

1.4 THE RESPONSE OF THE LEGISLATURE IN THE MID-1970S

Faced with these concerns, legislators chose to first concentrate on the rulemaking provisions of the APA. After many hours of hearings, especially in the house, and after the preparation of numerous staff reports, the 1974 and 1975 sessions of the Minnesota Legislature enacted the first major revisions of the APA since 1957.

Chapter 344 of the 1974 legislation was a modest beginning for this overhaul effort. The act created the Minnesota *State Register* as the basic "public information" publication for state government.¹ All proposed and adopted rules were required to be published in the *Register* before becoming effective.² The *State Register* continues today as the principal vehicle for transmitting notice of major state agency actions to the public, although use of the Internet as a means of providing notice is steadily increasing.

Chapter 355 of 1974 Minnesota Laws created the Legislative Commission to Review Administrative Rules (LCRAR).³ This action was another direct reflection of the increasing concerns of legislators about agency rulemaking. The LCRAR was abolished in 1995 as a part of a legislative effort to cut back on legislative commissions. The Legislative Coordinating Commission (LCC) took over many of its duties under 1997 legislation. The topic of legislative rule review activities is discussed in a later chapter.

The most significant legislation affecting the APA since its 1957 enactment was 1975 Minnesota Laws Chapter 380. This act was the culmination of the extensive legislative committee activity in the mid-1970s. Although it focused on rulemaking, Chapter 380 had implications for all administrative activities in the executive branch of Minnesota government. Because the 1975 legislation continues to be the cornerstone of the current APA, its various provisions will be discussed in detail in later chapters. However, it is useful to summarize the provisions of Chapter 380 responding to the major concerns of legislators as set forth above:

1. The definition of agency statements to which the APA applied was refined considerably. Agency statements subject to APA rulemaking requirements were defined as those "of general applicability and future effect . . . made to implement or make specific the law enforced or administered by [the agency] or to govern its organization or procedure."⁴ The key elements of this definition stressed the nature of the statements themselves and did not rely on the agency's interpretation of those statements.
2. The number of exclusions from the APA was greatly reduced. In the past, there had always been APA exclusions. Some entire agencies, and particular activities of other agencies, were excluded from APA rulemaking procedures. The 1975 amendments greatly limited those exclusions and expressly applied the APA to every other agency in the executive branch, although some programs remained excluded.⁵

¹ 1974 Minn. Laws ch. 344, §1, at 577.

² *Id.*

³ 1974 Minn. Laws ch. 355, §69, at 629-30.

⁴ 1975 Minn. Laws ch. 380, § 1, at 1286.

⁵ 1975 Minn. Laws ch. 380, § 1, at 1286.

3. The rulemaking procedure itself was revised. These procedural changes lengthened the time period for rulemaking by expanding public notice requirements, requiring an agency to "make an affirmative presentation of facts establishing the need for and reasonableness of the rule," allowing the hearing record to be kept open for post-hearing comments, and ensuring adequate opportunity for the attorney general's review.⁶
4. Expanded use of the *State Register* was provided in order to improve public notice of proposed agency rulemaking.⁷ A number of other procedural changes also served to improve the opportunity for public input into the process (e.g., the requirement that agencies publish notice of their intention to seek outside opinion before drafting their proposed amendments).⁸
5. An independent office of hearing examiners (now the Office of Administrative Hearings) was created to respond to the criticisms of bias and lack of procedural consistency in the hearing process.⁹ Hearing examiners were required to have law degrees, and various hearing examiners from state agencies were transferred to the new office.¹⁰

As might be expected, Chapter 380 was not met with universal acclaim by executive branch agencies. New time and cost burdens were placed on them, and they lost the high degree of control formerly possessed over the rulemaking process. From the standpoint of the public and regulated constituencies, however, there were noticeable gains. Access to the rulemaking process was greatly expanded, new opportunities were added for public input into the process, and confidence began to grow in the new office of hearing examiners. Legislators also gained from the new procedures. With the increased public access, legislators were more likely to receive constituent complaints early enough in the process to allow them to exert formal or informal pressure to change the proposed rules. In addition, legislators more often appeared at rulemaking hearings to offer the hearing examiners their interpretations of legislative history on controversial points.

These rulemaking changes increased costs. Informal surveys taken by legislative staff persons one year after the adoption of Chapter 380 indicated the rulemaking process took, on the average, slightly more than six months. In addition, the cost of adopting a typical rule exceeded \$2,000 (not including agency personnel staff time). For those agencies typically involved in complex rulemaking (such as those regulating pollution or health care facilities), the time and cost increases were substantial. Agencies responded to the new changes in various ways. Some sought to cut back on their rulemaking, others engaged in a more subtle variety of "informal" rulemaking, and still others sought to obviate the need for rulemaking altogether by urging the enactment of regulatory standards by statute rather than by rule. However, most agencies simply learned to cope with the new requirements.

⁶ 1975 Minn. Laws ch. 380, § 2, at 1287.

⁷ *Id.*

⁸ 1975 Minn. Laws ch. 380, §3, at 1288.

⁹ 1975 Minn. Laws ch. 380, §16, at 1293.

¹⁰ *Id.*