COMMISSION
ON REFORM
AND EFFICIENCY

CORE

REFORMING MINNESOTA'S ADMINISTRATIVE RULEMAKING SYSTEM

SUMMARY REPORT

MARCH 1993

Pursuant to 1991 Laws, Chapter 345,
Article 1, Section 17, Subd 9

THE CORE VISION OF STATE GOVERNMENT

The Commission on Reform and Efficiency envisions a Minnesota state government that is mission driven, oriented toward quality outcomes, efficient, responsive to clients, and respectful of all stakeholders. These goals are defined below.

Mission driven

State government will have clearly defined purposes and internal organizational structures that support the achievement of those aims.

Oriented toward quality outcomes

State government will provide quality services. It will focus its human, technical, and financial resources on producing measurable results. Success will be measured by actual outcomes rather than processes performed or dollars spent.

Efficient

State government will be cost-conscious. It will be organized so that outcomes are achieved with the least amount of input. Structures will be flexible and responsive to changes in the social, economic, and technological environments. There will be minimal duplication of services and adequate communication between units. Competition will be fostered. Appropriate delivery mechanisms will be used.

Responsive to clients

State government services will be designed with the customer in mind. Services will be accessible, located conveniently, and provided in a timely manner, and customers will clearly understand legal requirements. Employees will be rewarded for being responsive and respectful. Bureaucratic approvals and forms will be minimized.

Respectful of stakeholders

State government will be sensitive to the needs of all stakeholders in providing services. It will recognize the importance of respecting and cultivating employees. It will foster cooperative relationships with local units of government, and nonprofit and business sectors. It will provide services in the spirit of assisting individual clients and serving the broader public interest.

— Feb. 27, 1992

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EXECUTIVE SUMMARY

The legislature is not the only body in Minnesota that makes laws. State agencies and independent boards adopt and enforce laws, called rules, that affect nearly everyone — consumers, taxpayers, businesses, service providers, and recipients of state services — and all aspects of state and local government.

The Commission on Reform and Efficiency (CORE) chose to study administrative rulemaking because of concerns over the growing number of rules, their prescriptive nature, the diffused accountability for them, and the weak legislative mechanism for overseeing them. A major concern was that rules increasingly are setting policy, rather than implementing legislative initiatives.

Authority for adopting rules is delegated to state agencies by the Minnesota Legislature with the concurrence of the governor. To develop and adopt rules, agencies must follow a series of required steps set out in the state Administrative Procedure Act (APA).

The biggest problem associated with rules and rulemaking is the scope of authority granted to agencies by the legislature. CORE found that the legislature has often delegated its policy-making responsibilities to agencies to be carried out through rulemaking. Consequently, agencies may spend many months or years in rulemaking trying to resolve issues that should have been settled by elected officials. CORE recommends, therefore, that the legislature limit its delegations of rulemaking powers. It also proposes that the legislature strengthen its rulemaking oversight mechanism and amend the APA to provide for, among other things, a better informed public that participates more in rulemaking.

Under the current system, governors could be but have not been involved in rulemaking. A strong oversight role for the governor would increase executive branch accountability for rulemaking, a change that CORE strongly recommends.

Other CORE recommendations are directed at agency rulemaking actions and could be implemented without changes to the APA or directives from the legislature or the governor.

CORE's recommendations do not necessarily shorten the process. Problems of quality, overprescriptiveness, and quantity of rules are not solved by making rules faster. Rather, these recommendations focus on seriously weighing the costs and benefits of rulemaking, exempting some matters from the rulemaking process, and clearly defining the roles of the legislature and the governor.

INTRODUCTION

The Commission on Reform and Efficiency chose to examine administrative rulemaking for long-range reform in February 1992. This selection was precipitated by dissatisfaction with the use of rules and rulemaking in state government, expressed by a number of CORE members, legislators, regulated parties, and state managers. Specifically, they were concerned that the number of rules is growing; the rules are overly prescriptive; accountability for rulemaking is diffuse and oversight is weak; and rules often set policy, rather than implement legislative initiatives.

Throughout the project, CORE strived to:

- Analyze both the strengths and weaknesses of the current rulemaking process.
- Involve as many stakeholders and perspectives as possible.
- Consider all options presented.
- Focus on long-term reform in its recommendations on rulemaking.

CORE's project focused on both the formal and informal processes associated with rulemaking. It examined the statutory requirements of rulemaking; the supportive activities, including legislative actions taken before an agency engages in rulemaking; and agency activity that goes beyond the statutory requirements.

Project methodology

CORE, a group of 22 citizens appointed by Gov. Arne Carlson and the Minnesota Legislature to develop a number of state government reform initiatives, asked all state agencies to suggest improvements to the rulemaking process. Special emphasis in the form of extensive interviews and focus group discussions was placed on the 14 state agencies most active in rulemaking: the departments of Human Services, Health, Agriculture, Labor and Industry, Commerce, Natural Resources, Revenue, Education, Administration, Public Safety, Public Service, Transportation, and Corrections, and the Pollution Control Agency. About 70 persons participated in these agency interviews and focus groups.

CORE also met with current and past legislators, legislative staff, academicians, historians, and staff from the Attorney General's Office, the Revisor of Statutes, the Legislative Commission to Review Administrative Rules, and the Office of Administrative Hearings.

Comments also were solicited through a survey and focus group interviews of regulated parties on the rulemaking mailing lists of the departments of Health, Human Services, Agriculture, and Natural Resources, and the Pollution Control Agency. These agencies were chosen because of CORE's interest in the environmental and human services areas. Eighty-six persons responded to the survey, and 27 attended a focus group meeting. In addition, 22 county associations were invited to attend a special focus group meeting on county concerns.

From this diverse group of stakeholders, a project advisory group of 42 persons was formed to aid in the development of CORE's findings, conclusions, and recommendations.

Interviews and focus group data were supple-

mented by reviews of the literature, other states' and federal rulemaking practices, and the Model State Administrative Procedure Act developed by the National Conference of Commissioners on State Laws.

This report briefly summarizes the major components of the project. For a complete, detailed report of the project, contact the Department of Administration, Management Analysis Division, 203 Administration Building, 50 Sherburne Ave., St. Paul 55155, telephone (612) 296-7041.

BACKGROUND

Administrative rules are laws adopted and enforced by state agencies. They legally bind both an agency and the public, and they serve to ensure equal treatment for all affected parties.

Rulemaking is a set of steps that agencies must follow in order to develop and adopt administrative rules. This process is outlined in the Administrative Procedure Act (APA), Minnesota Statutes, Chapter 14. If a state agency wishes to regulate an activity or to enforce a standard, it must follow the APA.

The APA establishes the process that must be followed by agencies to adopt, repeal, and amend rules. The APA does not ensure the adoption of "good" rules any more than the legislative process ensures the establishment of "good" laws.

The APA includes a series of checks and balances on state agency activity while developing rules. It requires agencies to notify the public of its proposals, to hold a public hearing if the public requests one, and to seek approval of proposed rules by a neutral party — the Office of Administrative Hearings or the Office of the Attorney General.

Rules affect almost all aspects of state and local governments and therefore consumers, taxpayers, businesses, service providers, and recipients of state-regulated services. For example, rules regulate the qualifications and training needed to be licensed in a number of occupations and professions, the emission of chemicals into the air and water, the quantity and quality of food to be served in nursing homes, and the fees that must be paid to register a boat.

The legislature, with the concurrence of the governor, delegates to agencies the authority to develop rules. This delegation may be broad in scope or program-specific. For example, the legislature may direct an agency to develop rules to protect the public's health or to determine financial aid eligibility for dislocated rural workers. Not all state agencies have rulemaking authority.

Necessity for rulemaking

The delegation of rulemaking authority to state agencies is necessary for two fundamental reasons: (1) The legislature is in session only part of each year, and (2) the legislature recognizes that state agency experts can best determine the implementation details of a policy.

History of rulemaking

The Administrative Procedure Act originated in 1945. Between then and 1974, when the Legislative Commission to Review Administrative Rules (LCRAR) was created, many changes were made to it, culminating in drastic amendments in 1975.

Before 1975, few checks existed on rulemaking. An agency did not have to publish its proposed rules, and any public hearings were conducted by the agency itself. Over time, concerns arose about possibly arbitrary and capricious behavior by agencies, serving as a catalyst for reform. One particular rule that set out a policy for performing frontal lobotomies on state hospital patients without public input is often mentioned as the impetus for the 1974 legislative action.

The 1975 amendments included:

- The requirement that all proposed and adopted rules be published in one document, the *State Register*. This was intended as a minimum standard of public notification and as an invitation to the public to participate in agency deliberations.

- The expansion of the definition of *rule* to include "every agency statement of general applicability and future effect," which was intended to prevent agencies from developing enforceable documents without public participation.

- The creation of the Office of Hearing Examiners (now called the Office of Administrative Hearings) as an independent agency within the executive branch. This office was intended to be a neutral party to ensure that agencies follow the required process, to prevent rules from being adopted in certain procedural circumstances, and to conduct all administrative hearings according to the APA. All proposals for new rules required a public hearing.

In 1980, the APA was amended to allow "noncontroversial" rules to be adopted without a public hearing if fewer than seven persons requested a hearing. The attorney general was charged with approving such rules. This provision remains largely unchanged, except that the number of persons required to trigger a hearing was increased to 25 in 1984.

Relatively minor changes have been made to the APA by each legislature since 1984.

FINDINGS

CORE has determined that only a few changes are needed to the Administrative Procedure Act itself.

The APA has many strengths. Remarks from interviews and focus groups indicate that it is a fair law. It discourages agencies from making capricious or arbitrary decisions because it requires justification of a proposed rule as needed and reasonable. Checks exist to ensure that new rules are consistent with existing laws, and the APA allows agency rules to be challenged in court or through the LCRAR. In addition, agencies themselves have developed useful mechanisms to augment APA requirements to incorporate public input in the development of rules.

The most serious problem associated with rulemaking is related to the scope of authority granted to agencies by the legislature before the APA goes into effect. CORE found that the legislature often delegates its policy-making responsibilities to agencies to resolve issues through rulemaking. Consequently, agencies may spend many months or years in rulemaking trying to address issues that should have been decided by elected policy-making officials.

Rulemaking problems have no simple fixes. Amendments to the APA are of little value if the way the legislature delegates rulemaking authority to agencies does not also change. CORE believes the legislature should take a number of steps to resolve some of these problems, including narrowly focusing its future delegations of rulemaking powers, reviewing and possibly limiting past delegations, weighing the impact of rulemaking before it grants such authority to agencies, considering eliminating the rulemaking authority of independent boards, and strengthening its organization for overseeing rules and rulemaking.

CORE also found that governors in Minnesota have not been involved in rulemaking. Having looked at other states' rulemaking practices and the Model State APA, CORE concludes that the chief executive officer of the state should be accountable for laws generated by the executive branch.

Concerning the implementation of rulemaking by agencies, CORE found that most agencies negotiate with affected parties to develop new rules. This works fairly well in raising points of contention, but ensuring that all appropriate parties are at the negotiating table can be problematic.

RECOMMENDATIONS

CORE's rulemaking recommendations are divided into five areas of concern: delegation of rulemaking authority to agencies, accountability for rules, oversight of rulemaking, amendments to the Administrative Procedure Act, and initiatives that can be taken by state agencies.

Delegation of rulemaking authority to agencies

The legislature often must make tough policy and political decisions; many are left to the end of a session and made quickly to meet deadlines. When this occurs, intentionally or not, agencies may receive fairly broad authorizations to make policy decisions the legislature did not want to or could not make.

Transferring policy making to an agency shifts policy choices to an organization designed to administer the law, not make it. Political discussions are moved out of the legislature and into the rulemaking process.

The lack of firm direction from the legislature or governor often results in agency rules that are prescriptive and based on inputs, rather than expected outcomes. A familiar analogy is that rules tend to include in excruciating detail how a plane should be built but not necessarily that it must also fly.

Recommendations

1. ***The legislature should limit and focus future delegations of rulemaking powers.***

   The legislature should require agencies to prepare rule notes for bill provisions authorizing or requiring rules that may significantly affect the delivery of a service or result in significant burdens on agencies or others.

   As fiscal notes are used to identify costs to the state budget, these rule notes should explain why a delegation of rulemaking is needed, whether alternatives are available, whom the prospective rule would affect, what estimated costs may be imposed on providers or those to be regulated, and whether the prospective rule would be controversial or difficult to adopt.

2. ***The legislature should review and limit past delegations of rulemaking powers.***

   The Legislative Commission to Review Administrative Rules, with the cooperation of the Revisor of Statutes and the House and Senate Research staffs, should report to the 1994 legislative session the frequency with which broad grants of authority are used to adopt rules and their use in defining policy and procedural direction.

   This report should review all delegations of rulemaking to state agencies and include an assessment of the need for broad grants of authority, as well as recommendations for adopting more limited and specific delegations. It should then be referred to the House and Senate governmental operations committees, which may wish to prepare bills revising and limiting existing rulemaking authorities based on the report's findings.

3. ***Legislative leaders should require serious scrutiny of bills before delegating rulemaking authority.***

Legislative leaders should ask the chairs of policy committees to give increased attention to the rules provisions of bills by encouraging committee inquiry into rules provisions with agencies and bill proponents.

Committee inquiries should focus on the purposes of proposed rules, whom the rules would affect, whether alternatives are available, the costs associated with promulgation, and the costs imposed on regulated parties. The results of these discussions should be included in the committee record and incorporated as needed in the rulemaking provisions of a bill.

The House and Senate should direct bills containing significant rule authorizations to their respective governmental operations committees to ensure uniform scrutiny of rules provisions. These committees currently review provisions of bills that exempt an agency from rulemaking or authorize the use of emergency rulemaking. This recommendation would expand the review authority of these committees to include bills that delegate significant rulemaking.

4. ***The legislature, in establishing rulemaking mandates, should indicate what it expects will be achieved, should direct the agency to specify expected outcomes in the rule, and should state a deadline for the agency to have rules in place.***

With outcome-based rules, providers and other regulated parties would have the option of developing processes that meet the goals.

5. ***Where rules will have major cost impacts on large numbers of affected parties, the legislature should require agencies to carry out structured cost–benefit analyses.***

Mandates to perform agency cost–benefit analyses should be funded to ensure action. As an alternative, the governor could require agencies to conduct these formal analyses after legislative rulemaking authority has been granted.

6. ***The legislature should carefully examine the desirability of giving small agencies rulemaking powers if it does not fund them to perform all their functions, including rulemaking.***

Rulemaking requires agencies to expend significant resources. Some, but not all, of these agencies have such resources. If an agency must have rules, it must also be given the resources to make them. The reorganization of state agencies, proposed by CORE in its report, *A Minnesota Model*, would allow the consolidation of resources now spread among small agencies, facilitating or negating the need for this recommendation.

Accountability for rules

Accountability for laws made through rulemaking is diffuse and difficult to fix, compared with accountability for laws made through legislation. Statutory laws are the result of deliberations and agreements made by the legislature and agreed to by the governor. Rules are a result of delegations of authority from the legislature agreed to by the governor and adopted by nonelected agency commissioners or independent boards.

Accountability is most diffused when rulemaking authority is held by independent boards. The terms of these boards' members frequently overlap the term of the governor who appoints them, and boards may function as mini-legislatures

with significant discretion under broad authority granted by the legislature.

Traditionally, the governor does not play a role in the rulemaking activities of the executive branch, although the practices of other states and the Model State APA suggest a range of possible roles.

Recommendations

7. ***The governor should have the opportunity to review and comment on all rules just before their adoption by commissioners.***

   The governor may wish to establish guidelines on the types of rules that would be reviewed and the time frame and criteria of the review. The governor, for example, may wish to review rules that exceed federal standards. The governor should also determine how this review would be initiated and communicated to state agencies. The governor could do so by executive order, or legislative authority could be sought. The review could include the understanding that the commissioner could proceed to adopt the rule, if the governor has not commented within 30 days.

8. ***The governor should be instrumental in seeking clarification of delegations of authority from the legislature when policy direction is needed.***

   When agencies find that policy disputes are substantially affecting their ability to develop and adopt authorized rules, the governor should ask the legislature at the beginning of the session to take action to provide clearer or more complete policy direction. This request should be directed to the speaker of the House and the majority leader of the Senate and could be accompanied by a bill containing proposed language to clarify or resolve the issue.

9. ***The legislature should limit rulemaking authority to governor-appointed commissioners.***

   The legislature, as it reviews the scope of rulemaking authority granted to agencies, should also examine the need for and desirability of granting rulemaking authority to independent boards. Only in compelling situations should a board, rather than a commissioner, be empowered to adopt rules. For those boards retaining rulemaking authority, the governor should be granted final authority on controversial rules adopted with a public hearing. This could include an understanding that the rule would become effective if the governor does not take action within 30 days after adoption by the board.

Oversight of rulemaking

The legislature is responsible for overseeing its delegations of rulemaking authority to ensure that agencies are acting appropriately. The legislature is legitimately concerned with how the rulemaking process operates, its openness to the public, and the time and costs involved. Questions exist, however, regarding the legislature's effectiveness in its oversight. For example, the current oversight mechanism, the Legislative Commission to Review Administrative Rules, does not routinely communicate with the various legislative committees that generate large quantities of rulemaking authority. This oversight mechanism should provide a "reality check" to ensure that rules accurately interpret the intent of legislative mandates.

Recommendations

10. ***The legislature should examine its current mechanism for rules oversight and either strengthen it or replace it with a new organization.***

    Strengthened oversight should be accomplished by more directly linking the membership of the LCRAR to the chairs of legislative policy committees and the House and Senate governmental operations committees. For example, its membership may include governmental operations committee members — perhaps the chairs, initially — and the chairs or vice-chairs of policy committees that authorize considerable amounts of rulemaking.

    It is important that rulemaking discussions occurring in the governmental operations and policy committees during the session be followed up by discussions of the LCRAR after the session. If strengthening the LCRAR is not desirable, a joint governmental operations committee, composed of equal membership from the House and Senate, should be created to replace it.

11. ***The Legislative Commission to Review Administrative Rules or a new joint governmental operations committee should annually evaluate the scope, volume, and clarity of rulemaking authorizations.***

    The commission or its replacement should also assess the number of rulemaking responsibilities the legislature delegates to the executive branch and evaluate procedural actions that are exempted from the rulemaking process. This assessment should provide information on the quality and quantity of rulemaking authorizations to policy committees that delegate such authority. Such an assessment would expand the mission of the oversight mechanism to include a watch over agency activity and coordination among legislative committees.

12. ***The Legislative Commission to Review Administrative Rules or a new joint governmental operations committee should coordinate activity to ensure that policy committees have information about adopted rules — particularly those adopted following a public hearing — and the provisions of the legislation under which they were adopted.***

    If specific rules are not consistent with legislative expectations, policy committees should conduct hearings early in the session and initiate bills clarifying their expectations.

    In accordance with existing law, the LCRAR or new joint governmental operations committee would also conduct public meetings on proposed rules when requested by legislators or citizens. Members of associated policy committees should be invited to attend and participate. If major concerns exist, the commission or joint committee could choose to suspend the rule and refer it to the legislature for action at its next session.

Amendments to the Administrative Procedure Act

The law that guides agencies in establishing rules seems to work fairly well. It is a long but fair process of checks and balances that prevents, or at least makes very difficult, the development of capricious or arbitrary rules. The law includes several provisions to involve the public and to have neutral third parties approve agencies' rules. For example, agencies are required to notify the public of their intent to adopt rules,

publish the proposed rule language, and hold a hearing if at least 25 persons request that a hearing be held in front of an administrative law judge.

Agencies commonly form advisory task forces to assist in developing rules. Although this step is not required by the APA, agencies use it to reduce the level of controversy on a specific issue and to obtain the views of parties affected by the proposed rule. Depending on the complexity of the issues, this informal negotiation through a task force may take place in one meeting or stretch into years. Usually, agencies will formally propose the results of the negotiation as a rule. Once the language is proposed and published in the *State Register*, the agency is fairly committed to its language and not likely to be open to changes.

Because the informal negotiation process is not part of the APA, nor should it be, CORE recommends that an agency be required to inform the public of its intention to form an advisory task force, to allow more members of the public an opportunity to participate.

The APA also includes a provision called "substantial change" that ensures that an agency may adopt a rule only as it has been published in the *State Register* as a "proposed rule." If during the rulemaking process the agency changes its language substantially, as determined by the Office of Administrative Hearings or the Attorney General's Office, the agency must publish the new language, notifying the public of their opportunity to comment. This requirement was found to deter agencies from changing a proposed rule, even if the changes would improve it.

Recommendations

13. An agency should be required to publish a notice summarizing questions to be considered in the proposed rule, whether an agency intends to form an advisory task force, and a list of persons or associations the agency intends to invite to serve on an advisory task force.

This notice should also include a proposed schedule for formation of the advisory task force, completion of negotiations, and adoption of the proposed rule. If the agency does not plan to form a task force, it should explain how outside opinion will be solicited.

14. The Administrative Procedure Act should be amended to require those who petition for a public hearing to specify their objections and to include their names, addresses, and telephone numbers.

Petitions lacking this information should not be considered valid. The additional information would allow the agency to better prepare for the hearing.

15. The legislature should clarify the criteria for statements on the impact of rules affecting agricultural land, small businesses, or local governments.

The legislature might indicate, for example, whether statements of impact on local governments should include administrative costs, what should be included as "additional costs," what efforts should be made to collect estimates from affected local governments, and how estimates should be reconciled with state agencies' data. Agency comments now focus solely on whether the impacts were "considered."

16. ***The legislature should provide the chief administrative law judge and the attorney general with another process for incorporating substantial changes introduced after the proposed rule is published.***

    This process should consist of publishing the language changes made after a hearing (or allowing a hearing if one has not already been held), allowing a period for comments, and then proceeding to final action by the agency. This process would eliminate the possibility of a second public hearing on the substantially different rule language, but it would notify the affected interests and permit them to comment to the law judge or the attorney general. Further, the public could still register opinions with the LCRAR, as currently allowed, or with the governor as part of CORE's proposed review and comment. In addition, the agency commissioner or executive office secretary (proposed in CORE's executive reorganization recommendations) should either adopt the findings of the administrative law judge or explain why the agency rejects them.

17. ***In their statement of need and reasonableness, agencies should be required to list the alternatives they considered before deciding to propose a rule.***

    This would provide more information to the public and serve as a check on the agency.

Agency initiatives

A good number of CORE's recommendations could be implemented immediately without any changes to the APA. The following recommendations are directed at state agencies and could be implemented by agencies themselves.

CORE found that most agencies have negotiating processes to develop new rules in conjunction with affected parties. These tend to work fairly well in limiting the points of contention and in minimizing the possibility of a rule hearing. Narrowly focused special interests, however, seem to be the only parties involved in these negotiations.

In addition to establishing new rules, agencies must also keep their constituencies informed of their activity. This presents a Catch-22 situation, however: The encompassing nature of the definition of a rule requires that agency interpretations, guidelines, or bulletins be created through the same process as rules. This could stifle an agency's willingness to keep its public well informed.

Agencies also have few incentives, nor is much direction given to them, to keep their rules up to date. As a consequence, many rules become obsolete and are not enforced, but agencies and the public remain legally bound to them until they are repealed.

The culture of an agency, as well as direct legislative mandates, also contributes to the frequency and type of rules that it produces.

Recommendations

18. ***Agencies should review existing rules and repeal those that are obsolete.***

    Agencies should review rules that are obsolete and therefore no longer enforced, and repeal them. This review could be initiated by the governor, the legislature, the agency, or by public suggestion. Agencies can repeal rules through the Revisor of Statutes' technical bill, their annual housekeeping bill, or the procedure for making noncontroversial rules.

19. Agencies should seek exemptions from the rulemaking process for specific fee rules.

The commissioner of finance should, upon petition by an agency, exempt fee rules from the rulemaking process when such rules are restricted to reimbursement of service costs. Other categories of fee rules already identified in law should also be considered for exemption from Administrative Procedure Act provisions upon petition. Authority for granting exemptions is already implied in the department's statutes. If the authority is not clear, the commissioner or secretary should seek clarification from the legislature.

20. Rule interpretations or other educational documents should be exempt from Administrative Procedure Act rulemaking requirements.

Each agency should make a case to the legislature why its interpretive materials should be exempted from rulemaking. Procedures similar to those used for the establishment of the Revenue Department's *Revenue Notices* should be used as a model.

21. Agencies should make better use of rule variances or waivers to facilitate the use of outcome measures.

Rule waivers encourage regulated parties to design alternative approaches, enhancing compliance with state policies. Agencies should develop processes that specify when a rule can be waived, such as when the legislature has set a broad standard. Authority to do so already exists in the APA. Frequent use of waivers can indicate a need for reviewing and perhaps updating a particular rule.

22. To better notify the general public of rulemaking activity, agencies should provide more useful information about proposed rules throughout the state.

This could be done through news releases about proposed rules, what the rule will do, who will be affected by it, and what kinds of changes the rule will require. Agencies could further notify the media about any advisory committee meetings where citizens could present their ideas. Agencies could also solicit suggestions about changing or repealing rules, through notices in trade publications and the general media. Finally, agencies should more actively invite members of the public to add their names to the agency mailing list of persons to receive rulemaking notices.

23. Agencies should circulate proposed rule language before it is published and ask affected parties to develop impact assessments based on this draft.

Agencies should also develop estimates of costs imposed on affected parties. When this information has been solicited and developed, it should be included in the rule's statement of need and reasonableness.

24. The Attorney General's Office should simplify the approval of rules adopted without a hearing.

The Attorney General's Office should examine and reduce its requirements for noncontroversial rule review by agencies. It should continue to require that an agency demonstrate an attempt to involve the public, but it should abbreviate the number of documents agencies must produce.

25. ***The* State Register *publishers should reduce the time it takes to proofread, edit, and prepare for publication each of the three rule notices required by the Administrative Procedure Act — the notice to solicit outside opinion, the notice of intent to adopt a rule, and the notice of adoption.***

    The current two-week publication delay for notices that include rule language could be reduced through the use of existing technology, for example, telecommunication of text between the Revisor's Office and the printer.

26. ***Agencies should use neutral third parties in some highly controversial rules negotiations.***

    Many agencies create advisory task forces to assist in creating rules. When issues are very controversial, the use of these task forces may add months or years to the time it takes to adopt a rule. In cases of stalemate, some agencies have successfully used neutral third parties to facilitate closure of the process.

27. ***Agencies should organize their rulemaking resources for maximum benefit.***

    Rulemaking expertise should be organized to benefit all of an agency's divisions. The existence of internal rulemaking experts should be publicized throughout the agency; they should be the initial contacts for divisions not normally active in rulemaking. Reorganization of state agencies under secretaries may further allow for consolidating these resources. For example, the secretary of health and human services could create a rulemaking office for the new grouping.

CONCLUSION

CORE's rulemaking recommendations are expected to have several immediate and long-term effects on state government.

The immediate impacts would include:

- Certain fee rules would be exempt from agency rulemaking.
- Minor rule repeals would be done through the revisor's annual technical bill.
- Agencies would have more flexibility in producing interpretive materials to inform their publics.

The longer term impacts would include:

- Better defined legislative mandates would eliminate the need for some rulemaking and could result in less controversy for agencies to resolve through rulemaking.
- The legislature could make better informed decisions as it deliberates whether to delegate rulemaking authority to agencies because it would have explicit cost information from those affected by rules.
- The legislature would regain control over the amount and type of rulemaking done by state agencies.

The CORE recommendations are intended to encourage the legislature to delegate rulemaking authority to agencies more carefully and to not delegate significant policy issues for agencies to resolve through rulemaking.

If adopted, these recommendations would result over time in far fewer delegations of authority to agencies; thus, fewer new rules would be created. They also would result in direct accountability through the governor for executive branch rulemaking.

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