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Bill Number 1

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mending that it be approved and recommended for passage by the 1945 Legislature.

Dated April 15, 1944.

Respectfully submitted,

REUBEN A. THOREEN, Chairman
MONTE APPEL
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BILL NUMBER 1

A BILL

For an Act to Prescribe Uniform Rules of Practice for Administrative Agencies.

Be it enacted by the Legislature of the State of Minnesota.

SEC. 1. Subdivision 1. Unless the language or context clearly indicates that a different meaning is intended, the following words, terms, and phrases, for the purposes of this act, shall be given the meaning subjoined to them.

Subd. 2. "Administrative agency" or "the agency" means and includes any officer, board, commission, bureau, division, department, or tribunal, other than a court, having a state-wide jurisdiction and authority to make any order, finding, determination, award, or assessment.

Subd. 3. "Person" includes individuals, associations, partnerships, and corporations.

Subd. 4. "Rules and regulations" means and includes rules, regulations, and amendments thereto, of general application issued by any administrative agency interpreting, regulating the application of, or regulating procedure under the statutes which the administrative agency is charged with administering, but shall not apply to rules and regulations adopted by an administrative agency relating solely to the internal operation of the agency nor to rules and regulations adopted relating to the management, discipline, or release of any person committed to any state institution.

SEC. 2. Subdivision 1. For the purpose of carrying out the duties and powers imposed upon and granted to administrative agencies, each agency may promulgate reasonable rules and regulations and may amend, modify, or annul the same, and may prescribe methods and procedure in connection therewith. They shall prescribe reasonable notice, a fair hearing, findings of fact based upon substantial evidence, and shall not exceed the powers vested by statute.

Subd. 2. Within 90 days after the passage of this act each administrative agency shall prepare and file with the attorney general its rules and regulations in effect at the time of the passage of this act, together with proposed new rules and regulations. The attorney general shall prepare and promulgate rules and regulations common to all agencies, and in conjunction with the agencies such special rules adaptable to individual agencies as may be necessary or advisable, and shall file such rules and regulations in the office of the secretary of state prior to January 1, 1946.

Subd. 3. Every rule or regulation so filed in the office of the secretary of state shall have the force and effect of law.

Subd. 4. Every rule or regulation hereafter proposed by an administrative agency, before being adopted, shall be submitted, as to form and legality, with reasons therefor, to the attorney general, who, within 20 days, shall either approve or disapprove the same. If he approves the same, he shall file the rule or regulation in the office of the secretary of

state. If the attorney general disapproves such rule, he shall state in writing his reasons therefor, and such rule shall not be filed in the office of the secretary of state. If he fails to approve or disapprove any rule or regulation within such 20-day period, the agency may file same in the office of the secretary of state. No rule or regulation hereafter made by an agency shall become effective until filed in the office of the secretary of state. The secretary of state shall endorse on each rule or regulation the time and date of filing and maintain an index of such rules and regulations for public inspection.

Subd. 5. No fee shall be charged for any filing required by this section.

SEC. 3. Any person substantially interested or affected in his rights of person or property by a rule or regulation promulgated by an administrative agency may petition the agency for a reconsideration of such rule or regulation or for an amendment, modification, or waiver thereof. Such petition shall set forth a clear, concise description of the facts, and the grounds, upon which such reconsideration, amendment, modification, or waiver is sought. The agency may grant the petitioner a public hearing in the manner prescribed in section 4.

SEC. 4. Subdivision 1. In any proceeding before an administrative agency, a clear, concise written statement of the claims or charges made by or before the agency shall be filed. Thereupon the agency shall fix the time and place for hearing thereon and give notice thereof. The notice shall specify that unless a written answer, in clear, concise form, is filed with the agency at least three days before the time specified for the hearing, the claims or charges will be deemed admitted and appropriate action may be taken thereon by the agency.

Subd. 2. At such hearing the parties may present evidence and examine and cross-examine witnesses. When in the public interest, the public may be excluded.

SEC. 5. Subdivision 1. Only substantial evidence shall be received. Objections to evidence and rulings thereon shall be noted in the record of the proceedings. Except as provided in this act, the administrative agency shall consider only such information or evidence as is offered and made a part of the record of the hearing. No finding of fact shall be based solely on hearsay evidence.

Subd. 2. At any time after an issue of fact has been raised by the conflicting claims of the parties as shown by the complaint and answer, a party may serve upon any other party a written request for the admission by the latter of the genuineness of any relevant documents described in and exhibited with the request or of the truth of any relevant matters of fact set forth therein. Sufficient reference to public records and documents shall be made by reference to the place of the record or place where the document will be found. Copies of other documents shall be delivered with the request unless copies have already been furnished. Each of the matters an admission of which is requested shall be deemed admitted unless, within a period designated in the request, not less than ten days after service thereof or within such further time as the agency may allow on motion and notice, the party to whom the request is directed serves upon the party requesting the admission a sworn statement either denying specifically the matters of which the admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters.

Any admission made by a party pursuant to such request is for the purpose of the pending proceeding only and neither constitutes an admission by him for any other purpose nor may be used against him in any other proceeding.

If the truth of any such relevant matter shall be denied as provided aforesaid, an agency or party may offer competent relevant and material information or evidence in its possession or furnished by members of the agency staff or secured in the course of an independent investigation conducted by such agency. The provisions hereof shall not be considered as

limiting the right of a party to offer competent relevant proof of a material fact as could be done without this authority.

SEC. 6. Subdivision 1. Any member, officer, attorney, or examiner of an administrative agency, upon request of any party to a proceeding before it, or upon his own motion on behalf of the agency, shall require, by subpoena, the attendance and testimony of witnesses and the production of the documents and other objects described in such subpoena at such hearing or proceeding. The cost of serving such subpoena shall be paid by the person or agency requesting it. Any witness so subpoenaed who appears at the hearing, or whose deposition is taken, shall receive the same fees and mileage as are paid a witness in a civil action in the district court, which fees shall be paid by the person or agency requesting the subpoena for such witness.

Subd. 2. The deposition of a witness required in any proceeding before an agency may be taken in a manner and on a notice similar to that required in civil actions in the district court.

Subd. 3. If any such subpoena is disobeyed, the member, officer, attorney, or examiner of the agency, or the person at whose request the subpoena was issued, may apply to a judge of a district court of competent jurisdiction for an order requiring the attendance of the witness and the production of the documents and objects described in the subpoena. The failure of the witness to comply with the order of this court is a contempt of court and punishable accordingly.

SEC. 7. The member, officer, attorney, or examiner of an agency before which a proceeding or hearing is held may examine witnesses and records, and administer oaths to witnesses. Any witness who shall wilfully and knowingly testify falsely in any material matter at any proceeding or hearing before any member, officer, attorney, or examiner of an agency after such an oath has been administered to him may be prosecuted for the crime of perjury, as defined in Mason's Minnesota Statutes of 1927, Section 10016.

SEC. 8. The agency shall make a record of all evidence adduced and proceedings had at any hearing before it. Upon demand stenographic notes thereof shall be filed with the agency. A transcript of such stenographic notes shall be furnished to any party of the proceeding upon written request therefor, the charge therefor to be fixed by the agency.

SEC. 9. Within 30 days after all the evidence has been received, briefs filed, and arguments closed in any proceeding, other than an investigation, before an agency, the agency shall make findings of fact, conclusions of law, and an order based upon such facts and conclusions.

The findings of fact shall be stated in separately numbered paragraphs and shall contain all of the material facts which are relied upon by the agency to support its conclusions of law. The agency shall file a copy of the order in the office of the secretary of state and give notice of the order by delivering a copy thereof to each party to the proceeding either personally or by registered mail, if given by registered mail, the date of registry determines the date when notice is given.

SEC. 10. A party to a proceeding before an administrative agency may, within 15 days after receipt of the finding of facts and conclusions of law and order, file with the agency a motion in writing to amend such findings of fact and modify such conclusions of law. Such motion shall specify the particular findings of fact to which objection is taken and set out as to each of such findings an amended finding to be substituted therefore and the evidence in the record relied upon to support the amended finding. Such motion shall become a part of the record of the proceeding. The agency shall promptly grant or deny such motion, or grant or deny it in part, and give notice thereof in the manner provided in Section 9.

A party to such proceeding may, within 15 days after receipt of the findings of fact and conclusions of law and order, file with the agency a motion for a rehearing or a reopening by the agency. The agency shall promptly grant or deny such motion and give notice thereof in the manner provided in Section 9.

The agency, upon its own motion, may order a rehearing or reopen any proceeding before it and make such further order or orders as are authorized under any continuing jurisdiction vested in it by law.

SEC. 11. A party to a proceeding heard by an administrative agency aggrieved by a decision may petition the court for a review of the decision within 30 days after the notice given him required by section 9; or, if a rehearing of the decision has been requested in accordance with the provisions of section 10, within 30 days after the notice required by section 10 has been given.

The court shall have jurisdiction to review all conclusions of law and such findings of fact as were the subject of a motion to amend as provided in Section 10. The court shall have not jurisdiction to amend or modify any finding of fact which was not the subject of such motion to amend. Any finding of fact which is not supported by a fair preponderance of the evidence shall be modified by the court so as to be in accord with the fair preponderance of the evidence.

The provisions of this section shall not apply to the review of proceedings had under any tax law or repeal or modify any general or special statutes relating to the review of tax assessments or other matters of taxation.

SEC. 12. Informal notices, informal petitions, advisory and informative letters, designated as such, issued by an agency, or informal conferences, are not within the purview of this act; provided, that a person thereby aggrieved and substantially affected in his rights of person or property may demand a hearing before such agency.

BILL NUMBER 2

A BILL

For an Act Relating to the Filing, Codification, and publication of the Rules, Regulations, and Orders of State Administrative Agencies and Creating a Publication Board.

Be it enacted by the Legislature of the State of Minnesota:

SEC. 1. Each administrative agency shall file one copy of each of its rules or regulations in the office of the clerk of the district court in each county for public inspection, and mail one copy to the secretary of the Minnesota State Bar Association.

SEC. 2. There is hereby created a publication board which shall consist of the commissioner of administration, the secretary of state, and the attorney general. Each member may designate one of his assistants to act in his stead as a member of the board. Such designation shall be filed in the office of the secretary of state. The board shall select a secretary from its members. The board shall meet, from time, to time, upon the call of the commissioner of administration or his duly designated assistant.

SEC. 3. The publication board shall prescribe regulations for carrying out the provisions of this act. Among other things, such regulations shall provide for

(1) Periodic publication of all rules and regulations filed with the secretary of state in accordance with this act;

(2) The selection, compilation, and publication of such orders of administrative agencies as it may deem necessary;

(3) A uniform manner and form for the preparation, printing, and indexing of regulations and compilations to the end that all regulations and compilations be published uniformly at the earliest practicable date;

(4) Prorating the cost of these publications to the various state agencies.

SEC. 4. The filing or publication of a rule, regulation, or order raises a rebuttable presumption that:

(1) The rule or regulation was duly adopted, issued, or promulgated;

(2) The rule or regulation was duly filed with the secretary of state

and available for public inspection at the day and hour endorsed thereon,

(3) The copy of the rule or regulation is a true copy of the original rule or regulation, and

(4) All requirements of this act and regulations prescribed thereunder relative to such regulations have been complied with.

SEC. 5. Judicial notice of any rule, regulation, or order duly filed or published under the provisions of this act shall be taken.

BILL NUMBER 3

A BILL

For an Act to Abolish Writs and Orders of Certiorari to Review, Mandamus, and Prohibition, and to Provide the Civil Practice for Review Relating to Special Proceedings Against a Body or Officer.

Be it enacted by the Legislature of the State of Minnesota.

SEC. 1. The classifications and the writs and orders of certiorari to review, mandamus, and prohibition are hereby abolished. The relief heretofore obtainable by such writs or orders shall hereafter be obtainable only as provided in this act. Where in any statute reference is made to a writ or order of certiorari to review, mandamus, or prohibition, such reference shall mean the proceeding authorized by this act. Nothing in this act abolishes any proceeding for the review of proceedings had under any tax law or repeals or modifies any general or special statutes relating to the review of tax assessments or other matters of taxation.

SEC. 2. Subdivision 1. Unless the language or context clearly indicates that a different meaning is intended, the following words, terms, and phrases, for the purposes of this act, shall be given the meanings subjoined to them.

Subd. 2. "Body or officer" includes every court, tribunal, board, corporation, officer, or other person or aggregation of persons, whose actions may be affected by the proceedings under this act.

Subd. 3. "To review a determination" refers to the relief heretofore available in a certiorari or mandamus proceeding for the review of any act or refusal to act by a body or officer performing judicial, administrative, or corporate functions which involve the exercise of judgment or discretion.

Subd. 4. "To compel performance of a duty specifically enjoined by law" refers to all other relief heretofore available in a mandamus proceeding.

Subd. 5. "To restrain a body or officer exercising judicial or administrative functions from proceeding without or in excess of jurisdiction" refers to the relief heretofore available in a prohibition proceeding.

SEC. 3. The relief heretofore obtainable by writs and orders of certiorari to review, mandamus, and prohibition may hereafter be obtained only when the party seeking such relief files his petition therefor and accompanying papers, if any, in a court of competent jurisdiction within 30 days after he has notice of default, refusal, proceeding, order, decision, determination, or action sought to be reviewed or considered.

SEC. 4. The petition shall be verified and contain a plain, concise statement of the material facts upon which the petitioner relies. The petition may be accompanied by affidavits and other written proof, and shall demand the relief to which the petitioner believes he is entitled. Where a determination affects or aggrieves many persons of the same class, one or more of such persons may make the application for relief on behalf of, and for the benefit of, all persons so affected or aggrieved.

SEC. 5. The petition and accompanying papers, if any, with notice of the filing thereof, shall be served upon each adverse party in the manner prescribed by law for the service of summons in civil actions, within eight days after such filing, unless a shorter time is prescribed by the court in an order to show cause.

SEC. 6. If necessary in order to accomplish substantial justice, a proceeding under this act may be maintained against an officer whose term of

office has expired or against the members of a board or commission whose terms of office have expired, and the successor officer or successor member of the board or commission, or any other person having custody of a record of proceedings subject to review or consideration, may also be joined as a party, at any stage of the proceeding. Where the proceeding is brought to restrain a body or officer exercising judicial or administrative functions from proceeding without or in excess of jurisdiction in favor of another party, the latter must be joined as a party respondent with the body or officer.

SEC. 7 Subdivision 1. If the proceeding be one for a judicial review of the record or proceedings had before a body or officer, and no right of review by appeal exists, or if the proceeding be one to prohibit a court from performing any act impending beyond its jurisdiction, the respondent shall make return to the court within the time required by the order, served according to the requirements of section 5. Such return shall contain the originals or true copies of all records, files, and proceedings upon which was based the determination to be reviewed. All thereof shall be certified. At the option of the body or officer making such return, a verified statement, in writing, to be known as the answer, may supplement such return, if such answer will be of assistance to the court making the review. Upon such petition, certified return and answer, without the taking of evidence, the issue shall be presented to the court in the manner provided in civil actions. If the record so certified in the return shall be questioned by the petitioner as incorrect or incomplete, it shall be settled by procedure substantially similar to the practice in civil actions for the settlement of a case. The court shall decide the questions thus raised and make an order disposing thereof.

Subd. 2. If the proceeding be one to obtain from a court command of performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, at least two days prior to the return day, unless a different time is fixed in the order to show cause, the respondent shall serve upon the petitioner and file with the court a verified answer containing proper denials and statements of new matter as in an action. If there be a record of proceedings, subject to review or consideration, respondent shall identify such record in the answer and file it therewith.

The petitioner may by reply admit, deny, or allege facts to qualify or justify any facts alleged in the answer. The issues thus raised shall be determined by the court according to the procedure in civil actions, and when determined the court shall make a final order from which such determination shall appear either granting the relief prayed in the petition or appropriate relief not inconsistent therewith, or dismissing the proceeding either on the merits or with leave to renew.

SEC. 8. Either party may request the court to correct any omission or defect in the record or to strike out any part thereof upon the ground that such part is not relevant or material to the issues or is redundant or scandalous.

SEC. 9. Subdivision 1. Upon the return day the court may dismiss the petition or shall render such final order as may be required, but, if the petition presents such issues of fact for determination as are not ascertainable from the record, the court may determine the issues as required by the practice in civil actions.

Subd. 2. The only questions which may be determined by the court in any hearing before it are.

(1) Whether respondent failed to perform a duty specifically required of him by law;

(2) Whether respondent, if any officer or body exercising judicial or administrative functions, is proceeding or is about to proceed without jurisdiction or in excess thereof;

(3) Whether respondent, if an officer or body exercising judicial, administrative, or corporate functions, had jurisdiction of the subject matter of the determination being reviewed;

(4) Whether the authority conferred upon respondent in relation to the subject matter was pursued in the mode authorized by law in order to empower respondent to make the determination,

(5) Whether, in making the determination, respondent violated any rule of law affecting the rights of the parties thereto to the prejudice of the petitioner.

Where the determination under review was made as the result of a hearing held pursuant to statute, at which evidence was taken, the following questions shall also be determined. Whether there was any sufficient proof of the facts necessary to be proved in order to authorize making the determination, and, if there was such proof, whether or not, upon all the evidence, the determination is sustained and is according to law.

Subd. 3. If respondent fails to appear upon the return day or to comply with the provisions of section 7, the court may make a final order in favor of the petitioner based on the petition and accompanying papers, if any, or make an intermediate order directing respondent to comply with the requirements of section 7 or show cause why he should not be punished for contempt of court for failure to comply.

SEC. 10. Upon the application of a person specially and beneficially interested in upholding or annulling a determination to be reviewed, the court may admit him as a party in the proceedings upon such terms as justice requires. In a proper case the court may direct that notice of the pendency of the proceeding be given to any person in such manner as the court deems proper and suspend the hearing until the notice is given accordingly.

SEC. 11. In a proceeding under this act the court may, upon such terms as may be just, stay further proceedings on the part of respondent or the execution of any determination under review, pending the final order and until the further direction of the court. A bond given to procure such a stay is also effectual in favor of a person beneficially interested in upholding the determination to be reviewed, who is admitted as a party to the proceeding, as prescribed in section 10.

SEC. 12. Costs and disbursements may be taxed as in civil actions.

SEC. 13. The final order may be enforced by proceedings for contempt with respect to those parts thereof as grant to the petitioner the primary relief sought in the petition.

SEC. 14. With respect to those parts of the final order as award to the petitioner incidental relief, such as costs, disbursements, damages, or restitution, it may be entered, docketed, and enforced as a final judgment in an action. Upon entering the final order, the clerk shall forthwith attach together and file the following papers, which shall constitute the enrollment,

(1) If the petition be not answered, the petition and accompanying papers, if any, proof of service thereof, proof that no answer has been received, and report, decision, or order filed in the proceeding, and a copy of the final order;

(2) In other matters, the petition and accompanying papers, if any, and pleadings, notices of motion and orders made thereon, all offers of any respondent, all orders involving the merits of the determination under review and affecting the final order, and the final order.

If any original paper be lost, destroyed, or withheld, the court may permit a copy to be filed and used in its stead. The enrollment must be made before the final order can be enforced.

SEC. 15. This act shall take effect January 1, 1946.