants of rulemaking authority; and notifying policy committees about controversial proposed rules.

Statutory tools available to the Commission to carry out its purpose are provided in Sections 3.842 and 3.843 (see Appendix A for statutory text). They include:

- holding public hearings to investigate complaints about rules;
- suspending rules temporarily until the Legislature can meet to consider a bill to nullify a rule; and
- directing agencies to adopt policies through the public rulemaking process provided in chapter 14.

The operating procedures of the LCRAR are described in detail in Part II.

This Biennial Report covers the period from February 1993 to January 1995. During this time, the Commission held nine meetings and one retreat; the Subcommittee on the Chapter 370 Study held four meetings. The Commission received and investigated 48 complaints or inquiries; it conducted five formal rule reviews, heard reports from agencies about rules in progress, provided advice and comment to an agency on a proposed rule found to be not needed by an Administrative Law Judge; and discussed bills amending the Administrative Procedure Act.

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 meets for a third time to decide its course of action. Staff prepares and presents a final **staff report** to summarize the issues and offer 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 proposed rules, and is prepared to respond to complaints about them.

In addition, staff routinely notify policy committees about controversial rules that will be the subject of a rulemaking hearing. The Commission supports policy committee attention to controversial rules.

The Commission can hold public meetings to formally review proposed rules prior to a rulemaking hearing before an Administrative Law Judge. Staff will 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 may meet to consider suspending a 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 a rule 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 temporarily 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 provides that if the Chief Administrative Law Judge 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 were amended in January 1995, to include the Commission's authority to issue subpoenas. They appear in Appendix B of this report.

PART III RULE REVIEW

A. The Commission formally reviewed five rule complaints during the 1993 - 1994 biennium:

Minnesota Department of Health
Department of Human Services
Higher Education Coordinating Board
Department of Labor and Industry
Pollution Control Agency

1. Minnesota Department of Health, Food, Beverage and Lodging Rules, Minnesota Rules, Parts 4625.2300 and 4625.5000, Adopted Rules

On September 27, 1993, the LCRAR held a **preliminary assessment** concerning the Department of Health's fee rules for food, beverage and lodging establishments. The department had recently adopted a rule to increase licensing fees for these establishments, following a controversial rulemaking report issued by an administrative law judge in August 1993 approving the proposed rule. Representatives from the Minnesota Motel Association and Minnesota Restaurant, Hotel and Resort Associations asked the LCRAR to hear their complaints about the unfairness of the rules and to consider suspending the rules until the 1994 Legislature could review the fee increases. Complainants at the meeting stated that the fee rules were unfair because they were intended to recoup four years' worth of inspection program deficits. They also believed that the department had inefficiently implemented its inspection program, which had contributed to increased program costs and fee increases.

The Commission considered the particular fee rule, and the broader issue about how much or how many years of deficits a department should be allowed to recoup in fees, and the roles of the Legislature and administrative law judges in setting fees or approving fee rules.

The department testified that the license fees were last adjusted in 1988, effective in 1989. The department determined that the actual costs of licensing and inspecting the establishments covered was insufficient to cover past and anticipated future costs. Over the previous four years, the department had accumulated a $900,000 deficit. When the department developed the fee amounts for 1993, they were instructed by an executive budget officer, after discussions with the Department of Finance, to recapture the previous program costs over a five-year period to make it more acceptable to the business community. The department believed the rules were adopted in compliance with the directions set in statute.

The Department of Finance testified that under its current policy, fee revenues must approximate costs, and retroactive recovery of costs is allowed. The department suggested

alternatives to the current practice: i.e., to set all agency fees in statute, or to restrict agencies to recoup only the deficit from the two years prior to the current year.

After hearing testimony and considering the issues of concern, the Commission unanimously approved a motion to schedule a **public hearing** for more comprehensive testimony with the possibility of suspending the rule.

However, following the meeting, the Senate and House Finance committees and the Department of Health informed the LCRAR that during the 1993 session, several committees expressly rejected language that would have restricted the department's ability to raise these fees. It would have required an allocation of $700,000 from the general fund to offset this restriction. In response, the Chair determined it would be a futile use of its limited resources to pursue suspension of the rule, in view of actions taken on this issue by legislative committees during the session. In addition, the statutory authority for these fee rules is general and contains little qualifying language upon which to base a suspension.

The LCRAR will remain interested in the general issues of whether fees should be set in rule or law. In regard to deficit recovery, the Commission recommended in its Chapter 370 Rulemaking Report that deficit recovery in fee rules should be limited to two years.

2. **Department of Human Services, Prior Authorization for Medical Assistance Services, Minnesota Rules, Parts 9505.5000-.5105, Adopted Rules, September 1993**

This issue came before the Commission at a meeting on September 27, 1993, at the request of Representative Peggy Leppik and representatives for rehabilitation providers. Providers had the following concerns with the prior authorization system: 1) it is an unnecessarily slow and cumbersome process for wheelchair repairs and rehabilitative services; 2) persons in need of services are negatively affected when the prior authorization process produces inconsistent results; and 3) the cost of seeking prior authorization is too high and, therefore, not worthwhile to pursue. The department provided an overview of the prior authorization program, its general perspective on the program's effectiveness, and responses to complaints raised by witnesses.

Commission members concluded that the issue was worthy of further attention and directed staff to: further investigate the complaints about the department's rules governing prior authorization by consulting with providers, facilities and the department; report back to interested Commission members before deciding the next course of action; and keep the health and human services policy committees informed of these complaints and relevant findings. Based on this direction, LCRAR staff met with various parties interested in resolving the problems. In January, LCRAR staff convened a meeting with DHS staff and interested

providers to discuss the problems with the prior authorization system and to develop agreed upon solutions. At a Commission meeting in February, LCRAR staff presented a summary report listing the problems and agreed upon solutions. There were a number of problems that remained unresolved. The Commission concluded this issue by requesting staff to forward the report to the health and human services policy committees in the House and Senate. Staff were directed to follow up on any results that came from it.

Senator John Hottinger and Representative Simoneau directed LCRAR staff to draft a bill to address the problems cited in the staff report that remained unresolved. The bill contained provisions requiring:

- the Commissioner of the Department of Human Services to adopt administrative rules under Chapter 14 for establishing community standards and criteria for review of prior authorization requests for physical therapy, occupational therapy, speech therapy and related services;

- DHS to establish a task force to provide recommendations to the commissioner for developing a standardized form(s) of all required supporting documentation which providers must include with prior authorization requests;

- changes made to hearing procedures for patients and providers of therapy services; and

- the commissioner to prepare a report listing alternative methods to achieve utilization review.

The bill was merged into the Health and Human Services Appropriations bill, passed in both legislative chambers but vetoed by the Governor.

3. Higher Education Coordinating Board (HECB), Student Education Loan Fund (SELF) Rules, Minnesota Rules, Parts 4850.0011-.0017, Proposed Rules, September 1993

LCRAR staff reported to the LCRAR about a complaint from Representatives Lyndon Carlson and Peter Rodosovich relating to HECB's proposed rules governing the SELF Loan Program. These members expressed concerns that the board's proposed rules conflicted with a 1993 law that set new loan limits at a maximum of $6,000 per year. In addition, the board's originally proposed rules deleted the annual loan amounts altogether, and gave discretion to the board to prescribe those annual limits outside of the rulemaking process.

LCRAR staff were consulted on questions about the rulemaking process, including the adequacy of the agency's Statement of Need and Reasonableness, the agency's practice of

seeking withdrawal from persons who had requested a public hearing, and the issue of whether the proposed rules were substantially different from those published in the *State Register*.

Representative Carlson convened a meeting on September 10, 1993, with HECB, legislative staff, a student representative and LCRAR staff. Representative Peter Rodosovich sent a letter to HECB stating his concerns with the proposed rules. In response, HECB published a revised version of its proposed rules which contained the new loan limits.

With the law change in 1993 to allow loans up to $6,000 per year, HECB proposed a new scheme to allow loans with a maximum of $4,500 for year one, $9,000 for year two; $15,000 for year three; $21,000 for year four; and $25,000 for year five. The major item at issue was whether the maximum annual amounts the board was proposing, which were less than $6,000 per year, conflicted with the legislative intent to allow loans up to $6,000 per year.

An ALJ presided over a public rulemaking hearing on the proposed SELF Loan rules on November 1, 1995. LCRAR staff attended the hearing and testified on behalf of Representatives Carlson and Rodosovich. A representative from a student association testified against the proposed rules. Following the hearing, Representatives Carlson and Rodosovich submitted a letter to the ALJ stating their concerns for the rulemaking record. The ALJ considered the complainants arguments against the proposed loan amount scheme, but he deferred his judgement to the board's rationale, found the rules to be needed and reasonable and approved them.

4. **Department of Labor and Industry, Workers' Compensation Treatment Parameters, Emergency Rules Minnesota Rules, Chapter 5221, September 1993**

This issue came before the LCRAR at a meeting on September 27 pursuant to a letter signed by five Representatives and two Senators requesting the Commission to temporarily suspend the Workers' Compensation Emergency Rules on Treatment Parameters until the 1994 Legislature could review them. The emergency rules became effective May 18, 1993.

Complainants at the hearing stated that the department had exceeded its statutory authority and had distorted the legislative intent of the 1992 Workers' Compensation law resulting in rules that are unfair to injured workers. Specifically, Representative Rukavina was opposed to the imposition of specific timelines in these rules for discontinuing chiropractic treatment after 12 weeks and to the application of any policy changes to injuries that occurred prior to

October 1, 1992. He argued that the 1992 law guaranteed direct, continuing and local access to all types of medical providers, and that numerical 12-week timelines are contrary to this policy.

The department testified that the emergency treatment guidelines were adopted pursuant to Minnesota Statutes, section 176.83, subd. 5. The law instructed the Commissioner to adopt criteria to determine the reasonableness and necessity of the treatment for workers' compensation cases with the purpose of saving costs in treatment and in the overall cost of claims. The rules were intended to control the practice of a certain few providers who treated excessively in terms of frequency and duration. They were never intended to be applied across the board as an absolute bar to treatment. The department believed that it did what needed to be done to define necessary and reasonable treatment, and asked the Commission to allow these emergency rules to operate until they had a fair test to determine the effectiveness of the treatment guidelines.

The Commission directed staff to forward the rule complaint to the appropriate policy committees and encourage them to engage in discussions with the department about the development of permanent rules. Through this action, the Commission hoped that there would be meaningful dialogue about these rules between the Legislature and the department before the rules became permanent, to avoid the continuation of problems that will need legislative attention in the future.

5. Pollution Control Agency, Administrative Penalty Orders for Violations of Asbestos Removal Rules, Minnesota Rules, Part 7011.9920

On January 20, 1995, the Commission held a Preliminary Assessment about a complaint brought by Representative Simoneau on behalf of David Cummiskey. Cummiskey is an attorney representing Paul-Williams Environmental, Inc. on a matter involving a $4500 fine assessed by the Pollution Control Agency pursuant to an Administrative Penalty Order for violations related to the removal of friable asbestos material from the site of Immanuel St. Joseph' Hospital in Mankato. Paul-Williams Environmental, Inc. was cited for failure to provide a notice to PCA ten days before asbestos removal work began. The notice requirement has been adopted by reference in Minnesota Rules, and is part of federal law governing asbestos.

Cummiskey raised several issues about PCA's authority, procedures, internal guidelines and rules for issuing Administrative Penalty Orders that can result in considerable fines for persons and businesses affected by them. He was particularly disturbed by the agency's use of matrices in its Environmental Response Plan to determine the gravity of violations and the size of a fine. The Environmental Response Plan is not a rule and was not adopted through the rulemaking requirements of the Administrative Procedure Act. In addition, the governing statute (M.S. § 116.072, subd.5) allows the Commissioner to determine that a fine is not forgivable if a violation is serious or repeated. Cummiskey believes the agency should define what are "serious" violations by rule.

The commission took limited testimony at the preliminary assessment from the complainants and the Pollution Control Agency and determined that the issue was "meritorious and worthy of attention", as provided in the LCRAR enabling statute, Section 3.842, subd.3). It went on to approve a motion to hold a public hearing to further examine the complaint.

B. From February 1993 to January 1995, LCRAR staff investigated 43 other complaints about rules raised by legislators and concerned citizens. Solutions to these complaints were obtained without a formal review by the Commission. Listed below is a sample of three rule complaints that were recently investigated by staff.

1. Department of Public Safety, Fire Protection Rules, Minnesota Rules, Parts 7512.0100 - .2800

In June 1994, Representative Kathleen Sekhon asked the LCRAR to look into the Department of Safety's rules governing fire protection industry licensing procedures to determine whether they were appropriate or should be revised. In particular, she was concerned that certain rules adversely impact the ability of small businesses to achieve licensure and, therefore, to conduct business. The department had adopted the rules in question in February 1994.

Representative Sekhon was contacted by a fire protection contracting business with complaints about a $30,000 bond rule requirement which seemed particularly burdensome to small companies with limited assets, and about a rule relating to managing employee requirements. Unable to meet these requirements, the business was unable to obtain a license to do fire protection contracting work.

According to the department, the bond requirement of $30,000 was a provision in the rules to provide benefit to persons injured or who suffered a financial loss for failure of performance by the fire protection contractor. The requirement was necessary to protect the public and assure financial responsibility by the contractor if the work performed failed to meet the required standards.

The fire protection business had been operational for a year and a half. Its assets were limited and it had difficulty securing a $30,000 bond. LCRAR staff were able to help the constituent find an alternative way to secure the bonding approval required by the rules.

The second problem involved a rule that required contractors to employ a managing employee. A managing employee must meet certain professional standards that are demonstrated by passing an examination. A contractor without a managing employee must still meet these standards and pass the examination.

In this case, a business partner had worked in the fire protection business for 18 years installing fire sprinkler systems and supervising job sites. He had taken the managing employee examination twice and had passed the business section, but failed the trade section by a few points. The rules require that he wait six months before re-taking the test. The constituent asked the department for a variance from the six-month waiting period to re-test. Operating without a license for six months would have severe economic consequences. Following conversations with LCRAR staff, the department granted a variance to the six-month waiting period to re-test. In August, the partner took the test, passed and became licensed.

2. Department of Employee Relations, Pay Equity Rules, Minnesota Rules, Parts 3920.0100 - .1300

Representative Phil Carruthers asked the LCRAR to investigate a complaint about the Brooklyn Center School District regarding a penalty assessed by the Department of Employee Relations (DOER) for non-compliance with the Pay Equity Act. Representative Carruthers asked the LCRAR to investigate whether the department was implementing the law and rules in a fair and consistent manner.

The Legislature authorized DOER to provide technical assistance, monitor and enforce the pay equity law. The department adopted pay equity rules on October 5, 1992.

The school district received two non-compliance notices from DOER for failing certain statistical tests required by the rules. The second notice sent on May 25, 1994 included a penalty of $250,000 for non-compliance with the law. The school district could either make the recommended efforts to achieve compliance and pay the penalty, or appeal the penalty. The jurisdiction contested the department's findings and filed a request to suspend the penalty. The school district believed they were in compliance with the rules and tests for pay equity, and that the amount of the penalty was too severe and would further drive the district into an operating debt.

The main areas of controversy between the department and the school district were:

(1) The department's interpretation of certain job classifications differed, pursuant to the pay equity law, from how the same classifications were defined in the laws pertaining to teachers. The school district lumped some job classifications under one category which DOER believed should be separated because of how "class" was defined in the pay equity law. Because of this discrepancy, the school district failed a statistical test because it was using the other law to base its classification system for certain jobs rather than the pay equity law.

(2) The school district believed that DOER was inconsistently enforcing the pay equity law because there were other districts using the same job classification system that were not penalized by the department. DOER staff were unaware of other districts using the same job classification system. It claimed that the Brooklyn Center School District was cited for non-compliance when DOER noticed that the jurisdiction had listed certain job classifications inconsistently in two different reports submitted to the department.

(3) Since July 1991, the school district had made strides to come into compliance with the pay equity law by rectifying inequities. However, the speed with which contract changes could be implemented was contingent upon good faith bargaining efforts. The district believed the pay equity law conflicted with the collective bargaining laws.

LCRAR staff contacted the department to discuss the jurisdiction's concerns with the rules. Commission staff also attended the suspension of penalty appeal hearing held in August between DOER and the school district.

The district submitted a revised pay equity implementation plan to DOER in October reflecting suggestions made by the department. In November, DOER informed the school district that they found the district had achieved compliance with the pay equity law. It reduced the penalty from $250,000 to $17,000.

3. Department of Natural Resources, Snowmobile Registration Rules, Minnesota Rules, Parts 6100.5000 - .6000

In August 1994, Representative Phil Carruthers asked LCRAR staff to investigate a complaint raised by a constituent about a new snowmobile registration system implemented by the Department of Natural Resources (DNR) for the 1994-1995 winter season. The constituent owned a sign lettering business for snowmobiles which was negatively impacted by the new procedure. Representative Carruthers was concerned about the economic impact and that similar businesses directly affected by these changes were not properly informed by the department.

A staff investigation revealed that snowmobile registration procedures are governed by rules which were adopted in 1984. In September 1994, department staff were drafting amended snowmobile rules which contained a new one-stop shopping registration procedure for snowmobile owners. However, the department was implementing the new registration procedure before amending the rules pursuant to Chapter 14, the Administrative Procedure Act. The previous system required snowmobile owners to register their machines at deputy registrar offices. Owners would obtain a state validation decal to affix to their vehicles and were assigned registration numbers which the snowmobilers were responsible for placing on their machines in the area and size specified by the rules. Snowmobilers could go to either a

hardware store and purchase decal numbers, or have them painted on the machines by sign and lettering businesses.

With the new one-stop shopping registration procedure being implemented by the department, snowmobile owners receive a validation decal containing the expiration date and the registration numbers at the time they register their vehicles. The department implemented the new procedure because they believed it was a more cost-effective and efficient registration system for the department and snowmobilers. However, many small businesses specializing in painting these numbers on the machines were unaware of the new procedure before it was implemented, and were unable to prepare for the upcoming winter season. In addition, many snowmobilers were confused about the new procedure prior to its implementation, and were upset that the new decals were not aesthetic and did not match the colors on their machines.

The department received numerous complaints about the new procedure from small sign and lettering businesses and snowmobilers. The department claimed to be unaware that the newly implemented registration procedure would stir such controversy and that the impacts were so great on small sign and lettering businesses. Because the new procedure was implemented before the rules were adopted, the affected public was not apprised of the changes in a timely fashion, and had no opportunity to air their concerns or to suggest changes to the department.

Following discussions with LCRAR staff, the department issued a press release in January 1995 informing all interested persons about the new registration procedure implemented by the department for the 1994-1995 winter season. Signs were posted at all the deputy registrars containing the new registration requirements. At this writing, the department plans to publish proposed rules which will contain a revised registration procedure from the one-stop shopping system implemented for the 1994-1995 season. Snowmobilers will be able to choose to obtain a larger decal containing the expiration date and registration numbers, or a smaller decal containing only the registration expiration date. With this option, snowmobilers can display the registration numbers by either painting or affixing adhesive lettering to their machines. The department revised the registration system in an effort to appeal to all persons affected by the proposed rules. Sign and lettering businesses and the snowmobilers seem satisfied with the compromised solution developed by the department.

PART IV 1993 AMENDMENTS TO THE ADMINISTRATIVE PROCEDURE ACT

In March 1993, the Legislature received two reports about rulemaking in Minnesota. The Commission on Reform and Efficiency, known as CORE, and the Office of the Legislative Auditor issued lengthy reports with numerous recommendations as to how to improve the current process by which agencies adopt rules. Based on these two reports, Senator Duane Benson (former LCRAR member) and Senator John Hottinger (chair of the LCRAR) introduced bills incorporating some of the recommendations.

A. S.F. 1162 (chief author Benson) contained the following provisions:

- membership of the LCRAR to include the chair or vice-chair of the Governmental Operations Committees
- single definition of when a rule is considered to be "substantially changed" from the rule as originally proposed would now be in statute rather than in the Attorney General's office (AG) or Office of Administrative Hearings (OAH) rules
- agencies are to prepare an annual list of obsolete rules for the governor and the LCRAR
- transfer of the legal review of noncontroversial rules from the AG's office to the OAH
- the Notice to Solicit Outside Opinion must be sent to interested persons (not just be published in the State Register), and it must be more complete and meaningful
- agencies must adopt required rules within 18 months--beyond this timeline, an agency would have to return to the Legislature to obtain additional rulemaking authority to proceed to rulemaking
- the governor would review and approve rules
- written requests for a hearing must include the name and address of the requester and identify the portion of the rule objected to
- agencies must keep a rulemaking docket to inform the public about the rules it plans to propose
- the OAH must prepare a report on the effectiveness of interested persons notice of rulemaking and on the agency practice of negotiating withdrawals of the request for public hearings
- the LCRAR must study and report on various rulemaking topics by February 15, 1994
- an appropriation of $65,000 to the LCRAR to conduct the study; $35,000 to the OAH for the transfer of legal review functions; $15,000 transferred from the AG to the OAH

B. S.F. 1362 (chief author Hottinger) contained the following provisions:

- a single definition of when a rule is considered to be "substantially changed" from the rule as originally proposed would now be in statute rather than in AG or OAH rules
- more information is required to be included in the Notice to Solicit Outside Information
- agencies must adopt required rules within 18 months, or return to the legislature for additional rulemaking authority

- if written requests for a public hearing do not include the requester's name and address, the request is invalid and need not be considered by the agency
- agencies are required to maintain a public rulemaking docket
- OAH must report about the effectiveness of the notice to interested persons and about the agency practice of negotiating withdrawals of requests for a public hearing
- legal review of noncontroversial rules transfers from the AG to the OAH.

These two files were merged via a delete-everything amendment into S.F. 1162 which the Senate passed. The House Governmental Operations Committee did not hear the companion bill, H.F. 1681. Therefore, no APA bill passed the Legislature in 1993.

PART V 1994 AMENDMENTS TO THE ADMINISTRATIVE PROCEDURE ACT

A. LCRAR Chapter 370 Study and Bill

1. LCRAR Subcommittee on Chapter 370 Study

Laws 1993, Chapter 370 directed the LCRAR to submit a report by February 15, 1994 to the House and Senate Governmental Operations Committees on various rulemaking topics. The LCRAR formed a Subcommittee to study these topics and to make recommendations to amend the APA that will improve rulemaking. The Subcommittee members included Representative Peggy Leppik (Chair), Representative Wayne Simoneau, and Senators John Hottinger, Pat Pariseau and Don Betzold.

The topics studied by the Subcommittee were taken directly from Laws 1993, Chapter 370 Section 12 which included:

- **Rulemaking Delegations**

  The LCRAR was to compile a list of all delegations of rulemaking authority to state agencies indicating which of those grants were general rulemaking authority and which were more narrowly drawn, specific authorizations. The Commission was to evaluate the continued need for these delegations of rulemaking authority to state agencies. In addition, the LCRAR was to evaluate the continued need for delegations of rulemaking authority to quasi-independent boards or commissions.

- **Rule Impact Statements**

  The LCRAR was directed to recommend statutory criteria to be used in preparing rule impact statements including those in Minnesota Statutes, §§ 14.11 and 14.115, for agricultural land, small businesses, and local governments, or the removal for these impact statements. In addition, the Commission was to provide recommendations for the development of more complete information on the economic and other impacts of proposed rules on directly affected persons and on agencies required to enforce the rules. Included in this discussion, the LCRAR was to recommend ways this information might be obtained from affected parties, whether this information should be included in the statement of need and reasonableness, and how the information might be distributed before the proposed rule is published.

- **Rulemaking Exemptions**

  The Commission was to recommend criteria to be used by legislative committees for granting Chapter 14 rulemaking exemptions.

- **Fees**

  The LCRAR was to suggest whether fees should be set or changed by rule or statute.

- **Coordination of Rulemaking in the Executive Branch**

  The LCRAR was to recommend methods to improve the coordination of rulemaking in the executive branch.

The study flowed in part from rulemaking reports issued in 1993 by both the Commission on Reform and Efficiency (CORE) and the Legislative Audit Commission (LAC).

The Subcommittee held four meetings from November 1993 to January 1994. The subcommittee heard testimony from agencies and other interested persons about the study topics. Staff also presented a summary report stating the findings and conclusions made in an LCRAR study of rulemaking exemptions conducted in 1988.

The Subcommittee held a joint meeting on December 20, 1993, with the Senate and House Governmental Operations Administrative Rules Subcommittees, and the full LCRAR to hear presentations from Professor Arthur Bonfield, a nationally recognized expert on administrative rules and the Model Act, and members from legislative commissions in Wisconsin and Iowa. Professor Bonfield discussed rulemaking and rule review under the Minnesota APA, Model Act and other state schemes. As a comparison to Minnesota's rulemaking and rule review scheme, Representative Janet Metcalf, from the Iowa Administrative Rules Review Committee, and Senator Bob Jauch, from the Wisconsin Joint Committee for Review of Administrative Rules, gave overviews of their committees' rule review authorities and activities.

To specifically address the statutory items on rulemaking delegations, the Subcommittee directed staff to send a letter to 20 large cabinet level agencies requesting current lists of rulemaking delegations (general versus specific) and responses to questions about these delegations. All agencies responded to the inquiry and most also answered the inquiry by supporting the continued need for general grants of rulemaking authority.

In regard to the study item of whether or not fees should be set or changed by rule or statute, LCRAR staff reviewed 20 Administrative Law Judge reports issued by the Office of Administrative Hearings from 1988 to 1993 of fee-related rules. The LCRAR also sent letters to

the finance and appropriation committees in the House and Senate informing them of the study and asking them for input on the issue of fees.

Based on staff research, agencies' responses, testimony from agency staff and other interested persons, presentations made by Professor Bonfield and legislative members from Iowa and Wisconsin, the LCRAR Subcommittee approved the Chapter 370 Report containing findings and recommendations for the full Commission to consider and approve. The Subcommittee also suggested that the LCRAR sponsor a bill to implement recommendations in the report.

The full LCRAR held four meetings to discuss the subcommittee report and proposed bill. On March 8, 1994, the Commission approved the report and bill (H.F. 2593/S.F. 2363). Copies of the report and bill were sent to the Governor, House and Senate Governmental Operations Committees, and all legislative members of the House and Senate.

The LCRAR bill was introduced in both chambers and referred to the Senate and House Governmental Operations Committees. In the House, the bill was not acted upon, but in the Senate it was amended into S.F. 1969, an omnibus bill amending the Administrative Procedure Act authored by Senator John Hottinger.

2. Chapter 370 Study Recommendations and LCRAR Bill (H.F. 2593, Chief Author Leppik/S.F. 2363, Chief Author Hottinger)

Listed below are the report recommendations and bill items. The bill provisions (H.F. 2593/S.F. 2363) are highlighted in *italic print.*

- **Rulemaking Delegations**

  Rulemaking authority is granted on a case-by-case basis. The LCRAR supported more legislative attention to rulemaking language in bills, making for more specific delegations. This attention should occur in either or both policy committees and Governmental Operations committees. Whenever possible, the legislature should make policy decisions in law rather than by delegating authority to agencies and quasi-independent boards to make rules, especially in controversial areas. In addition, the Commission suggested that the executive branch should seek legislative changes if it is concerned about the accountability of quasi-independent boards.

  The LCRAR supported a meaningful systematic review of proposed rules by the legislature. The Commission proposed amending the APA to provide for legislative review of proposed rules. *Under the scheme proposed in the bill, the Chief Administrative Law Judge would prepare a summary of issues that arose at the rulemaking hearing, and then forward it to the legislature for review by policy committees. The policy committees would*

then have an opportunity to hold hearings about rule issues and to address unresolved problems in the bills. No controversial rule may be adopted unless submitted to the legislature for consideration.

The Commission sent the lists of delegations provided by the largest agencies to the appropriate policy committees recommending that these committees biennially review the delegations and rules adopted thereunder for continued appropriateness. *The LCRAR bill contained a provision requiring the Commission to gather this kind of information for use by the legislature every five years.*

- **Rule Impact Statements**

While it is important for the legislature to have information about the economic costs and other impacts of rulemaking, the LCRAR found that the current APA requirements relating to small businesses, agricultural land and local governments are not very effective. *The LCRAR proposed repealing all impact statements currently required by the APA, and replacing them with a modified, less burdensome version of "regulatory analysis" found in the Model State Administrative Procedure Act.*

Minnesota Statutes, § 3.984, requires agencies to prepare rule notes on every bill containing a grant of rulemaking authority providing information about the economic and other impacts, costs to adopt rules, and areas of controversy anticipated by the agency. The LCRAR will continue to monitor rule notes prepared for bills and *proposed amending the § 3.984 to require that rule notes also contain an estimate of the cost of adopting rules under the APA.*

- **Rulemaking Exemptions**

The LCRAR was concerned about exemptions because of due process considerations. Exemptions continue to be granted by the legislature but presently are not limited in scope or duration. *To provide legislative oversight for exempt rules, the LCRAR proposed amending the APA to sunset all existing and future exemptions after a period of two years. In addition, the LCRAR recommended policy committees to review existing exemptions and to sunset problematic exemptions sooner than in two years.*

Amend the APA to allow general exemptions for good cause for emergencies and technical changes, based on language contained in the Model Act § 3-108. Because there is no legal review of exempt rules under the current APA, the LCRAR proposed that the Office of Administrative Hearings conduct the legal review of all exempt rules.

The LCRAR proposed some other amendments to the APA, including allowing a new category of exemptions for forms, and repeal the emergency rulemaking provisions, except for the expedited section created for the DNR, making it no longer necessary for the legislature to grant specific authority to adopt emergency rules.

The LCRAR encouraged the House and Senate Governmental Operations Committees to continue scrutiny of exemptions by using standard provided in the Model Act § 3-116: "Balance the need for public participation in, and adequate publicity for, agency policy making against the need for efficient, economical and effective government."

- **Fees**

The LCRAR encouraged the legislature to draft all new grants of rulemaking authority for fee rules to be as specific as possible.

The LCRAR proposed amending § 16A.1285 to limit deficit recovery of program costs by agencies through fee rules to two years, rather than the current practice that allows a five-year deficit recovery period.

Following the 1993 session, the Department of Finance was implementing a new statute governing fee rules, § 16A.1285. The new law was part of a departmental effort to reform the way it captures, reports and classifies fees and charges. *The LCRAR proposed amending the Administrative Procedure Act, Chapter 14, to make all technical reference changes to § 16A.1285,* and to monitor the new statute governing fees.

- **Coordination of Rulemaking in the Executive Branch**

The LCRAR found that rulemaking is not centralized in the executive branch. Some larger agencies have created rule writing divisions while agencies that infrequently adopt rules have less experience and expertise. Therefore, *the LCRAR proposed amending the law to provide an on-going training program in the Department of Employee Relations for all agency rule writers.*

The LCRAR proposed amending the law to create an administrative rules counsel to advise the governor in rulemaking matters.

If the legislature desires more executive branch accountability, the LCRAR proposed amending the law to provide a form of gubernatorial rule review.

The LCRAR will monitor the one-stop shopping efforts underway by the executive branch.

B. Guiding Principles

On March 8, 1994, the LCRAR adopted a set of principles for evaluating any rulemaking reform proposal. These principles were based on the purposes of the Administrative Procedure Act (APA) provided in § 14.001. The purposes of Chapter 14 are to:

- provide oversight of powers and duties delegated to administrative agencies;
- increase public accountability of administrative agencies;
- ensure a uniform minimum procedure;
- increase public access to governmental information;
- increase public participation in the formulation of administrative rules.

The intent of the APA is to strike a fair balance between these purposes and the need for efficient, economical and effective government administration, and the need to provide persons with adequate procedural protection from agency actions affecting them. As such, any reform proposal should provide legislative oversight, legislative accountability, gubernatorial accountability, agency accountability and public access to the rulemaking process. S.F. 1969 and H.F. 1899 embodied these guiding principles.

C. Senate APA Bill: S.F. 1969 (Author: Hottinger)

Senator John Hottinger, Chair of the LCRAR, introduced S.F. 1969 which revised many of the current procedures for the adoption and review of administrative rules by state agencies. The bill contained provisions from the LCRAR Chapter 370 bill, recommendations on rulemaking made by the CORE Commission and the Legislative Auditor's Office, and sections of S.F. 1162 , authored by Senator Duane Benson, which passed in the Senate but was not heard in the House during the 1993 Legislative session.

S.F. 1969 passed in the Senate but differed significantly from its companion House bill, H.F. 1899, authored by Representative Mindy Greiling (House bill discussed later). The bill authors were unable to work out the major differences **in conference committee** at the end of the session and, subsequently, only concurred on a few provisions which were enacted in **Laws 1994, Chapter 629**.

A summary of S.F. 1969 as passed on the Senate floor in April 1994 follows. Provisions from S.F. 1969 enacted in Chapter 629 are highlighted in *italic print.*

- **Legislative Oversight & Accountability**

LCRAR granted the power to object rules, thereby shifting the burden of proof from the complainant to the agency to establish the validity of the rule in any subsequent judicial challenge to the rule. This provision assured agency accountability. The Commission was also provided with the power to intervene in litigation arising from agency action. These powers were in addition to the Commission's current authority to suspend an adopted rule.

The grounds for suspending rules by the LCRAR were articulated to strengthen the law in case of a constitutional challenge to the Commission's suspension power.

LCRAR required to prepare a report to be submitted to the legislature, beginning in the year 2000 and every four years thereafter, listing all rulemaking delegations granted to departments and agencies (Chapter 629).

LCRAR would receive an additional 30 days to provide advice and comment on rules found by the Administrative Law Judge to be not needed or unreasonable.

LCRAR members must be appointed within 30 days after convening a legislative session. This would enable the LCRAR to continue its oversight responsibilities with less interruption (Chapter 629).

Agencies must publish a notice of intent to adopt rules or a notice of a hearing within 18 months following the effective date of the law authorizing or requiring the agency to adopt, amend or repeal rules. Failure to publish either notice within 18 months would cause the rulemaking authority to expire.

Rule notes must include additional information about the estimated cost to adopt a rule (Chapter 629).

Exempt rules would be subject to a legal review by the Office of Administrative Hearings and expire two years after their adoption and, sunset current exemptions on July 1, 1996.

- **Gubernatorial Accountability**

The governor would have been provided the power to suspend rules by executive order and the power to terminate a rulemaking proceeding at any time. In addition, agencies would be required to submit a list to the governor of all rules, and must identify any rules that are obsolete and should be repealed.

- **Agency Accountability**

  In a judicial challenge to the validity of a rule that was objected to by the LCRAR, the burden of proof would have shifted from the complainant to the agency.

  The bill repealed impact statements relating to small businesses, agricultural land and political subdivisions and replaced them with a modified version of the regulatory analysis contained in the Model State Administrative Procedure Act. This analysis would provide more information about the economic impacts, costs to adopt rules, areas of controversy and alternative methods of regulation. In addition, the SONARs must include a description by the agency of the efforts made to provide additional notice of rulemaking to persons or classes affected by rules.

  An agency withdrawing a rule would be required to notify all persons requesting a hearing and provide an explanation of reasons for the withdrawal. An Administrative Law Judge would review the notice and comments to determine whether they were consistent with the purposes of the § 14.001.

  Fee rules may only recoup for deficits incurred in the previous two fiscal years.

  Agencies may adopt an exempt rule if they established good cause to not follow the regular rulemaking procedures in Chapter 14. This good cause exemption would have replaced current law on emergency rules.

- **Public Access and Participation**

  The bill contained additional public notice requirements and general obligations on agencies to improve public notification of and access to rulemaking, including providing more information in the notice of Solicitation of Outside Information, maintaining a current rulemaking docket of possible proposed rules, wider distribution of agency guidebooks, and other public notice and access provisions.

  Contested case law was to be adopted as rules when an agency intends to rely on them as precedent.

- **Administrative Improvements**

  S.F. 1969 contained a number of provisions to improve rulemaking procedures to ensure a more efficient, economical and effective administration of rulemaking.

- The review of non-controversial rules was transferred from the Office of Attorney General to the Office of Administrative Hearings.
- A unified definition of Substantial Change provided in Chapter 14.
- Requests for a public hearing must include name, address and the portion of the rule being objected to.
- Department of Employee Relations to provide training on rulemaking, and the use of negotiations and mediation in rulemaking.

D. House APA Bill: H.F. 1899 (Chief Author: Greiling)

Representative Mindy Greiling was the chief author of H.F. 1899, companion bill to S.F. 1969, which repealed most of the state agency rulemaking procedures established under the Administrative Procedure Act (APA), Chapter 14. It specified new procedures to be followed in adoption of administrative rules based largely on the Model State Administrative Procedure Act.

H.F. 1899 was the final product of the House Governmental Operations and Gambling Committee's Subcommittee on Administrative Rules, chaired by Representative Mindy Greiling. The Subcommittee held a series of meetings from November 1993 to February 1994 with the charge of preparing an omnibus administrative rules bill. LCRAR staff monitored all the subcommittee meetings and were asked to appear before the subcommittee to present reports on rule review functions of the LCRAR with comparison to other states, rulemaking exemptions, and APA bills introduced during the 1993 session. In December 1994, the Subcommittee met jointly with the LCRAR and the Senate Administrative Rules Subcommittee to hear from Professor Arthur Bonfield, a nationally recognized expert on administrative rules and the Model APA, and members from legislative commissions in Wisconsin and Iowa.

Following approval by the House Governmental Operations Committee, the bill was passed by the House in April 1994. H.F. 1899 differed from its companion bill, S.F. 1969. The conference committee concurred on only a few provisions which were enacted in Laws 1994, Chapter 629.

Using the LCRAR's guiding principles for evaluating administrative rulemaking reform bill, the following bill summary highlights the provisions as passed on the House floor before it went to conference committee. Provisions of H.F. 1899 enacted in Chapter 629 are highlighted with *italic print.*

- **Legislative Oversight & Accountability**

  The bill proposed additional powers to the LCRAR for legislative oversight and review of proposed rules:

  - Greater role assigned to LCRAR to review possible and proposed rules.
  - LCRAR, or a legislative standing committee, granted the power to object rules on specified grounds thus shifting the burden of proof on those grounds in a court challenge to the agency. The LCRAR's current suspension powers were repealed.
  - LCRAR, or a relevant standing committee, permitted to petition for judicial review or to intervene in a court proceeding involving rulemaking.
  - *Permitted the chairs of the governmental operations committees to designate another member to serve on the LCRAR (Chapter 629).*
  - *Publish a bulletin periodically highlighting controversial proposed rules (Chapter 629).*
  - LCRAR required to prepare a report every five years on grants of rulemaking authority--Senate version required a report every four years.
  - LCRAR required to report every two years on rulemaking exemptions; and, to submit an annual LCRAR report, rather than a biennial report as currently required by law.

  H.F. 1899 repealed the current law governing rule notes for every bill, and *provided new requirements that the chair of a standing committee may request a rule note, containing specified information (Chapter 629).* Agencies must report to the LCRAR, legislative policy committees and the governor if they do not adopt rules within 12 months of the effective date of the law requiring rules.

- **Gubernatorial Accountability**

  Permitted the Governor, upon request of the LCRAR to temporarily suspend an adopted rule or terminate a rule adoption proceeding. In addition, the Governor would be permitted to suspend APA procedures by an executive order when necessary to avoid denial of federal funds.

- **Agency Accountability**

  Similar to current law, § 14.06, agencies must adopt rules embodying standards, principles and procedural safeguards.

Upon request of the LCRAR, governor or more than one agency, the attorney general, in consultation with the Revisor of Statutes, must adopt model rules relating to rulemaking topics appropriate for use by agencies.

Agencies must review rules every four years, with a more comprehensive review every ten years.

Agencies permitted to solicit public comments before publication of a proposed rule, and permits the creation of advisory committees.

Repealed current law requiring rule impact statements for agricultural land and political subdivisions and required small business impact statements under certain circumstances.

Agencies may, with the approval of the governor, omit certain rulemaking procedures if the procedures for good cause (deemed unnecessary, impracticable, or contrary to public interest). The LCRAR or governor permitted to request an agency to hold a rulemaking proceeding on exempt rules. The rule in question ceases to be effective 180 days following this request unless the rule is re-adopted under full procedures. H.F. 1899 exempts certain rules from the APA, similar to what is exempted under the current APA.

Adding a requirement that if the Ethical Practices Board intends to apply principles of law or policy announced in an advisory opinion more broadly, that it must adopt these principles as rules (Chapter 629).

Minnesota High School League required to give certain notices for future rules, and to review and attempt to improve existing rules.

- **Public Access and Participation**

H.F. 1899 specified procedures for notice of proposed rule adoption, public participation, and the manner of adoption of rules (current APA procedures were repealed). As with S.F. 1969, the bill contained improved methods of public notification and access to rulemaking, including the following provisions:

  - Required each agency to maintain a rulemaking docket and specified the contents (similar to S.F. 1969).
  - Contents of rulemaking record are articulated and the record is not the exclusive basis for judicial review.
  - Governor required to maintain a subject matter index of rules.
  - Similar to current law, § 14.09, persons may petition agencies to adopt rules.

- An action to contest the validity of a rule on the basis of procedural violations must be commenced within two years after the effective date of the rule.
- Similar to § 14.04, the bill required agencies to provide brochures, a guidebook or other documents containing all formal and informal procedures.
- Agencies required to adopt certain rules, upon request of a person and to the extent practicable, to supersede principles of law declared in particular cases. This requirement doesn't apply to agencies having quasi-judicial power.

- **Administrative Changes/Improvements**

H.F. 1899 proposed new administrative rulemaking procedures. The bill envisioned a more legislative-type procedure, as compared to the current procedures for adopting a rule after a public hearing, which tends to be somewhat more judicial in nature with the review by an administrative law judge. Major changes were made in the areas including the SONAR and the role of the administrative law judges. ALJs would not be required for all hearings, and their reports would have the effect of recommendations. The role of the chief administrative law judge was eliminated.

The bill repealed the requirements for SONARS and a demonstration at a public hearing of the need and reasonableness of the proposed rules. SONARS required in current law were replaced with a concise explanatory statement at the time the proposed rule is published and supplemented when it is adopted. Upon the request of the LCRAR, governor or political subdivision, or 300 people, an agency must prepare a regulatory analysis (taken from Model Act) which entails a more rigorous cost-benefit analysis of the proposed rules.

H.F. 1899 proposed a unified definition of substantial change which was similar to S.F. 1969 except that in the House version, a person aggrieved by an agency decision on this issue would appeal in court. S.F. 1969 permitted an ALJ to prevent rules from being adopted based on a finding of substantial change.

H.F. 1899 provided that APA procedures do not apply to interpretive rules which define the meaning of a statute. These rules are binding on a court, and an agency interpretation of a statute or rule is not invalid if it was not adopted as a rule.

PART VI OTHER OVERSIGHT ACTIVITIES

A. Advice and Comment on Proposed Rules (§ 14.15, Subd. 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 (ALJ) 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 determines that the need for or reasonableness of the rules has not been properly established, the agency is not required to follow the suggested actions to correct the defect. The agency, if it elects to not follow the suggested actions, 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 a 30-day time limit within which to provide its advice and comment.

Department of Labor and Industry, Workers' Compensation Rules and the Medical Rules of Practice, Minnesota Rules, Chapters 5220 and 5221

On December 28, 1993, the Department of Labor and Industry (DLI) requested the LCRAR's advice and comment on two proposed rules relating the Workers' Compensation Rules of Practice and the Medical Rules of Practice. The department wanted to adopt the language originally proposed in the rules. However, because of an adverse ruling by an ALJ, the department sought the Commission's advice and comment on the proposed rules, pursuant to § 14.15, subdivision 4. On January 26, 1994, the LCRAR held a public hearing on the proposed rules in question.

The proposed rules added new language to the rule parts relating to the scope of the Department's Workers' Compensation Rules of Practice in Chapter 5220 and the scope of the Department's Medical Rules of Practice in Chapter 5221. The department proposed amending these two rule parts by adding language to indicate that Chapter 5220 also governs Workers' Compensation matters before the Office of Administrative Hearings (OAH); and that Chapter 5221 shall be applied in "all relevant determinations made by compensation judges at the department and OAH, and by the commissioner," as stated in the ALJ report.

The ALJ found that while the department had the statutory authority to adopt the rules, the language in the scope rule parts were not needed and superfluous, and should be deleted. Generally, the proposed language stated that the rules in these chapters apply to all Workers' Compensation matters heard before the department and OAH. The ALJ who presided over the rule hearing agreed that judges must apply the relevant rules in matters before them but stated that it was unnecessary to state the obvious in the proposed rules.

The department's position was that the rule part amendments were needed because they added language stating that judges must apply relevant rules in matters before them which ensures consistency and predictability in how judges must apply the rules in Workers' Compensation matters. The department stated that there were different points of view about whether OAH judges must apply all department rules in Workers' Compensation matters. While the department agreed that it may not be necessary to state that judges must apply the relevant rules, the proposed rule amendments clarified for judges which rules were applicable. The department testified that without the proposed amendments, the application of the rules would be arguably ambiguous and uncertain.

At the LCRAR hearing on the proposed rules, the Commission heard a staff summary report, testimony from the department as to why it wanted to adopt the proposed language, and testimony from the Chief Administrative Law Judge stating that he approved the ALJ's hearing reports on the proposed rules and supported the judge's findings.

Following discussion with department staff and the Chief ALJ, the Commission found the proposed language contained in the rules was not superfluous and was needed to clarify what DLI perceived to be a problem and advised DLI to proceed to adopt the rules as proposed.

The Commission met its statutory responsibility to the Department of Labor and Industry by giving its advice within 30 days of the request. Although the advice was not binding, DLI proceeded to adopt the rules as proposed.

B. Department of Human Services Interpretive Memoranda Study and Report

Minnesota Laws 1993, Chapter 338, § 10 directed the Department of Human Services (DHS) to "study and report on the cost, feasibility and means of implementing the publication and dissemination of written memoranda that provide interpretation, details, or supplementary information concerning the application of law or rules administered by the Licensing Division." The department was required to consult with the LCRAR, legal advocates, consumer groups, providers of services, and county social agents. DHS was directed to submit the results of its study to the Legislature on February 1, 1995.

The LCRAR invited James Loving, Director of Licensing, to present a draft of the department's report at a meeting of the Commission on January 20, 1995. Interpretive memoranda or guidelines are to be developed as a means of clarifying and simplifying rules used by providers in licensed programs.

The department is planning to propose legislation in 1995 to exempt DHS from all Chapter 14 rulemaking requirements for interpretive memoranda (or guidelines) for all residential and nonresidential licensed programs. As interpretive memoranda would fall outside of the

rulemaking process, which is intended to ensure public participation, legal review and agency justification for rules, the LCRAR remains interested in this approach.

C. Minnesota Statutes, § 14.12, Deadline to Publish Proposed Rules

Minnesota Statutes, § 14.12 provides that if a state agency has been required to adopt rules, it must publish a Notice of Intent to Adopt Rules within 180 days of the effective date of the law requiring the rules. This section applies when no other due date for mandated rules has been established in the authorizing statute. If an agency does not meet the publication deadline, it must notify the LCRAR, appropriate policy committees of the legislature and the governor of the reason for its failure to do so. The purpose of § 14.12 is to encourage agencies to exercise promptly their delegated rulemaking authority.

1994

The LCRAR monitors agency compliance with the publication and notification requirements of § 14.12. Following the 1994 legislative session, LCRAR staff identified 47 grants of mandatory rulemaking authority. These grants included all laws explicitly requiring rulemaking, and laws requiring certain programs or services which seemed to fit the definition of a rule pursuant to Chapter 14. This list did not include laws with permissive grants of rulemaking, or mandatory grants with specified dates of when rules must be promulgated. In October 1994, the Chair of the LCRAR sent reminder letters to 21 responsible agencies about the rulemaking grants and their § 14.12 obligations.

As of February 1, 1995, the 180-day deadline passed for all 47 grants. Of these grants, the responsible agencies met their Section 14.12 obligations for 64% (30 grants) of the grants, of which 23% (7 grants) were published and 77% (23 grants) notified the LCRAR. The 180-day deadline was not met by 36% (17 grants) of the grants.

1993

In 1993, the LCRAR did not send letters to remind agencies of the § 14.12 requirements. On their own initiative and pursuant to the law's requirements, for Laws 1993, seven agencies notified the LCRAR that they were unable to publish rules for seven grants within the 180-day deadline. (As a comparison, for Laws 1994, 13 agencies notified the LCRAR that they were unable to meet § 14.12 requirements for 24 of the 47 mandatory rulemaking grants identified by Commission staff.)

The compliance rate by agencies for § 14.12 has been considerably higher when the LCRAR reminds agencies of their obligations under the law.

PART VII NATIONAL ASSOCIATION OF ADMINISTRATIVE RULES REVIEW

Senator John Hottinger, LCRAR chair during the 1993-1994 biennium, was elected to the Executive Committee of the National Association of Administrative Rules Review at a conference held December 2 and 3, in conjunction with the Council of State Governments Annual meeting in Pinehurst, North Carolina.

The purpose of this national organization is to encourage "more effective oversight and review of state administrative rules and the procedures by which they are made. It promotes enactment of state administrative procedure acts that improve public participation in the rulemaking process" (from the Fall 1994 newsletter of the organization, *Rules and Review*).

Minnesota was instrumental in the creation of this organization. In November 1990, it sponsored a regional one-day conference in St. Paul, in an effort to bring together members and staff of legislative oversight bodies from midwestern states to share their varied experiences in performing oversight of state agency rules.

In 1993 the regional organization voted to become a national organization in affiliation with the Council of State Governments. Currently , 17 states participate as members. The newsletter, *Rules and Review*, is designed to help share information among states. Members are committed to meeting annually.

APPENDIX A

LCRAR ENABLING LAWS

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

A legislative commission to review administrative rules, consisting of five senators appointed by the subcommittee on committees of the committee on rules and administration of the senate and five representatives appointed by the speaker of the house of representatives shall be appointed within 30 days after the convening of the legislative session. Its members must include the chair or the chair's designee of the committees in each body having jurisdiction over administrative rules. 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; 1993 c 370 s 2; 1994 c 629 s 1*

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 § 14.02, subdivision 4. The commission also has jurisdiction of rules which are filed with the secretary of state in accordance with § 14.38, subdivisions 5, 6, 7, 8, 9, and 11, or were filed with the secretary of state in accordance with the provisions of §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 § 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.

Subd. 6. **Reports on Rulemaking Grants.** Beginning with a report submitted to the legislature on February 1, 2000, and every four years after that date, the commission shall compile a list of all general and specific grants of rulemaking of all agencies. The report should include a brief description of each grant and a citation to the authorizing statute.

Subd. 7. **Publication of Rules Bulletin.** The commission shall periodically publish a bulletin highlighting controversial proposed rules and other developments of interest in rulemaking. The bulletin shall be available to legislators and to the general public.

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; 1994 c 629 s 2,3*

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 § 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 § 14.14, subdivision 1 of a hearing thereon, to be conducted in accordance with §§ 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 § 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, §§ 3.841 to 3.845, 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, alteration, or amendment 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 rules and administration subcommittee 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, §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. SUBPOENAS

9.1 [Issuance.] The commission, by a two-thirds vote of its members, may request the issuance of subpoenas, including subpoenas duces tecum, requiring the appearance of persons, production of relevant records, and the giving of relevant testimony. Subpoenas shall be issued by the chief clerk of the house or the secretary of the senate upon receipt of the request. A person subpoenaed to attend a meeting of the commission shall receive the same fees and expenses provided by law for witnesses in district court.

9.2 [Service.] Service of a subpoena authorized by this section shall be made in the manner provided for the service of subpoenas in civil actions at least seven days before the date fixed in the subpoena for appearance or production of records unless a shorter period is authorized by a majority vote of all the members of the commission.

9.3 [Counsel.] Any person served with a subpoena may choose to be accompanied by counsel if a personal appearance is required and shall be served with a notice to that effect. The person shall also be served with a copy of the statute establishing the commission and a general statement of the subject matter of the commission's investigation or inquiry.

9.4 [Attachment.] To carry out the authority granted by this section, the commission may, by a two-thirds vote of its members, request the issuance of an attachment to compel the attendance of a witness who, having been duly subpoenaed to attend, fails to do so. The chief clerk of the house or the secretary of the senate upon receipt of the request shall apply to the district court in Ramsey County for issuance of the attachment.

9.5 [Failure to respond.] Any person who without lawful excuse fails to respond to a subpoena issued under Minnesota Statutes, § 3.153 and this rule or who, having been subpoenaed, willfully refuses to be sworn or affirm or to answer any material or proper question before the commission is guilty of a misdemeanor.

10. ORDER OF BUSINESS

10.1 [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.

Adopted
9/16/87
Amended
1/20/95

APPENDIX C

GENERAL RULEMAKING STATISTICS
1993 and 1994

Under the 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.

1993

In 1993, there were a total of 208 provisions in law that required or authorized agencies to adopt permanent or emergency rules, or that exempted agencies from rulemaking. Of this total:

- 104 mandatory grants
- 13 exemptions
- 5 emergency rulemaking grants

In 1993, agencies proposed 126 sets of rules:

- 35 were the subject of a rulemaking hearing before an Administrative Law Judge
- 91 were reviewed by the Attorney General

1994

In 1994, there were a total of 149 provisions in law that required or authorized agencies to adopt permanent or emergency rules, or that exempted agencies from rulemaking. Of this total:

- 78 mandatory grants
- 18 exemptions
- 2 emergency rulemaking grants

In 1994, agencies proposed 103 sets of rules:

- 11 were the subject of a rulemaking hearing before an Administrative Law Judge
- 92 were reviewed by the Attorney General

APPENDIX D

LCRAR STATISTICS
from February 1993 to January 1995

1. Number of Commission meetings — 9 and 1 retreat

2. Number of meetings of the Commission's Subcommittee on the Chapter 370 Rulemaking Study — 4

3. Number of rule reviews conducted by full Commission — 5

   The rule reviews conducted by the Commission in 1993 and 1994 involved the following agencies:

   Department of Health
   Higher Education Coordinating Board
   Department of Human Services
   Department of Labor and Industry
   Pollution Control Agency

4. Number of rule complaints or inquiries responded to by LCRAR staff (without a rule review by the full Commission): 43

   Listed below is a breakdown of these complaints by department and number of complaints received by the LCRAR:

Department	Number of Complaints
Board of Accountancy	2
Department of Agriculture	1
Board of Chiropractic Examiners	1
Department of Commerce	6
Department of Corrections	1
Department of Education	2
Department of Employee Relations	2
Department of Health	6
State High School League	1
Housing Finance Agency	1

Department	Number of Complaints
Department of Human Services	1
Department of Labor and Industry	3
Bureau of Mediation Services	2
Department of Natural Resources	2
Pollution Control Agency	2
Board of Psychology	1
Department of Public Safety	3
Racing Commission	1
Department of Revenue	1
Department of Trade and Economic Development	2
Department of Transportation	1
Board of Water and Soil Resources	1
Total Number of Complaints	**43**

APPENDIX E

BUDGET AND STAFFING LEVEL

FISCAL YEAR 1994		FISCAL YEAR 1995	
Appropriation	$136,000.00	Appropriation	$134,000.00
Base Budget Reduction	- 1,000.00	Base Budget Reduction	- 1,000.00
Transfer In from Category Salary Supplement	+ 1,542.00	Transfer In from Category Salary Supplement	+ 2,537.00
Transfer In Insurance Supplement	+ 240.00	Transfer In Insurance Supplement	+ 480.00
Transfer in from LCPFP	+ 4,166.00	Balance In from 1994	+ 604.35
TOTAL:	$140,948.00	TOTAL:	$136,621.35

EXPENSE CATEGORY	ANNUAL BUDGET FY94	ANNUAL BUDGET FY95
Salaries	102,042.00	103,037.00
Fringe	21,940.00	22,780.00
Rents & Leases	100.00	100.00
Repairs & Maintenance	1,800.00	1,800.00
Printing	500.00	500.00
Purchased Services	700.00	0
Postage	200.00	200.00
Telephone	1,000.00	1,000.00
Members' Per Diem (In-State)	2,500.00	2,000.00
Members' Travel (In-State)	1,800.00	1,000.00
Staff Travel (In-State)	100.00	100.00
Members' Per Diem (Out-of-State)	300.00	600.00
Members' Travel (Out-of-State)	900.00	600.00
Staff Travel (Out-of-State)	900.00	900.00
Supplies	800.00	Supplies &
Publications	700.00	Publications 1,500.00
Equipment	4,666.00	504.35
TOTAL:	$140,948.00	$136,621.35

Staff: Executive Director - Full Time
Assistant Director - Full Time
Secretary - 3/4 Time