Chapter 15. Judicial Review of Contested Cases

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15.1 Introduction

Judicial review of state agency actions in contested cases is most frequently accomplished under the Administrative Procedures Act (APA). Procedures for both obtaining review and limiting the scope of review are enumerated in the APA. Review under the APA is not exclusive, however: it does not prevent the use of other means of review or trial de novo, as may be provided by law.[1] Some statutes provide different procedures for, or avenues of, judicial review. Resort to extraordinary writs or injunctive or declaratory proceedings may also be necessary in some instances.[2]

A contested case is a judicial or quasi-judicial proceeding. For purposes of the APA, it is "a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing."[3] Actions of a legislative nature, quasi-legislative actions are also subject to judicial review, but a more limited scope of review gives the agency much greater latitude.[4] It is therefore to the advantage of the party challenging the agency action to have the action characterized as quasi-judicial rather than legislative. Quasi-legislative actions are not reviewable by writ of certiorari.[5] Instead quasi-legislative actions are reviewed by declaratory judgment actions.[6]

There is a presumption in favor of judicial review of agency decisions, even if no review is provided by statute.[7] Liberal interpretations of the "contested case" definition and of

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[1] Minn. Stat. § 14.63 (2021); *see Ramsey Cnty. v. Minn. Pub. Utils. Comm'n*, 345 N.W.2d 740, 743 (Minn. 1984).

[2] *Reetz v. City of Saint Paul*, 956 N.W.2d 238, 243 (Minn. 2021) ("When a statutory right to review a municipal body's quasi-judicial decision is lacking, certiorari is the exclusive method to seek judicial review."); *Dietz v. Dodge County*, 487 N.W.2d 237, 239 (Minn. 1992).

[3] Minn. Stat. § 14.02, subd. 3 (2021).

[4] *In re Request of Interstate Power Co. for Authority to Change Rates*, 574 N.W.2d 408, 413 (Minn. 1998) (limiting standard of review to whether agency exceeded its statutory authority); *St. Paul Area Chamber of Commerce v. Minn. Pub. Serv. Comm'n*, 312 Minn. 250, 262, 251 N.W.2d 350, 358 (1977).

[5] *Minnesota Ctr. for Envtl. Advocacy v. Metro. Council*, 587 N.W.2d 838, 842 (Minn. 1999)

[6] *Honn v. City of Coon Rapids*, 313 N.W.2d 409, 416 (Minn. 1981); *Anderson v. Cnty. of Lyon*, 784 N.W.2d 77, 81 (Minn. Ct. App. 2010) ("Quasi-legislative acts of an administrative agency affect the rights of the public generally; the validity or construction of an administrative agency's quasi-legislative act, like a claim of right under a contract, can be determined by a district court in a declaratory-judgment action.").

[7] *See Minn. Pub. Interest Research Grp. v. Minn. Envtl. Quality Council*, 306 Minn. 370, 381, 237 N.W.2d 375, 382 (1975) ("There is a presumption in favor of judicial review of agency decisions in the absence of statutory language to the contrary."); *Kleven v. Comm'r of Pub. Safety*, 399 N.W.2d 153, 155 (Minn. Ct. App. 1987) (recognizing that presumption of judicial review can be overcome where legislative intent of non- reviewability can be demonstrated); *Neujahr v. Ramsey Cnty. Civil Serv. Comm'n*, 370 N.W.2d 446, 448 (Minn. Ct. App. 1985) ("Preclusion of judicial review of administrative actions is not

appellate jurisdiction are followed in order to ensure a forum for review.[8]

15.2 Prerequisites to Judicial Review

Courts will not exercise jurisdiction to review an agency action if certain requirements of reviewability have not been satisfied. These include finality of the agency decision, exhaustion of administrative remedies, exercise of primary jurisdiction by the agency, ripeness of the decision for review, and standing of the party seeking review.

15.2.1 Finality

Judicial review is available under the APA of "a final decision in a contested case."[9] A proposed agency decision is not reviewable, nor are the findings and conclusions of an administrative law judge (ALJ), unless the ALJ's decision is final without further agency action.[10]

Under the APA, an application for reconsideration of the agency's action is not necessary in order that the action be final for purposes of review. However, If reconsideration is sought r the thirty-day period for commencing review proceedings does not begin to run until service of the order "finally disposing of the application for reconsideration."[11] If the agency's statute requires a petition for reconsideration as a precondition for judicial review, that provision supersedes the APA and the agency action is not final and not reviewable until reconsideration has been sought and acted upon.[12]

A final decision is also required in cases not subject to the APA.[13] The finality doctrine

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lightly inferred. The fact that a statute provides review of some acts is not sufficient to infer that other acts are not reviewable.").

[8] *Minn. Pub. Interest Research Grp.*, 306 Minn. at 380-81, 237 N.W.2d at 381-82; *Minn. Pub. Interest Research Grp. v. N. States Power Co.*, 360 N.W.2d 654, 656 (Minn. Ct. App. 1985).

[9] Minn. Stat. § 14.63 (2021)

[10] *Zizak v. Despatch Indus. Inc.*, 427 N.W.2d 755, 756 (Minn. Ct. App. 1988); *see, e.g.*, Minn. Stat. § 363A.29, subd. 7 (2014) (making final the ALJ's order in favor of respondent in Human Rights Act proceeding); *see also Bennett v. Spear*, 520 U.S. 154,177-79 (1997) (holding that Fish and Wildlife Service's "biological opinion" constitutes final agency action for APA purposes in citizen suit under Endangered Species Act because it reflects the consummation of the agency's decision-making process). *See also* Minn. R. 1400.8300 (2013).

[11] Minn. Stat. § 14.64 (2021); *see Little v. Arrowhead Reg'l Corr.*, 773 N.W.2d 344, 345-46 (Minn. Ct. App. 2009) (finding agency loses jurisdiction over a petition for reconsideration if, before the agency has issued a written decision on the petition, a timely certiorari appeal is taken and perfected pursuant to Minn. Stat. § 14.64 and the court of appeals acquires jurisdiction; however court of appeals may remand matter on which a petition for reconsideration is pending to reestablish the agency's jurisdiction over the petition for reconsideration); *Rodne v. Comm'r of Human Servs.*, 547 N.W.2d 440, 444 (Minn. Ct. pp. 1996) (finding determination by Commissioner on reconsideration was final, and agency decision reviewable by court of appeals by writ of certiorari). Interlocutory review of discovery rulings by writ of prohibition is discussed in § 8.5.3 of this text.

[12] *Matter of N. States Power*, 447 N.W.2d 614, 614 (Minn. Ct. App. 1989) (finding Minn. Stat. § 216B.27 requires petition for reconsideration of Public Utilities Commission action).

[13] *Thomas v. Ramberg*, 240 Minn. 1, 5-6, 60 N.W.2d 18, 20 (1953); *City of Richfield v. Local No. 1215*, 276 N.W.2d 42, 51 (Minn.1979) ("[i]t is fundamental that before judicial review of administrative

essentially assures that a court will not interfere with actions yet to be taken by the agency with the requisite expertise. The agency must first take some action that will affect the rights and obligations of the parties. The test of finality is not the name assigned by the agency to its action but is the "legal force or practical effect"[14] of the agency decision or the agency's expectation of compliance by those affected by its action.[15]

An agency's decision to assume jurisdiction of a case is not reviewable unless the entity seeking review can demonstrate irreparable injury flowing from the assertion of jurisdiction itself. The possibility of an adverse result or the cost of a hearing is not sufficient to demonstrate such injury.[16] Even an order denying intervention is not immediately appealable, but only appealable after a final order is issued.[17] This is because any "person aggrieved" is allowed to seek review of a final decision under the APA.[18]

15.2.2 Exhaustion of Administrative Remedies

Available administrative remedies must be exhausted before judicial review is commenced. This issue may arise when judicial relief is sought either before the agency takes any action or after some initial decision is made but before all intra-agency proceedings have been completed.[19]

The purposes of this doctrine are to prevent premature interference with agency processes, to allow the agency to function efficiently and have a chance to correct its own errors, to afford the parties and courts the benefits of the agency's expertise, and to compile a record that is adequate for judicial review.[20] It also conserves judicial time by obviating review before the agency has had a chance to grant the relief sought.[21]

Statutory exhaustion requirements create a jurisdictional bar, while judge-made

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proceedings will be permitted, the appropriate channels of administrative appeal must be followed")

[14] *FTC v. Standard Oil Co.*, 449 U.S. 232, 243 (1980).

[15] *Abbott Labs. v. Gardner*, 387 U.S. 136,150 (1967).

[16] *Thomas*, 240 Minn, at 7, 60 N.W.2d at 21-22.

[17] *Matter of Application by City of Rochester for an Adjustment of its Serv. Area Boundaries with Peoples Co-op. Power Ass'n, Inc.*, 524 N.W.2d 540, 542 (Minn. Ct. App. 1994)

[18] *Ramsey Cnty. V. Minnesota Pub. Utilities Comm'n*, 345 N.W.2d 740, 743 (Minn. 1984)

[19] *Uckun v. Minnesota State Bd. of Med. Prac.*, 733 N.W.2d 778, 785 (Minn. Ct. App. 2007) ("It is a long-settled rule that no one is entitled to injunctive protection against the actual or threatened acts of an administrative agency until all administrative remedies have been exhausted, unless exhaustion of administrative remedies will cause imminent and irreparable harm.") (internal quotations omitted). S. *Minn. Constr. Co. v. Minn. Dep't of Transp.*, 637 N.W.2d 339, 344 (Minn. Ct. App. 2002) (requiring contractor to allow agency to complete administrative enforcement of prevailing wage statute before appeal to court, even though enforcement by county attorney was also statutorily authorized); *Cntys. of Blue Earth v. Minn. Dep't of Labor & Indus.*, 489 N.W.2d 265, 269 (Minn. Ct. App. 1992) (concluding counties were required to exhaust administrative remedies prior to bringing action to enjoin enforcement of prevailing wage rate.); *Dodge v. Cedar-Riverside Project Area Comm.*, 443 N.W.2d 844, 847 (Minn. Ct. App. 1989).

[20] *Weinberger v. Salfi*, 422 U.S. 749, 765-66 (1975).

[21] *McCarthy v. Madigan*, 503 U.S. 140, 145 (1992) ("Exhaustion is required because it serves the twin purposes of protecting administrative agency authority and promoting judicial efficiency.")

exhaustion doctrines are likely to be subject to numerous exceptions. .[22] A challenge to agency standards for issuing a permit may proceed, for example, without first applying for the permit and having it rejected.[23]

There are important exceptions to the exhaustion rule. Exhaustion is not required if it would be futile, that is, when nothing can be accomplished by resorting to the administrative remedies.[24] This may occur when the agency is biased, has predetermined the issue,[25] or lacks the power to provide adequate relief.[26] If irreparable harm will result from pursuit of an administrative remedy and the agency proceeding is challenged on constitutional or jurisdictional grounds, exhaustion may not be required.[27] Speculative damages, however, such as the "apprehension that the final outcome of the administrative proceedings will be prejudicial," or that expense will be incurred in trying the matter before the agency,[28] will not suffice. The injury must be substantial in the sense that relief will be effectively denied if review is not granted, even if the injured party should successfully pursue the administrative remedy.[29] The United States Supreme Court has held that the exhaustion of administrative remedies doctrine will not defeat a declaratory judgment action in federal court where the only question presented is the constitutionality of a statute, which the agency could have no power to decide.[30]

A party does not have a right to a jury trial on the issue of exhaustion of administrative remedies, because exhaustion is a legal issue for the court.[31]

15.2.3 Primary Jurisdiction

The doctrine of primary jurisdiction is another impediment to obtaining judicial relief without waiting for agency action. It applies when an agency and a court have concurrent jurisdiction. If the issue is one that has "been placed within the special competence of an

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[22] *Ross v. Blake*, 578 U.S. 632, 136 S. Ct. 1850, 195 L. Ed. 2d 117 (2016)

[23] *N. Suburban Sanitary Sewer Dist. v. Water Pollution Control Comm'n*, 281 Minn. 524, 535, 162 N.W.2d 249, 256 (1968).

[24] *Starkweather v. Blair*, 245 Minn. 371, 395, 71 N.W.2d 869, 884 (1955); *Builders Assoc, of Minn.*, 819 N.W.2d 172, 177-78 (Minn. Ct. App. 2012) (holding that exhaustion is not required when there are no adequate administrative remedies); *Uckun v. State Bd. of Med. Practice*, 733 N.W.2d 778, 785-86 (Minn. Ct. App. 2007) (holding that the board decision to temporarily suspend physician did not make permanent suspension hearing futile); *Zaluckyj v. Rice Creek Watershed Dist.*, 639 N.W.2d 70, 74 (Minn. Ct. App. 2002) (finding landowner was required to exhaust his administrative remedy and produce a record before judicial review, despite landowner's claim that the agency administrative process was futile due to adverse agency policy).

[25] *See Gibson v. Berryhill*, 411 U.S. 564, 575 (1973).

[26] *See McShane v. City of Faribault*, 292 N.W.2d 253, 256 (Minn. 1980).

[27] State *ex rel. Sheehan v. Dist. Court*, 253 Minn. 462, 466, 93 N.W.2d 1, 4 (1958); *Thomas v. Ramberg*, 240 Minn. 1, 4-5, 60 N.W.2d 18, 20 (1953).

[28] *Thomas*, 240 Minn, at 5, 60 N.W.2d at 20.

[29] *Id*.

[30] *Public Utils. Comm'n v. United States*, 355 U.S. 534, 540 (1958). *Jones Bros., Inc. v. Sec'y of Lab.*, 898 F.3d 669, 674 (6th Cir. 2018) (holding there is no exhaustion requirement and thus no forfeiture penalty for failing to raise constitutional claims in front of an administrative body that cannot entertain it.)

[31] *Zaluckyj v. Rice Creek Watershed Dist.*, 639 N.W.2d 70, 73-74 (Minn. Ct. App. 2002).

administrative body," the court may defer to the agency for an initial decision.[32] The purpose of the rule is to ensure uniformity of interpretation of laws administered by agencies and to take full advantage of an agency's expertise.[33] Its application is not automatic, however. The court may decline to defer to the agency if the agency's determination would not necessarily aid the court[34] or if the question to be decided by the court differs from that which would be decided by the agency.[35] Even if an agency has special expertise in a particular area, that may not preclude other non-judicial officers from exercising jurisdiction. The court of appeals held that the Commissioner of Commerce did not have exclusive jurisdiction over the insurance industry because the Attorney General also has broad common law and statutory authority to bring lawsuits to protect Minnesota citizens.[36]

15.2.4 Ripeness

Generally, an agency action is ripe for judicial review if it imposes an obligation, expects compliance, denies a right, fixes a legal relationship, attaches a sanction for noncompliance, threatens prosecution or seizure, or has other immediate impact. [37]Otherwise, review is premature and will be denied. The purpose of the ripeness rule is "to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties."[38] The rule is most likely to be invoked when one seeks review of a rule, policy, or other legislative or discretionary decision that is not made in a judicial or quasi- judicial proceeding.

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[32] *United States v. W. Pac. R.R.*, 352 U.S. 59, 64 (1956). *But see State of Minn, ex rel Swan Lake Wildlife Assoc, v. Nicollet Cnty. Bd. of Comm'rs*, 711 N.W.2d 522, 5v. (Minn. Ct. App. 2006) (rejecting county's argument that district court lacked subject matter jurisdiction to hear claim under Minnesota Environmental Rights Act (MERA), because a claim could also be presented to the drainage authority under the administrative drainage procedures set out in statute; noting that MERA specifically stated it "shall be in addition to any administrative . . . rights and remedies now or hereafter available").

[33] Frank E. Cooper, State Administrative Law 574 (1965).

[34] *Int'l Travel Arrangers v. W. Airlines*, 623 F.2d 1255,1259-60 (8th Cir. 1980).

[35] *Minn.-Iowa Television Co. v. Watonwan T.V. ImprovemeT.V. s'n*, 294 N.W.2d 297, 303 (Minn. 1980); *see Siewert v. N. State Power*, 793 N.W.2d 272, 285 (Minn. 2011) (holding MPUC does not have sole jurisdiction over all possible claims against NSP, including damages and injunctive relief from nuisance).

[36] *State v. Am. Family Mut. Ins. Co.*, 609 N.W.2d 1, 3 (Minn. Ct. App. 2000).

[37] *See In re Quantification of Envtl. Costs*, 578 N.W.2d 794, 798-99 (Minn. Ct. App. 1998) (holding a matter involving PUC's setting of environmental cost values was ripe for review where there was extensive record and where utilities might suffer hardship); *see also* G. Joseph Vining, *Direct Judicial Review and the Doctrine of Ripeness in Administrative Law*, 69 MICH. L. REV. 1443 (1971).

[38] *Abbott Labs. v. Gardner*, 387 U.S. 136,148-49 (1967); State *ex rel. Friends of the Riverfront v. City of Minneapolis*, 751 N.W.2d 586, 592 (Minn.App.2008), *review denied* (Minn. Sept. 23, 2008) ("Ripeness is a justiciability doctrine designed to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies....").

15.2.5 Standing

Even if the agency action is final, administrative remedies have been exhausted, primary jurisdiction has been exercised, and the issue is ripe for review, the party seeking review must have standing. "Standing is the requirement that a party has a sufficient stake in a justiciable controversy to seek relief from a court."[39] The underlying purpose of the doctrine of standing and the various tests it has spawned is "to guarantee that there is a sufficient case or controversy between the parties so that the issue is properly and competently presented to the court."[40] Consistent with the presumption in favor of reviewability of agency actions, the standing requirement is liberally construed.

Under the APA, review is available in contested cases to "any person aggrieved" by a final decision.[41] Thus, while a contested case is defined as one that determines the rights, duties, or privileges of "specific parties,"[42] one need not be a party to obtain review of the agency decision.[43]

For purposes of standing, an "aggrieved party" is one who "is injuriously or adversely affected by the judgment or decree when it operates on his rights of property or bears directly upon his personal interest."[44] The word "aggrieved" refers to a substantial grievance, a denial of some personal or property right, or the imposition on a party of a burden or obligation.[45] This interpretation of "aggrieved" applies when seeking review of agency action, except that the aggrieved person does not have to be a party.[46] When an agency is acting pursuant to specific authority, a person has standing to challenge administrative procedure if they can show an interest arguably among those intended to be protected by the statute.[47] A mere "interest" in a

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[39] *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn.1996)

[40] *Twin Ports Convalescent, Inc. v. Minn. State Bd. of Health*, 257 N.W.2d 343, 346 (Minn. 1977) (quoting *Minn. State Bd. of Health v. City of Brainerd*, 241 N.W.2d 624, 628 (Minn. 1976)) (finding operator of ambulance service had standing to challenge validity of competitor's license).

[41] Minn. Stat. § 14.63 (2021).

[42] *Id*. § 14.02, subd. 3.

[43] *Ramsey Cnty. v. Minn. Pub. Utils. Comm'n*, 345 N.W.2d 740, 744 (Minn. 1984).

[44] *In re Implementation of Util. Energy Conservation Improvement Programs*, 368 N.W.2d 308, 311(Minn. Ct. App. 1985) (quoting *in re Getsug*, 290 Minn. 110,114,186 N.W.2d 686, 689 (1971))

[45] *Getsug*, 290 Minn, at 114,186 N.W.2d at 689. This case was decided under former provisions of the APA. The supreme court held that the agency was not an aggrieved party for purposes of appealing the district court's decision reversing the agency's own action. *Id*. at 115,186 N.W.2d at 689; *see also Mankato Aglime & Rock Co. v. City of Mankato*, 434 N.W.2d 490, 493 (Minn. Ct. App. 1989) ("A person who is injuriously or adversely affected by a judgment when it operates on his rights of property or bears directly upon his personal interest, is 'aggrieved' for the purposes of an appeal.").

[46] *Ramsey Cnty*., 345 N.W.2d at 744 (allowing nonparties to appeal as aggrieved persons; accepting at face value nonparties' assertion that they were aggrieved); *Implementation of Util. Energy Conservation*, 368 N.W.2d at 311.

[47] *In re Risk Level Determination of J.V.*, 741 N.W.2d 612, 614-615 (Minn. Ct. App. 2007) (finding relator not aggrieved by risk determination level where relator will suffer no harm arising out of the determination because community notification of his risk level is forbidden); *Mankato Aglime*, 434 N.W.2d at 492-93; *In re Minn. Joint Underwriting Ass'n*, 408 N.W.2d 599, 608 (Minn. Ct. App. 1987) ("Repeatedly throughout the statute, the words 'any person or entity' are used. This manifests an intent by the legislature to permit one class member to institute extended activation for the entire class."(citations omitted)).

problem considered in an agency proceeding does not confer standing on an individual or organization to seek review of the agency's decision. [48]

A liberal "injury-in-fact" test is applied in challenges to agency rule making.[49] To have standing in a declaratory judgment action to challenge an agency's rule, a petitioner must have a "direct interest" in the validity of the rule that is different from the interest of the citizenry in general.[50] Liberal interpretations of standing are also followed in other agency contexts.[51] Because there is a presumption in favor of reviewability of agency actions,[52] liberal standing determinations are likely in contested case appeals not governed by the APA.

Before the 1977 amendment to the APA, it was held that the agency was not "aggrieved" and did not have standing to appeal when it had acted in a quasi-judicial matter and its action had been reviewed by another agency or court.[53] Thus, absent express statutory authority, an agency could not seek review or modification of the decision of its own hearing examiner in those situations where the hearing examiner, rather than the agency, made the final decision.[54] Currently, if a statute makes an ALJ's decision binding on an agency that is a

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[48] *In re Sandy Pappas Senate Comm.*, 488 N.W.2d 795, 798 (Minn. 1992) (holding that a candidate in a primary election lacked standing to seek review of the Ethical Practices Board decision regarding opponent); *In* re Application of Dakota Telecomm. Grp., 590 N.W.2d 644, 647-48 (Minn. Ct. App. 1999) (concluding incumbent non-exclusive cable franchise holder did not have a legally cognizable injury and therefore lacked standing to challenge award of second cable franchise).

[49] *Snyder's Drug Stores v. Minn. State Bd. of Pharmacy*, 301 Minn. 28,32, 221 N.W.2d 162,165 (1974).

[50] *Rocco Altobelli, Inc. v. Dep't of Commerce*, 524 N.W.2d 30, 34 (Minn. Ct. App. 1994) (citing *Arens v. Vill. of Rogers*, 240 Minn. 386, 390, 61 N.W.2d 508, 512 (1953)) (holding that a hair salon lacked standing to challenge the Department of Commerce's rule providing tax exemptions to cosmetology chair leasing shops); *see* § 24.2 (discussing standing for judicial review).

[51] *See Minn. Pub. Interest Research Grp. v. Minn. Dep't of Labor & Indus.*, 311 Minn. 65, 72-73, 249 N.W.2d 437, 441 (1976).

[52] *Minn. Pub. Interest Research Grp. v. Minn. Envtl. Quality Council*, 306 Minn. 370,377,237 N.W.2d 375, 380 (1975).

[53] *Minn. State Bd. of Health v. Governor's Certificate of Need Appeal Bd.*, 304 Minn. 209, 217, 230 N.W.2d 176, 181 (1975); *In re Getsug*, 290 Minn. 110, 114, 186 N.W.2d 686, 689 (1971); *Town of Eagan v. Minn. Mun. Comm'n*, 269 Minn. 239, 240-41,130 N.W.2d 525, 526 (1964). The above cases were decided under Minn. Stat. § 15.0426 (1976), which provided, "An aggrieved party may secure a review of any final order or judgment of the district court under section 15.0424 or section 15.0425 by appeal to the supreme court." In 1977, the statute was amended to include an agency as an aggrieved party. 1977 Minn. Laws, ch. 443, § 5, at 1221. The revised statute, Minn. Stat. § 15.0426 (1978), provided, "An aggrieved party, including an agency which issued a decision or order in a contested case, may seek review ... by appeal to the supreme court." (Emphasis added.) Section 15.0426 was subsequently renumbered as Minn. Stat. § 14.70. When the renumbered statute was amended in 1983 with the creation of the court of appeals, the language of the statute omitted the reference to an agency as an aggrieved party. 1983 Minn. Laws, ch. 247, §§ 9, at 856, 219, at 964. The revised statute, Minn. Stat. § 14.63 (1984), provided, "Any person aggrieved by a final decision in a contested case is entitled to judicial review of the decision under the provisions of sections 14.63 to 14.68." (Emphasis added.) It is not clear whether the intention behind the 1983 amendment was to revert to pre-1977 law or simply to reflect that it was expected that in most cases there would be only one level of judicial appeal, with further appeal to the supreme court discretionary with that court.

[54] *Francis v. Minn. Bd. of Barber Exam'rs*, 256 N.W.2d 521, 524 (Minn. 1977); *Dakota Cnty. Abstract Co. v. Richardson*, 312 Minn. 353, 356, 252 N.W.2d 124,126-27 (1977); Minn. Dep't of Hwys. v. Minn. Dep't of Human Rights, 308 Minn. 158,164-65, 241 N.W.2d 310, 314 (1976). Minn. Stat. § 363.072 was amended in

party to the proceeding, the agency may obtain review by certiorari if it is aggrieved by the decision.[55]

15.3 Procedures for Obtaining Review

The vast majority of agency actions are subject to review in the court of appeals pursuant to the APA. However, some matters continue to have different procedures specified by statute, including review in the district court. One must therefore examine the applicable agency statute carefully instead of assuming that APA review will apply. On occasion, it may also be necessary to utilize one of the extraordinary writs or declaratory or injunctive relief.

15.3.1 Review Under the Administrative Procedure Act

Review is obtained in the court of appeals by the issuance of a writ of certiorari. Detailed procedures are contained in both the APA (Minnesota Statutes sections 14.63 to 14.68) and Minnesota Rule of Civil Appellate Procedure 115. Rule 115.01 states that the appeal period and the acts required to invoke appellate jurisdiction are governed by the applicable statute.[56] Section 14.64 provides that once the petition is served and filed, "the matter shall proceed in the manner provided by the rules of civil appellate procedure." Both the statutes and the rule should therefore be reviewed in detail.

A petition for the writ must be filed with the court of appeals and served on all parties to the contested case hearing within thirty days after the party receives the final decision and order of the agency.[57] The petition must be served on the agency personally or by certified mail. Proof of service must be filed with the clerk of appellate courts. A copy of the petition must be provided to the attorney general at the time it is served on the parties.[58]

1977 to permit appeals by the commissioner of human rights from adverse decisions of the ALJ (which are final under Minn. Stat. § 363A.29, subd. 7 (2014)), thus overcoming the decisions against prior appeal attempts in *Minn. Dep't of Hwys.*, 308 Minn, at 164-65, 241 N.W.2d at 314, and *Dakota Cnty. Abstract Co.*, 312 Minn, at 356, 252 N.W.2d at 126-27. *See* 1977 Minn. Laws, ch. 408, § 5, at 956.

[55] *In re Haymes*, 444 N.W.2d 257, 259 (Minn. 1989) (finding Racing Commission aggrieved by ALJ decision on attorney's fees under Equal Access to Justice Act).

[56] Rule 115.01 was amended in 1999 to conform with the APA, thereby eliminating ambiguity about whether the rule or statute controlled the timing to secure the writ. Previously, under Minn. Stat. § 14.63 (1998), the petition for writ of certiorari must have been filed with the court of appeals and served on the agency not more than 30 days after receipt of the agency's final decision and order, while rule 115 (effective through 1998) required that the writ be issued within 30 days after the date of mailing notice of the agency decision

[57] Minn. Stat. § 14.63 (2021). *But see supra* note 53 (discussing statutory amendments leading to the current iteration of Minn. Stat. § 14.63). Also, service of the petition for the writ on only the attorney for the agency is not sufficient and is a jurisdictional defect, since the agency itself must be served. *State v. Scientific Computers*, 384 N.W.2d 560, 561 (Minn. Ct. App. 1986).

[58] Minn. Stat. § 14.64 (2021); *Matter of Midway Pro Bowl Relocation Benefits Claim*, 937 N.W.2d 423, 427–28 (Minn. 2020))("The plain language of the statutes at issue here provides a deadline to serve the parties but no deadline to serve the agency.1 Specifically, we hold that judicial review under the Administrative Procedure Act is invoked by compliance with the provisions of section 14.63, and we also hold that the 30-day deadline in section 14.63 does not apply to the service requirement imposed by

The prescribed forms for the petition for writ of certiorari and for the writ are set forth in the Minnesota Rules of Civil Appellate Procedure.[59] The proposed writ must be filed with the petition.[60] Filing fees are prescribed in the rules.[61] No cost bond needs to be filed unless it is required upon motion for good cause pursuant to Rule 107.[62]

If a request for reconsideration by the agency is made within ten days after its decision and order, the thirty-day period to petition for a writ does not begin to run until service of the order finally disposing of the request for reconsideration. It is not necessary to seek reconsideration in order to file a petition for writ of certiorari.[63]

When the petition is properly filed, the petitioner is entitled as a matter of right to the issuance of the writ by the clerk of appellate courts.[64] Once the writ is issued, copies must be served personally or by certified mail on all parties to the agency proceeding. [65]On request of the petitioner, the agency must certify the names and addresses of all parties as disclosed by the record, and that certification is conclusive.[66] Proof of service on the agency must be filed with the clerk of appellate courts within seven days of service.[67] A copy of the writ must also be provided to the attorney general.[68]

Filing of the writ does not stay enforcement of the agency decision. It may be stayed, however, by the agency or by the court of appeals.[69] The request for a stay on a supersedeas bond must be first made to the agency, but the agency's decision is reviewable by the court of appeals.[70]

The agency must transmit to the court of appeals the original or a certified copy of its entire record within thirty days after service of the writ or at such later time as the court permits.[71] A stipulation by all parties to the review may serve to shorten the record, and any party unreasonably refusing to stipulate to limit the record may be taxed additional costs by the court.[72] Subsequent corrections or additions to the record may be required or permitted by the court.[73] The agency and all parties to the agency proceeding may participate in the review

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section 14.64.") *In re Risk Level Det. of J.M.T.*, 759 N.W.2d 406,408 (Minn. 2009) (stating that first-class mail is ineffective service under MAPA).

[59] Minn. R. Civ. App. P. 115.03, apps. 115A-B.

[60] *Id*. 115.02.

[61] *Id*. 115.02, subd. 3.

[62] *Id*., subd. 2.

[63] Minn. Stat. § 14.64 (2021).

[64] *Id*. § 606.06.

[65] *Id*. § 14.64.

[66] *Id*.

[67] Minn. R. Civ. App. P. 115.03, subd. 4.

[68] *Id.*

[69] Minn. Stat. § 14.65 (2014); *see DRJ, Inc. v. City of St. Paul*, 741 N.W.2d 141,145-46 (Minn. Ct. App. 2007) (holding city council's refusal to stay a liquor license revocation pending appeal does not constitute an abuse of discretion when it is supported by findings that reflect bar's past failure to comply with license conditions and a balancing of the potential harm to bar owner against potential harm to public).

[70] Minn. R. Civ. App. P. 115.03, subd. 2(b).

[71] Minn. Stat. § 14.66 (2021)

[72] *Id.*

[73] *Id*.

proceedings.[74]

Review by the court of appeals is confined to the record.[75] The matter may be referred by the court back to the agency for the taking of additional evidence if application is made, before the date set for hearing by the court, showing the need to present additional evidence.[76] It must be shown to the satisfaction of the court that the additional evidence is material and that there are good reasons that it was not presented in the agency proceeding.[77] After hearing the additional evidence, the agency may modify its findings and decision. It must file with the court of appeals the additional evidence and any modified findings or decision, which become part of the record for review.[78]

If it is alleged that there are irregularities in procedure that are not shown in the record, the court of appeals may transfer the case to the district court to take evidence and determine the alleged irregularities.[79] The transfer is to the district court for the county in which the agency has its principal office or the county in which the contested case hearing was held. The district court determination on procedural questions may be appealed to the court of appeals as in other civil cases.[80]

Costs and disbursements may be taxed by the prevailing party, but not for or against the agency whose decision is reviewed.[81] The court may award double costs to the prevailing party if the writ was brought for the purpose of delay or vexation.[82] If the writ is issued improperly or not served as required, it may be discharged on the filing of an appropriate motion.[83]

The first review of an agency decision that is commenced must be decided before any subsequent appeals from the same decision involving the same subject matter may be heard.[84]

The court of appeals requires strict compliance with the filing deadlines and jurisdictional requirements. Jurisdiction of the court of appeals is exclusive, and a petition erroneously filed in the district court may not subsequently be filed in the court of appeals if the thirty-day filing deadline has passed.[85]

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[74] *Id.* § 14.64

[75] *Id.* § 14.68

[76] *Id.* § 14.67

[77] *Id*.

[78] *Id.*

[79] *Id*. § 14.68. *But see in re Dakota Cnty. Mixed Mun. Solid Waste Incinerator*, 483 N.W.2d 105,106 (Minn. Ct. App. 1992) (finding transfer to district court for testimony and evidence on alleged procedural irregularities inappropriate where permit applicants failed to show that information became known only after agency proceedings).

[80] Minn. Stat. § 14.68 (2021)

[81] Minn. R. Civ. App. P. 115.05

[82] *Id*.

[83] *Id*. 115.06.

[84] Minn. Stat. § 14.65 (2014).

[85] *Davis v. Minn. Dep't of Human Rights*, 352 N.W.2d 852, 853-54 (Minn. Ct. App. 1984). Similarly, if a party asks an agency to reconsider its decision twice (when the second request is not authorized in statute or rule) and then files a certiorari appeal after the appeal period from the agency's final decision has expired, the appeals will be dismissed as untimely. The filing of the second request for reconsideration, and the agency's second denial of reconsideration, does not extend the appeal period from the original (and final) agency decision. *Hickman v. Comm'r of Human Servs.*, 682 N.W.2d 697,700-01 (Minn. Ct. App. 2004).

15.3.2 Non-APA Statutory Review Procedures

15.3.2(1) In the Court of Appeals

There are some situations in which review lies in the court of appeals without reference to the APA. In most of these cases, review is by certiorari,[86] with procedures governed by Minnesota Statutes chapter 606 and rule 115 of the Minnesota Rules of Civil Appellate Procedure.[87] Other statutes prescribe review by the court of appeals pursuant to a "notice of appeal" to be disposed of as in other civil cases,[88] a "petition,"[89] or simply "as in other civil cases."[90]

15.3.2(2) In the District Court

There are still several instances in which review is obtained in the district court rather than the court of appeals. District court review has been retained in those instances in which the existing statute provides for a de novo review.[91] This has been based on the rationale that appellate type review of agency actions should lie in the court of appeals, while de novo proceedings should remain in the district court where fact-finding functions are traditionally performed.[92] The Minnesota Supreme Court, however, has viewed with disfavor statutes which specify trials de novo and which attempt to confer original jurisdiction on trial courts over policy matters which are the responsibility of the legislative and executive branches.[93] Constitutional principles of separate governmental powers require that the judiciary refrain

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[86] Minn. Stat. §§ 268.105, subd. 7 (appeals from unemployment insurance determinations), 480A.06, subd. 3 (court of appeals jurisdiction) (2014); *Zahler v. Dep't of Human Servs.*, 624 N.W.2d 297, 300-01 (Minn. Ct. App. 2001) (reviewing maltreatment decision by the Commissioner, governed by Minn. Stat. § 256.045, under Minn. Stat. § 14.69 of the APA; finding the hearing, before a human services referee, was not an APA hearing).

[87] *Rodne v. Comm'r of Human Servs.*, 547 N.W.2d 440, 444 (Minn. Ct. App. 1996) (finding commissioner's determination on reconsideration of license disqualification was final decision reviewable by court of appeals by writ of certiorari).

[88] Minn. Stat. § 270C.925 (2014) (commissioner of revenue).

[89] *Id*. § 273.16 (commissioner of revenue).

[90] *Id*. §§ 253B.19, subd. 5, .23, subd. 7 (proceedings under Commitment Act).

[91] *Id*. §§ 3.737, subd. 4(c) (commissioner of agriculture, compensation for destroyed livestock), 49.18 (Commissioner of commerce, assessments against stockholders), 116.072 subd. 7(commissioner of pollution control agency, administrative penalties), 116B.10 subd. 3 (commissioner of pollution control agency, environmental rights civil actions), 53C.03(d) (commissioner of transportation, motor vehicle sales finance licenses), 246.55 (Commissioner of human services, patient care charges in state hospitals). 256.045 subd. (Commissioner of human services, fair hearing review)

[92] Samuel L. Hanson, *The Court of Appeals and Judicial Review of Agency Action*, 10 Wm. Mitchell L. Rev. 645, 658-59 (1984); *see Arrowhead Concrete Works, Inc. v. Williams*, 550 N.W.2d 883, 886-87 (Minn. Ct. App. 1996) (holding that the district court erred when it applied deferential arbitrary and capricious standard of review to Commissioner's decision instead of de novo review as required by Minn. Stat. § 116.072, subd. 7(b)).

[93] *White Bear Lake Restoration Ass'n ex rel. State v. Minnesota Dep't of Nat. Res.*, 946 N.W.2d 373, 382 (Minn. 2020) *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808,824 (Minn. 1977); *see also Dokmo v. Indep. Sch. Dist. No. 11*, 459 N.W.2d 671, 674 (Minn. 1990).

from de novo review of administrative decisions.[94] Through certiorari, constitutional guarantees are protected when a reviewing court exercises only limited jurisdiction over the decisions of administrative agencies.[95]

There are nevertheless situations in which review is obtained on the record in the district court pursuant to specific statutes that were not changed to require review in the court of appeals.[96] Some statutes prescribe district court review without reference to the manner or scope of review.[97]

The Minnesota court of appeals has held that evidence not contained in the administrative record and submitted for the first time to the district court on review may be considered for limited purposes only.[98] The court may consider evidence outside the administrative record when (1) the agency's failure to explain its action frustrates judicial review; (2) additional evidence is necessary to explain technical terms or complex subject matter involved in the agency action; (3) the agency failed to consider information relevant to making its decision; or (4) plaintiffs make a showing that the agency acted in bad faith.[99] If the evidence submitted outside the administrative record demonstrates that the agency's effort was clearly inadequate or that the agency failed to set forth widely shared scientific views, the court's proper function is to remand to the agency for correction of the agency's errors.[100]

15.3.3 Extraordinary Writs

The writs of certiorari, mandamus, prohibition, and quo warranto are governed by statutes, by the rules of civil procedure, and by the rules of civil appellate procedure.[101] The writ

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[94] *Dokmo*, 459 N.W.2d at 674 (reiterating that the only method of appealing school board decisions on teacher related matters are by writ of certiorari); *see*, e.g., *Zweber v. Credit River Twp.*, 882 N.W.2d 605, 611 (Minn. 2016) (holding that a writ of certiorari may be appropriate even when an adequate statutory remedy exists) *Tischer v. Hous. & Redev. Auth. of Cambridge*, 693 N.W.2d 426,429-31 (Minn. 2005) (holding that the sole remedy for a claim of wrongful discharge of a public employee is to the court of appeals by certiorari; noting that de novo review in district court would not allow appropriate deference to the administrative decision).

[95] *Dokmo*, 459 N.W.2d at 674; *see also Dietz v. Dodge Cnty.*, 487 N.W.2d 237, 239 (Minn. 1992); *Mowry v. Young*, 565 N.W.2d 717, 720 (Minn. Ct. App. 1997); *Zuehlke v. Indep. Sch. Dist. No. 316*, 538 N.W.2d 721, 725 (Minn. Ct. App. 1995).

[96] Minn. Stat. § 44.09, subd. 3 (2021) (municipal personnel boards, suspension or discharge of employees).

[97] *Id*. § 237.20 (public utilities commission); *see City of Chaska v. Chaska Twp.*, 271 Minn. 139, 141, 135 N.W.2d 195,197 (Minn. 1965).

[98] *Matter of Issuance of Air Emissions Permit No. 13700345-101 for PolyMet Mining, Inc., City of Hoyt Lakes, St. Louis Cnty., Minnesota*, 955 N.W.2d 258, 269 (Minn. 2021) ("Supplementing the record can be appropriate for a limited class of documents which should have been considered by the [agency] in reaching the challenged decision.") *White v. Minn. Dep't of Natural Res.*, 567 N.W.2d 724, 734-35 (Minn. Ct. App. 1997) (finding evidence submitted outside the administrative record did not establish a material question of fact regarding whether the DNR clearly failed in its responsibility to prepare an environmental assessment worksheet). *see also Nat'l Audubon Soc. v. Minn. Pollution Control Agency*, 569 N.W.2d 211, 216 (Minn. Ct. App. 1997).

[99] *White*, 567 N.W.2d at 735.

[100] *Id.* (citing , 267 N.W.2d 720, 723 (Minn.1978)).

[101] Extraordinary writs are discussed exhaustively in Stefan A. Riesenfeld, John A. Bauman &

most likely to be used for purposes of reviewing an agency action already taken is the writ of certiorari.

15.3.3(1) Certiorari

Review under the APA, as discussed in § 15.3.1, is accomplished by writ of certiorari to the court of appeals, and other statutes prescribe certiorari review by the court of appeals for particular cases. Certiorari is also the usual method for reviewing the action of an agency that has acted in a judicial or quasi-judicial capacity when no other avenue of review is prescribed.[102] However, the Minnesota Supreme Court decided that the Metropolitan Council's approval of a bridge project was not a quasi-judicial decision and was therefore not reviewable by writ of certiorari. The Court summarized the three indicia of quasi-judicial actions as follows: (1) investigation into a disputed claim and weighing of evidentiary facts; (2) application of those facts to a prescribed standard; and (3) a binding decision regarding the disputed claim.[103]

Richard C. Maxwell, *Judicial Control of Administrative Actions by Means of the Extraordinary Remedies in Minnesota*, 33 Min. L. Rev. 569 (1949), 36 Minn. L. Rev. 435 (1952), and 37 Minn. L. Rev. 1 (1952); and in Duncan H. Baird, *Judicial Review of Administrative Procedures in Minnesota*, 46 Minn. L. Rev. 451 (1962).

[102] *See Nelson v. Schlener*, 859 N.W.2d 288, 292 (Minn. 2015) (holding that certiorari review is available asbsent stautotry authority for a different process but finding that Minn. Stat. § 3.736 provides a process for determining of a purported state-employee tortfeaser was acting within the scope of their state employment.), *Willis v. Cnty. of Sherburne*, 555 N.W.2d 277, 282-83 (Minn. 1996) (finding, absent statutory authority for different process, county employee may contest discharge only by certiorari; but finding defamation and disability discrimination claim not limited to review by certiorari), *City of Shorewood v. Metro. Waste Control Comm'n*, 533 N.W.2d 402, 404 (Minn. 1995) (holding writ of certiorari exclusive mechanism for obtaining judicial review of methodology used to calculate sewage disposal costs), *Dietz v. Dodge Cnty.*, 487 N.W.2d 237, 239 (Minn. 1992) (concluding review by certiorari appropriate in wrongful discharge of county employee); *In re Haymes*, 444 N.W.2d 257, 259 (Minn. 1989) (concluding Racing Commission, aggrieved by binding decision of ALJ, could obtain review by certiorari; but dismissing, finding petition for discretionary review was unauthorized), *W. Area Bus. & Civic Club v. Duluth Sch. Bd.*,324 N.W.2d 361, 364 (Minn. 1982); *Mahnerd v. Canfield*, 297 Minn. 148, 152, 211 N.W.2d 177, 179 (1973). *Univ, of Minn. v. Woolley*, 659 N.W.2d 300, 303-04 (Minn. Ct. App. 2003) (determining discharged University employee lost right to review by certiorari by moving from a step 3 panel decision (the final administrative decision) to a step 4 arbitration); *Lund v. MNSCU*, 615 N.W.2d 420, 423-24 (Minn. Ct. App. 2000) (holding district court lacked authority to issue a writ of mandamus to a teacher denied a license by MNSCU since the decision was quasi-judicial in nature and therefore reviewable only by certiorari to the court of appeals); *Mowry v. Young*, 565 N.W.2d 717, 720 (Minn. Ct. App. 1997) (finding writ of certiorari the exclusive method to obtain judicial review of police reserve member's termination); *Micius v. St. Paul City Council*, 524 N.W.2d 521, 522-23 (Minn. Ct. App. 1994) (finding writ of certiorari only available method to obtain judicial review of city council's liquor license denial). *Bahr v. City of Litchfield*, 404 N.W.2d 381, 384 (Minn. Ct. App. 1987) (reviewing certiorari action of city police civil service commission: holding while the writ is discretionary, it should issue when the proceedings to be reviewed are strictly legal in nature and when no other avenue of appeal is available).

[103] *Minn. Ctr. for Envtl. Advocacy v. Metro. Council*, 587 N.W.2d 838, 842 (Minn. 1999); *see also Minnesota Dep't of Nat. Res. v. Chippewa/Swift Joint Bd. of Commissioners*, 925 N.W.2d 244, 246 (Minn. 2019); *Anderson v. Cnty. of Lyon*, 784 N.W.2d 77, 81 (Minn. Ct. App. 2010) (finding County Board's decision was not quasi-judicial); *Cnty. of Martin v. Minn. Cntys. Ins. Trust*, 658 N.W.2d 598, 602 (Minn. Ct. App. 2003) (Finding joint powers board formed to provide self-insurance to counties was not an executive body whose decisions are subject to review by certiorari).

Certiorari is not available to review legislative or purely ministerial acts of administrative agencies or officers.[104] And it is not a choice that is available when another method of appeal is provided[105] unless the statute makes optional the procedure to be followed in obtaining review.[106]

Review by certiorari is limited to the record of the proceeding before the agency.[107] Unless otherwise prescribed by statute or appellate rule, the writ must be issued and served within sixty days after receipt of notice of the action to be reviewed.[108] "Due notice" under Minnesota Statutes section 606.01 requires, at a minimum, written notice that is reasonably calculated to reach the person affected.[109] The prevailing party on a writ of certiorari shall be entitled to an award of costs against the adverse party, and the court of appeals may award double costs if the writ is brought for the purpose of "delay or vexation."[110] The writ may be dismissed, with costs and disbursements awarded, if it is issued contrary to the provisions of chapter 606 or not served within sixty days.[111] Writs of certiorari may be issued by the district courts,[112] the court of appeals,[113] and the supreme court.[114] The writ is rarely issued by the supreme court, except that certiorari review in the supreme court is prescribed for decisions of the workers' compensation court of appeals[115] and the tax court. [116] Rules 115 and 116 of the

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[104] *Mahnerd*, 297 Minn, at 152,211 N.W.2d at 179; *Minn. Chapter of Associated Builders & Contractors, Inc. v. Bd. of Educ. of Minnetonka Indep. Sch. Dist. No. 276*, 567 N.W.2d 761, 762-63 (Minn. Ct. App. 1997) (Finding certiorari not available to review school board's decision to require construction contractors to be bound by project labor agreement where decision was not quasi-judicial); *Press v. City of Minneapolis*, 553 N.W.2d 80, 84-85 (Minn. Ct. App. 1996) (finding district court had jurisdiction to consider landowners' challenges to city inspection department's work orders and interpretation of ordinance); *see Zweber* 882 N.W.2d at 609 (finding that 42 U.S.C. § 1983 claims must be brought in district court rather than the court of appeals via certiorari), *Handicraft Block, Ltd. v. City of Minneapolis*, 611 N.W.2d 16, 20 (Minn. 2000) (finding Heritage Preservation Commission decision was not legislative but was quasi-judicial and therefore reviewable by writ of certiorari); *cf. Dead Lake Ass'n, Inc. v. Otter Tail Cnty.*, 695 N.W.2d 129,134-35 (Minn. 2005) (finding court lacked jurisdiction to hear attack on validity of zoning ordinance by writ of certiorari because zoning decisions are legislative in nature and therefore must first be litigated in district court by a declaratory judgment action).

[105] *Waters v. Putnam*, 289 Minn. 165,170,183 N.W.2d 545, 549 (1971).

[106] *Bryan v. Cmty. State Bank of Bloomington*, 285 Minn. 226, 230-31,172 N.W.2d 771, 774 (1969).

[107] *W. Area Bus. & Civic Club*, 324 N.W.2d at 365; *see also Dokmo v. Indep. Sch. Dist. No. 11*, 459 N.W.2d 671, 675-76 (Minn. 1990)

[108] Minn. Stat. §§ 606.01-.02 (2014).

[109] *Bahr v. City of Litchfield*, 420 N.W.2d 604, 607 (Minn. 1988) (finding posted notice sufficient when civil service candidates were told notice would be posted and the candidates actually read the posted notice); *Sorenson v. Lifestyle, Inc.*, 674 N.W.2d 439, 441 (Minn. Ct. App. 2004) (finding, despite employer argument that services of a copy of writ petition on employer's attorney was ineffective because unemployment appeal statute required service on an "involved party," that service of the writ petition was governed by Minn. R. Civ. App. P. 125.02, which required service upon attorney where party was represented by counsel).

[110] Minn. Stat. § 606.04 (2021).

[111] *Id*. § 606.05

[112] *Id*. § 484.03.

[113] *Id*. § 480A.06, subd. 3.

[114] *Id*. § 480.04.

[115] *Id*. § 176.471 subd. 1 (special provisions for this certiorari proceeding).

[116] *Id*. § 271.10 subd. 1 (special provisions for this certiorari proceeding).

rules of civil appellate procedure govern certiorari proceedings in the court of appeals and supreme court, respectively, unless different procedures are prescribed by statute.

The question remains whether the district courts retain any certiorari jurisdiction. Historically, this writ was usually issued in the district courts rather than the supreme court, because the former were the courts of general jurisdiction.[117] This is no longer the case. Since the creation of the court of appeals, most statutes providing for on-the-record review of state agency actions have been amended to require certiorari review in the court of appeals. Moreover, the APA is now a catchall statute that requires court of appeals review of state agency actions for which no other statutory review procedure is prescribed.

In regard to local agencies, there was initially no legislative effort to direct review of their decisions to the court of appeals. In 1985, Minnesota Statutes section 480A.06, subdivision 3, was amended to provide for certiorari review in the court of appeals of decisions of all agencies and officials. Even before this amendment, however, the court of appeals asserted jurisdiction over local agency actions and deemed its jurisdiction to be exclusive.[118] Minnesota Statutes section 606.01 provides a 60-day deadline for issuance of the writ.[119]

15.3.3(2) Mandamus

The writ of mandamus may be used "to compel the performance of an act which the law specially enjoins as a duty."[120] It may require the agency "to exercise its judgment or proceed to the discharge of any of its functions," but it does not provide a means of controlling discretion or reviewing an action once it is taken.[121] When an official has some discretion on how to perform a duty, mandamus may compel that the official exercise that discretion but may not control how that discretion is exercised.[122] The writ will not issue when there is an adequate remedy at law,[123] and the courts are hostile to its use as a "judicial short-cut."[124]

The district courts have exclusive jurisdiction over writs of mandamus except when the

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[117] *See Tierney v. Dodge*, 9 Minn. 166,166 (1864).

[118] *See, e.g.*, *Grinolds v. Indep. Sch. Dist. No. 597*, 366 N.W.2d 667, 669 (Minn. Ct. App. 1985). *But see Blanding v. Sports & Health Club*, 373 N.W.2d 784, 793-96 (Minn. Ct. App. 1985) (Foley, J., dissenting) (Arguing against asserting exclusive jurisdiction over review of local agency actions). Certiorari review of a local agency action occurred in the district court, however. *See Bahr v. City of Litchfield*, 404 N.W.2d 381,383 (Minn. Ct. App. 1987), rev'd, 420 N.W.2d 604 (Minn. 1988); *see also Lund v. MNSCU*, 615 N.W.2d 420, 424 (Minn. Ct. App. 2000).

[119] Minn. R. Civ. App. P. 115.01 was amended in 1999, deleting a 30-day deadline so that the statute now clearly controls. *See supra* note 56 (discussing the 1999 amendment).

[120] Minn. Stat. § 586.01 (2014).

[121] *Id.*; *Pelican Grp. of Lakes Improvement Dist. v. MDNR*, 589 N.W.2d 517, 519 (Minn. Ct. App. 1999) (Denying writ of mandamus because DNR was not under a clear duty to require a permit for construction of a culvert designed to increase drainage from a lake); *Northwoods Envtl. Inst. v. Minn. Pollution Control Agency*, 370 N.W.2d 449, 451 (Minn. Ct. App. 1985); *Friends of Animals & Their Env't v. Nichols*, 350 N.W.2d 489, 491 (Minn. Ct. App. 1984) ("Mandamus will only issue to compel the performance of an act which the law specifically requires to be performed as a duty. It is not available to review an agency's exercise of discretion. It will, however, issue to set discretion in motion.").

[122] *Minnesota Voters All. v. Cnty. of Ramsey*, 971 N.W.2d 269, 275 (Minn. 2022)

[123] Minn. Stat. § 586.02 (2021).

[124] *Waters v. Putnam*, 289 Minn. 165,172,183 N.W.2d 545, 550 (1971).

writ is to be directed to a district court or a judge thereof, or to the court of appeals or a judge thereof, in which case the writ must issue from the court of appeals or supreme court respectively.[125]

Statutory provisions governing the writ of mandamus are in Minnesota Statutes chapter 586. These provisions control over conflicting provisions in the rules of civil procedure.[126] Additional provisions governing mandamus from the court of appeals and supreme court are in rules 120 and 121 of the rules of civil appellate procedure.

15.3.3(3) Prohibition

The writ of prohibition may be used to restrain an agency from acting on a matter that is beyond its authority or in which it lacks jurisdiction. It is not a means of reviewing an agency action after it is taken.[127] The writ is available when the agency is taking or about to take judicial or quasi-judicial action, the agency is or will be exceeding its authority or jurisdiction, the petitioner has no other adequate remedy, and the petitioner will be irreparably injured.[128]

This writ is not among those listed in Minnesota Statutes section 484.03 as being within the jurisdiction of the district courts. It is within the jurisdiction of the supreme court.[129] Although it is not identified explicitly as being within the jurisdiction of the court of appeals,[130] appellate rule 120 contemplates the issuance of such writs by the court of appeals, at least with respect to actions of lower courts. It is consistent with the policies behind the creation of the court of appeals and the exercise by the court of appeals of its certiorari jurisdiction[131] to anticipate that the court of appeals would issue writs of prohibition to government agencies and officials.[132]

15.3.3(4) Quo Warranto

This writ is designed "to correct the usurpation, misuser, or nonuser of a public office." It is intended to challenge an ongoing and unauthorized exercise of official or corporate power.[133] Although it is generally not available to review an agency action, it has been used to

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[125] Minn. Stat. § 586.11 (2021). The court of appeals has considered on its merits, however, a petition filed directly with it to compel action by a state agency. *Northwoods Envtl. Inst.*, 370 N.W.2d at 451.

[126] Minn. R. Civ. P. 81.01(a)

[127] *In re Giblin*, 304 Minn. 510, 510, 232 N.W.2d 214, 215 (Minn. 1975).

[128] *In re Leslie v. Emerson*, 889 N.W.2d 13, 14 (Minn. 2017); *Richardson v. Sch. Bd. of Indep. Sch. Dist. No. 271*, 297 Minn. 91,93,210 N.W.2d 911, 913 (1973). State *ex rel. Adent v. Indus. Comm'n*, 234 Minn. 567, 569, 48 N.W.2d 42, 43-44 (1951).

[129] Minn. Stat. § 480.04 (2021).

[130] *See id*. § 480A.06.

[131] *See supra* § 15.3.3(1) in this chapter (discussing certiorari under the APA).

[132] But the 1998 amendments to Minn. R. Civ. App. P. 120 do not explicitly recognize its application to agencies.

[133] *Save Lake Calhoun v. Strommen*, 943 N.W.2d 171, 174 (Minn. 2020) State *ex rel. Danielson v. Vill. of Mound*, 234 Minn. 531, 542, 48 N.W.2d 855, 863 (1951); State *ex rel. Sviggum v. Hanson*, 732 N.W.2d 312,320 (Minn. Ct. App. 2007) (concluding quo warranto proceedings are not available to test the constitutionality of a completed disbursement of public funds).

review an annexation proceeding.[134] It is not available if there is an adequate legal or equitable remedy.[135] This writ is among those within the express jurisdiction of both the district courts[136] and the supreme court.[137] The supreme court has directed the writ to be filed in districts court in the first instance.[138] No specific mention is made of it in the statute defining the jurisdiction of the court of appeals.[139] Despite the statutory provisions, however, the writ has not been abolished for purposes of the rules of civil procedure,[140] while there is no reference to it in the rules of civil appellate procedure.

15.3.4 Injunctive and Declaratory Relief

Injunctive relief is not ordinarily available to review actions already taken by administrative agencies. The right to review of the merits of an agency action under the APA or other certiorari or statutory proceedings is normally, though not always,[141] an adequate remedy that would preclude injunctive proceedings. If an injunction is sought before the completion of action by the agency, one will encounter the doctrines of finality and exhaustion of administrative remedies.[142]

A declaratory judgment is a broad and flexible remedy, not encumbered, for example, with the requirements that there be no other adequate remedy or that there be irreparable injury. The only substantial prerequisite is that there be a justiciable controversy. When there is an established statutory avenue of review for an agency action already taken, however, that avenue is exclusive, and declaratory judgment is not appropriate.[143] Declaratory judgment is useful, and perhaps even the prescribed procedure, when challenging agency actions other than those categorized as contested cases.[144] All injunctive and declaratory judgment

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[134] *Danielson*, 234 Minn, at 542, 48 N.W.2d at 863.

[135] *Id*. at 539, 48 N.W.2d at 861.

[136] *Save Lake Calhoun*, 943 N.W.2d. at 174, *Rice v. Connolly*, 488 N.W.2d 241, 244 (Minn. 1992), Minn. Stat. § 484.03 (2014).

[137] Minn. Stat. § 480.04. Quo warranto proceedings were brought in the supreme court in *Latola v. Turk*, 310 Minn. 395, 396, 247 N.W.2d 598, 598 (1976), State *ex rel. Palmer v. Perpich*, 289 Minn. 149,149,182 N.W.2d 182,182 (1971), and *Danielson*, 234 Minn, at 534, 48 N.W.2d at 858.

[138] *Save Lake Calhoun*, 943 N.W.2d. at 174

[139] *See* Minn. Stat. § 480A.06 (2014).

[140] Minn. R. Civ. P. 81.01(b) was abrogated by 1997 amendment. As the 1996 advisory committee stated, "the rule was abrogated to reflect the decision of the Minnesota Supreme Court in *Rice v. Connolly*, 488 N.W.2d 241,244 (Minn. 1992), in which the court held: '[W]e have determined that quo warranto jurisdiction as it once existed in the district court must be reinstated and that petitions for the writ of quo warranto and information in the nature of quo warranto shall be filed in the first instance in the district court.' . . . The continued existence of a rule purporting to recognize a procedural remedy now expressly held to exist can only prove misleading or confusing in future litigation. Abrogation of the rule is appropriate to obviate any lack of clarity." Minn. R. Civ. P. 81.01 advisory comm. cmt. - 1996 amend, (emphasis added).

[141] *See Miller v. City of St. Paul*, 363 N.W.2d 806, 810 (Minn. Ct. App. 1985).

[142] *Thomas v. Ramberg*, 240 Minn. 1, 6, 60 N.W.2d 18, 21 (1953).

[143] *Town of Stillwater v. Minn. Mun. Comrn'n*, 300 Minn. 211, 218, 219 N.W.2d 82, 87 (1974).

[144] *See, e.g., ch. 24 (discussing Judicial Review of Rules); see also AAA Striping Serv. Co. v. MNDOT*, 681 N.W.2d 706, 714-15 (Minn. 2004).

proceedings, except for judicial review of rules, must originate in the district court.[145]

15.4 Scope of Review

This section will focus on the scope of review provided under section 14.69 of the APA. Virtually all appellate review of state agency actions is now expressly pursuant to this statute. Even before the 1983 amendments directing judicial review through the APA,[146] the Minnesota Supreme Court had established a policy of applying the APA scope of review to decisions of all state agencies, even those with apparently conflicting appeal statutes, unless a particular statute expressly required a trial de novo.[147]

15.4.1 Section 14.69: Generally

Minnesota Statutes, section 14.69 (2014), provides in its entirety as follows:

> In a judicial review under sections 14.63 to 14.68, the court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences,
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> conclusion, or decisions are:
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> (a) in violation of constitutional provisions; or
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> (b) in excess of the statutory authority or jurisdiction of the agency; or
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> (c) made upon unlawful procedure; or
>
> (d) affected by other error of law; or
>
> (e) unsupported by substantial evidence in view of the entire record as submitted; or

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[145] *E.g.*, Minn. Stat. §§ 103G.2243, subd. 3 (review of wetland protection plans), 103D.537 (appeal of watershed district permit decisions) (2014); *see also Bd. of Chiropractic Exam'rs v. Cich*, 788 N.W.2d 515,520 (Minn. Ct. Ap. 2010) (holding that the district court lacked authority to grant injunction in excess of statute).

[146] 1983 Minn. Laws, ch. 247, §§ 9, at 856,17, at 859, 23, at 863, 28, at 869, 54, at 878, 60, at 883,144, at932.

[147] *Sunstar Foods v. Uhlendorf*, 310 N.W.2d 80, 84 (Minn. 1981); *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 822-27 (Minn. 1977); *Minneapolis Van & Warehouse Co. v. St. Paul Terminal Warehouse Co.*, 288 Minn. 294, 297-98,180 N.W.2d 175,177 (1970); *see also Fisher Nut Co. v. Lewis*, 320 N.W.2d 731, 733-34 (Minn. 1982); *In re Nw. Bell Tel. Co.*, 310 Minn. 146,148-49, 246 N.W.2d 28, 30 (1976). The scope of review in certiorari proceedings not governed by the APA is set forth in *Western Area Business & Civic Club v.Duluth School Board*, 324 N.W.2d 361, 365 (Minn. 1982) (citations omitted):

> The standard of review is narrow. The trial court must determine, through an examination of the entire record before the Board, only whether the Board had jurisdiction, whether it acted within those jurisdictional bounds and whether the evidence furnished any legal and substantial basis for the action taken. The trial court must not put itself in the place of the Board, try the matter de novo and substitute its findings for those of the Board. On appeal to this court, our function is to make an independent examination of the Board's record and decision and to arrive at our own legal conclusions without according any special deference to the trial court's review.

(f) arbitrary or capricious.

Pursuant to section 14.69, the court of appeals may affirm, remand, reverse, or modify the agency decision. While only reversal and modification are made expressly subject to the holding on appeal that the petitioner's rights have been prejudiced on the basis of one or more of the six prescribed grounds for review, a frequent remedy on a determination of improper agency action is a remand for further proceedings. Modification of the agency decision is a "drastic remedy" that is "viewed with disfavor" and that is "reserved for only extraordinary situations."[148] The preferred course is for the appellate court either to reverse the agency action or to remand it for further proceedings.

The scope of review prescribed in section 14.69 applies only to the quasi-judicial decisions of an agency. Quasi-judicial conduct is marked by: (1) an investigation into a disputed claim; (2) an application of those facts to a prescribed standard; and (3) a decision binding on all the parties.[149] The term "quasi-judicial" applies only to those administrative decisions which are based on evidentiary facts and which resolve disputed claims of rights.[150] A much more limited review is applied to legislative determinations.[151] Decisions on certain issues, even within the context of a contested case proceeding, may be legislative in character and therefore subject to the more limited scope of review.[152] When an agency acts in a legislative capacity, the standard

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[148] *Reserve Mining Co. v. Minn. Pollution Control Agency*, 267 N.W.2d 720, 723 (Minn. 1978).

[149] *Minnesota Dep't of Nat. Res. v. Chippewa/Swift Joint Bd. of Commissioners*, 925 N.W.2d 244, 246 (Minn. 2019), *Minn. Ctr. For Envtl. Advocacy v. Metro. Council*, 587 N.W.2d 838, 842 (Minn. 1999); *Meath v. Harmful Substance Comp. Bd.*, 550 N.W.2d 275, 279 (Minn. 1996); *see also* David Schultz, *Quasijudicial and Quasilegislative Hearings in Minnesota Law*, Bench & Bar of Minn. (Sept. 2003).

[150] *Meath*, 550 N.W.2d at 279.

[151] *Arvig Tel. Co. v. Nw. Bell Tel. Co.*, 270 N.W.2d 111, 117-16 (Minn. 1978*); St. Paul Area Chamber of Commerce v. Minn. Pub. Serv. Comm'n*, 312 Minn. 250, 262, 251 N.W.2d 350, 358 (1977); *City of New Brighton v. Metro. Council*, 306 Minn. 425, 430, 237 N.W.2d 620, 623 (1975). For a review of this distinction in the context of municipal zoning cases, see *Honn v. City of Coon Rapids*, 313 N.W.2d 409, 413-16 (Minn. 1981); *Eagle Lake of Becker Cnty. Lake Ass'n v. Becker Cnty. Bd. of Comm'rs*, 738 N.W.2d 788, 793-94 (Minn. Ct. App. 2007). *See also In re PERA Salary Det. Affecting Emps. of Duluth*, 820 N.W.2d 563, 569 (Minn. Ct. App. 2012) (reviewing determination by a public-retirement-fund board); *In re Interstate Power Co.*, 419 N.W.2d 803, 807 (Minn. Ct. App. 1988) (stating while quasi-judicial action of Public Utilities Commission must be supported by substantial evidence, a legislative action will be upheld unless the action by the commission is outside the commission's statutory authority or it can be shown by clear and convincing evidence that the decision was unjust, unreasonable, or discriminatory); *In re Hibbing Taconite Co.*, 431 N.W.2d 885, 889 (Minn. Ct. App. 1988) (finding issuance of permit by Minnesota Pollution Control Agency is quasi-judicial in nature and is therefore more closely scrutinized than quasi-legislative decisions that receive limited review on appeal); *In* re Interstate Power Co., 416 N.W.2d 800, 806 (Minn. Ct. App. 1987).

[152] *In re Request of Interstate Power Co.*, 574 N.W.2d 408,412-13 (Minn. 1998) (finding MPUC acted in legislative capacity when it balanced both cost and noncost factors and made choices among public policy alternatives); *St. Paul Area Chamber of Commerce*, 312 Minn, at 259-63, 251 N.W.2d at 356-58 (concluding, in utility rate hearing, that revenue requirements raise quasi-judicial issue subject to substantial evidence review while rate allocations are legislative and will be upheld absent "clear and convincing evidence" of their invalidity); *Minn. Chapter of Associated Builders & Contractors, Inc. v. Bd. of Educ. of Minnetonka Indep. Sch. Dist. No. 276*, 567 N.W.2d 761, 762-63 (Minn. Ct. App. 1997) (holding certiorari not available to review school board's decision requiring construction contractors to be bound by project labor agreement where board's decision was not quasi-judicial). For analyses of this distinction in utility rate proceedings, *see In re Request for Servs. in Qwest's Tofte Exch.*, 666 N.W.2d 391, 395 (Minn. Ct.

of review is whether the agency exceeded its statutory authority.[153] Because agency decisionmakers have specialized knowledge and expertise, it is a "fundamental concept"[154] that

App. 2003) (concluding PUC acted in both quasi-legislative and quasi-judicial capacities when it ordered Qwest to extend its services while bearing most of the cost of doing so; applying both standards of review and reversing); Samuel L. Hanson & R. Scott Davies, *Judicial Review of Rate of Return Calculations*, 8 Wm. Mitchell L. Rev. 499 (1982); Neil Hamilton & Irving Colacci, *Judicial Review of Utility Ratemaking in Minnesota: An Analysis and a Proposal*, 8 Wm. Mitchell L. Rev. 543 (1982).

[153] *In re Request of Interstate Power Co.*, 57 N.W.2d at 412-13 (citing *St. Paul Area Chamber of Commerce*, 251 N.W.2d at 358).

[154] *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 824 (Minn. 1977).

their decisions enjoy "a presumption of correctness"[155] and "administrative regularity. "[156] The reviewing court will not substitute its judgment for that of the agency on technical matters,[157]

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[155] *Matter of Minnesota Power's Petition for Approval of EnergyForward Res. Package*, 958 N.W.2d 339, 343–44 (Minn. 2021) ("Substantial deference, however, is given to the decision of the Commission and agency decisions enjoy a presumption of correctness *Matter of Restorff*, 932 N.W.2d 12, 18 (Minn. 2019) "), ("Agency decisions enjoy a presumption of correctness that warrants deference by courts.")(quoting Kind *Heart Daycare, Inc. v. Comm'r of Hum. Servs.*, 905 N.W.2d 1, 9 (Minn. 2017)) *In re Review of 2005 Automatic Adjustment of Charges*, 768 N.W.2d 112,118-19 (Minn. 2009) ("A presumption of correctness attaches to an agency decision, and deference is shown to an agency's conclusions in the area of its expertise."); *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001) (noting administrative agencies enjoy a presumption of correctness, and that deference should be shown to agencies' expertise and special knowledge in the field of their technical training, education, and experience); *Reserve Mining*, 256 N.W.2d at 824 (" [A]dministrative agencies enjoy a presumption of correctness, and deference should be shown by courts to the agencies' expertise and their special knowledge in the field of their technical training, education, and experience."); *Matter of MCEA for Commencement of an Env't Assessment Worksheet*, No. A20-1592, 2021 WL 4515335 (Minn. Ct. App. Oct. 4, 2021), review granted (Dec. 28, 2021)("[D]ecisions of administrative agencies enjoy a presumption of correctness, and deference should be shown by courts to the agencies' expertise and their special knowledge in the field[s] of their technical training, education, and experience.") *In re Application of the Grand Rapids Pub. Utils. Comm'n*, 731 N.W.2d 866, 870-71 (Minn. Ct. App. 2007) (deferring to MPUC's expertise when the Commission's rejection of ALJ's decision was well-reasoned); *In re Appeal of the Exclusion of Molnar*, 720 N.W.2d 604,610 (Minn. Ct. App. 2006) (holding Racing Commission did not abuse its authority or discretion by permanently excluding track patron rather than merely fining him or by considering all allegations of improper behavior); *J.R.B. v. Dep't of Human Servs.*, 633 N.W.2d 33,38 (Minn. Ct. App. 2001) (deferring to Department of Health's medical and scientific expertise where department interpreted standards of proper care); *In re DiVall Insured Income Props. 2 Lt'd. P'ship*, 445 N.W.2d 856, 859 (Minn. Ct. App. 1989) (presuming denial by Commissioner of Commerce of registration of securities to be correct); *In re Space Ctr. Transp.*, 444 N.W.2d 575, 579 (Minn. Ct. App. 1989) (presuming decision of Transportation Regulation Board on petition to transfer motor carrier permit to be correct*); Glencoe Area Health Ctr. v. Minn. Dep't of Human Servs.*, 441 N.W.2d 549, 551 (Minn. Ct. App. 1989) (finding decision of Department of Human Services setting payment rates for medical assistance reimbursement enjoys a presumption of correctness); *In re Hutchinson*, 440 N.W.2d 171, 176 (Minn. Ct. App. 1989) (presuming decision of Racing Commission to be correct); *Big Fish Lake Sportsmen Club, Inc. v. Water Res. Bd.*, 400 N.W.2d 416, 419 (Minn. Ct. App. 1987) (presuming decision of Water Resources Board establishing boundaries of watershed district to be correct); *Henry v. Metro. Waste Control Comm'n*, 401 N.W.2d 401, 404 (Minn. Ct. App. 1987) (presuming decision of Commissioner of Veterans Affairs to be correct); *c.f In re Hibbing Taconite*, 431 N.W.2d at 889-90 (noting agency's entitlement to presumption of correctness, but declining to give deference where question was "of statutory interpretation" regarding "not a technical statute and not a longstanding interpretation by the agency"). *But see City of Lake Elmo v. Metro. Council*, 685 N.W.2d 1, 3-4 (Minn. 2004) (finding specific statute governing appellate review of agency decision modified traditional scope of review under § 14.69 by providing that the court must not give preference to either the ALJ's report or the council's final decision).

[156] *No Power Line v. Minn. Envtl. Quality Council*, 262 N.W.2d 312, 325 (Minn. 1977); *see also In re Khan*, 804 N.W.2d 132, 137 (Minn. Ct. App. 2011), *City of Moorhead v. Minn. Pub. Utils. Comm'n*, 343 N.W.2d 843, 849 (Minn. 1984).

[157] *Matter of NorthMet Project Permit to Mine Application Dated Dec. 2017*, 959 N.W.2d 731, 758 (Minn. 2021), *reh'g denied* (June 15, 2021) ("Even if ambiguous, we only defer to the agency's expertise if the language is so technical in nature that the agency's field of technical training, education, and experience is necessary to understand the [statute]."), State *ex rel. Anoka Cnty. Airport Protest Comm. v. Minneapolis-St. Paul Metro. Airports Comm'n*, 248 Minn. 134,145-46, 78 N.W.2d 722, 730 (1956); *Schermer v.*

and the responsibility for resolving conflicts in testimony and determining the weight to be given it and the inferences to be drawn from it rests with the agency.[158] Judicial deference extends, however, only to matters within the peculiar expertise of the agency.[159] If the agency decision turns on a question of law[160] or on matters in which the court has factual knowledge

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State Farm Fire & Cas. Co., 702 N.W.2d 898, 907 (Minn. Ct. App. 2005); *In re Rate Appeals of Lyngblomsten Care Ctr. & Camilia Rose Care Ctr.*, 578 N.W.2d 1, 3 (Minn. Ct. App. 1998) (giving "great weight" to DHS's statutory interpretation in medical assistance reimbursement decision due to ambiguous and technical nature of statute involved); *N. Memorial Med. Ctr. v. Minn. Dep't of Health*, 423 N.W.2d 737, 738 (Minn. Ct. App. 1988) (showing deference to decision of Department of Health denying license to extend service area for scheduled, nonemergency ambulance services); *In re Interstate Power Co.*, 416 N.W.2d 800, 806 (Minn. Ct. App. 1987) (noting that in utility rate hearings, the court will ordinarily defer to agency's expertise and its technical knowledge in the field of its technical training, education, and experience); *In re Minn. Power's Transfer*, 399 N.W.2d 147, 149 (Minn. Ct. App. 1987) (showing deference to decision of Public Utilities Comm'n determining rates); *Minn. Life & Health Ins. Guar. Ass'n v. Dep't of Commerce*, 400 N.W.2d 769, 772 (Minn. Ct. App. 1987) (showing deference to Commissioner of Commerce determining the assessment base for member insurers of an insurance guaranty association).

[158] *Matter of Restorff*, 932 N.W.2d 12, 23 (Minn. 2019) *Quinn Distrib. Co. v. Quast Transfer, Inc.*, 288 Minn. 442, 448, 181 N.W.2d 696, 699-700 (1970*); Gibson v. Civil Serv. Bd.*, 285 Minn. 123,126,171 N.W.2d 712, 715 (1969), *Matter of Wazwaz*, 943 N.W.2d 212, 216 (Minn. Ct. App. 2020), *review denied* (June 30, 2020) *In re Khan*, 804 N.W.2d 132, 141 (Minn. Ct. App. 2011); *see Minn. Life & Health Guar. Ass'n*, 400 N.W.2d at 774; *In re Minn. Joint Underwriting Ass'n*, 408 N.W.2d 599, 605 (Minn. Ct. App. 1987).

[159] *In re Quantification of Envtl. Costs*, 578 N.W.2d 794, 799 (Minn. Ct. App. 1998) (extending deference to agency expertise, despite relator's argument that PUC decision was not entitled to deference because PUC was acting outside of its realm of expertise, where the legislature had properly assigned task of determining environmental costs of pollutants to the commission); *White v. Minn. Dep't of Natural Res.*, 567 N.W.2d 724, 730 (Minn. Ct. App. 1997) (showing deference to agency's conclusions in area of agency's expertise). *But see Minn. Ctr. for Envtl. Advocacy v. Comm'r of Minn. Pollution Control Agency*, 696 N.W.2d 95, 108 (Minn. Ct. App. 2005) (giving no deference to PCA's interpretation of the term "existing high [water] quality," finding that the phrase was clear and capable of being understood so the agency's expertise was not required to interpret it).

[160] *Gist v. Atlas Staffing, Inc.*, 910 N.W.2d 24, 31 (Minn. 2018) ("The interpretation of an administrative regulation presents a question of law that we review de novo.") *No Power Line v. Minn. Envtl. Quality Council*, 262 N.W.2d 312,320 (Minn. 1977) (reviewing panel determination that applicable statute was a "grandfather" clause); *ConAgra v. Swanson*, 356 N.W.2d 825, 827 (Minn. Ct. App. 1984); *N. States Power Co. v. Hagen*, 314 N.W.2d 278, 283 (N.D. 1982) ("Questions of law are reviewed on a different standard [than questions of fact]."); *see, e.g., In re Request for SDS Gen. Permit*, 769 N.W.2d 312, 317 (Minn. Ct. App. 2009) (deferring to MPCA agency expertise for interpretation of ambiguous rule, but noting the court "need not defer to an agency's determination of its own regulation when the language is clear and understandable"); *The Work Connection, Inc. v. Bui*, 749 N.W.2d 63, 66 (Minn. Ct. App. 2008) (deferring to and upholding ULJ interpretation of statute where ULJ addressed the issue in the final ruling); *In re Maltreatment & Disqualification of Kleven*, 736 N.W.2d 707, 709 (Minn. Ct. App. 2007) (upholding Department of Human Services' interpretation of statute); *Dep't of Human Servs. v. Muriel Humphrey Residences*, 436 N.W.2d 110,117 (Minn. Ct. App. 1989) (noting that reviewing court is not bound by Department of Human Services' determination of a legal question); *Gorecki v. Ramsey Cnty.*, 437 N.W.2d 646, 649 (Minn. Ct. App. 1989) (finding decision of Commissioner of Veterans Affairs fully reviewable where decision was based on a question of law); *In re Hutchinson*, 440 N.W.2d 171, 176 (Minn. Ct. App. 1989) (interpreting plain meaning of "disciplinary hearings" to include proceedings involving status of a license as "disciplinary in nature"); *State by Khalifa v. Russell Dieter Enters.*, 418 N.W.2d 202, 204 (Minn. Ct. App. 1988) (reversing Department of Human Rights decision because it was based on an erroneous legal theory); *In re Minn. Ins. Guar. Ass'n*, 428 N.W.2d 824, 828 (Minn. Ct. App. 1988) (holding decision of

superior to that of the agency,[161] the court will not defer to the agency. But an agency's construction of a statute is entitled to some weight when the statutory language is technical in nature and the agency's interpretation is one of longstanding application.[162]

In the 2007 case *In re Cities of Annandale & Maple Lake NPDES/SDS Permit Issuance for the Discharge of Treated Wastewater*,[163] the Minnesota Supreme Court addressed for the first time the issue of whether courts should defer to a state agency's interpretation of a federal regulation where the state is charged with enforcing and administering the federal regulation.[164] In this decision, reversing the court of appeals, the supreme court found that the Minnesota Pollution Control Agency (MPCA) was charged with day-to-day responsibility for enforcing and administering 40 CFR § 122.4(i), such that the regulation is properly characterized as the MPCA's own regulation.[165] Drawing from the federal standard for agency deference in Chevron,[166] the Minnesota court concluded that the regulation is unclear and susceptible to more than one reasonable interpretation and, therefore, the MPCA's expertise and special knowledge may be considered when determining whether MPCA's interpretation of the federal regulation is reasonable.[167] Finally, the court found that MPCA's interpretation of the regulation was reasonable and deferred to that interpretation.[168] The Annandale decision summarizes, interprets, and distinguishes several of the court's earlier cases involving deference to an

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Commissioner of Commerce not based on error of law); *In re Minn. Joint Underwriting Ass'n*, 408 N.W.2d at 605 ("An agency's interpretation of legislative intent, while influential, cannot bind a court. When a statute is unambiguous, its wording controls over agency interpretations." (citations omitted)).

[161] *Hennepin Cnty. Court Emps. Grp. v. Pub. Emp't Relations Bd.*, 274 N.W.2d 492, 494 (Minn. 1979) (reviewing whether court employees are "essential" within meaning of labor relations statute).

[162] *Martin v. Occup'l Safety & Health Review Comm'n*, 499 U.S. 144, 150 (1991) (quoting *Lyng v. Payne*, 476 U.S. 926, 939 (1986)) ("It is well established 'that an agency's construction of its own regulations is entitled to substantial deference.'"); *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 375 (Minn. 1996); *Arvig Tel. Co. v. Nw. Bell Tel. Co.*, 270 N.W.2d 111, 114 (Minn. 1978); *Schwanke v. Minnesota Dep't of Admin.*, 834 N.W.2d 588, 594 (Minn. Ct. App. 2013), *aff'd*, 851 N.W.2d 591 (Minn. 2014). *In re Lyngblomsten Care Ctr.*, 578 N.W.2d at 3 (concluding DHS's statutory interpretation in medical assistance reimbursement decision entitled to "great weight" due to ambiguous and technical nature of statute involved); see also Minn. Stat. § 645.16 (2014) ("When the words of a law are not explicit, the intention of the legislature may be ascertained by considering, among other matters . . . legislative and administrative interpretations of the statute.").

[163] 731 N.W.2d 502.

[164] *Id*. at 511-13. See Mehmet K. Konar-Steenberg, *In Re Annandale and the Disconnections Between Minnesota And Federal Agency Deference Doctrine*, 34 Wm. Mitchell L. Rev. 1375 (2008) (critiquing holding and identifying differences between Minnesota and federal deference law).

[165] *Id*. at 516.

[166] *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837,842-43 (1984) (establishing that Federal courts should defer to an agency construction of a statute if the statute is ambiguous and if the agency has constructed a permissible interpretation of the statute). For more recent expansion of federal Chevron deference, *see City of Arlington, Tex. v. F.C.C.*, 133 S.Ct. 1863, 1868-75 (2013) (establishing that Chevron deference even permits an agency to construe its own jurisdiction where the law does not clearly prohibit the agency from ruling on its own jurisdiction).

[167] 731 N.W.2d at 516, 522.

[168] *Id*. at 524.

agency's interpretation of its own regulations, including *Reserve Mining*,[169] *St. Otto's Home*,[170] *Blue Cross Blue Shield of Minnesota*,[171] *Eller Media*,[172] and *Minnesota Center for Environmental Advocacy v. MPCA*.[173]

Because review by the court of appeals is appellate in nature, a lower court's decision will not be given any particular deference if it reaches the state supreme court. When agency actions were reviewed initially in the district courts, the supreme court made it clear that it would review the agency record independently; its review of a district court decision would not include the deference usually accorded to the findings of a trial court, because the district court was not acting in a fact-finding capacity.[174] District court review was therefore often an exercise in futility, because it was essentially duplicated in the supreme court. This was a major factor prompting the changes in the APA giving the court of appeals exclusive jurisdiction to review state agency actions. With appeal to the supreme court now being discretionary, the initial appellate review of an agency action will usually be the last.

15.4.2 Section 14.69: The Six Grounds for Review of Agency Action

15.4.2(1) In Violation of Constitutional Provisions

Agency action taken pursuant to an unconstitutional enabling statute or an unconstitutional agency rule is invalid and will be overturned.[175] The decision may also be unconstitutional because of procedural irregularities so substantial as to deny due process.[176]

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[169] *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808 (Minn. 1977).

[170] *St. Otto's Home v. Dep't of Human Servs.*, 437 N.W.2d 35 (Minn. 1989).

[171] *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264 (Minn. 2001).

[172] *In re Denial of Eller Media Co.'s Applications*, 664 N.W.2d 1

[173] 644 N.W.2d 457 (Minn. 2002). For further, more recent discussion of Annandale and regarding agency interpretation of federal and state regulatory framework, see *In re Alexandria Lake Area Sanitary Dist.*, 763 N.W. 2d. 303, 313-14 (Minn. 2009).

[174] *Urban Council on Mobility v. Minn. Dep't of Natural Res.*, 289 N.W.2d 729, 732-33 (Minn. 1980); *Signal Delivery Serv. v. Brynwood Transfer Co.*, 288 N.W.2d 707, 710 (Minn. 1980); *Reserve Mining*, 256 N.W.2d at 822-24.

[175] *See Holmberg v. Holmberg*, 588 N.W.2d 720, 725-726 (Minn. 1999) (reviewing constitutionality of state's administrative child support process on separation of powers concerns); *Blue Earth Cnty. Welfare Dep't v. Caballero*, 302 Minn. 329, 349, 225 N.W.2d 373, 385 (1974) (reviewing lower court decision striking down commissioner's order for county welfare department to comply with Federal Housing Act amendment, on constitutional challenge to the FHA amendment); *see also Murphy v. Comm'r of Human Servs.*, 765 N.W.2d 100, 108 (Minn. Ct. App. 2009) (holding that a disqualification statute violated the Minnesota Equal Protection Clause). *See generally* 2 Frank E. Cooper, State Administrative Law 683-84 (1965).

[176] *Pearson v. Sch. Bd. of Indep. Sch. Dist. No. 381*, 356 N.W.2d 438,441 (Minn. Ct. App. 1984); *see, e.g., Thompson v. Comm'r of Health*, 778 N.W.2d 401, 409 (Minn. Ct. App. 2010) (holding that a denial of a hearing when employment disqualification is based on a non-conviction determination violates procedural due process rights); *In re On-Sale Liquor License, Class B*, 763 N.W.2d 359, 366-67 (Minn. Ct. App. 2009) (concluding City's imposition of conditions on liquor license based on the "good cause" standard in local ordinance violates licensee's due process rights); *In re Expulsion of Z.K. & S.K.*, 695 N.W.2d 656, 663 (Minn. Ct. App. 2005) (reversing a student expulsion decision that had been affirmed by

Constitutional questions based on procedure will not be frequent, however, because of the extent to which procedural fairness is assured by the APA and the rules of the office of administrative hearings (OAH).[177]

Because there is no statute or rule expressly proscribing bias on the part of the agency decisionmaker,[178] this question will most likely arise as a constitutional one. Due process requires an impartial decisionmaker.[179] There is a substantial body of law on this question at the federal level that generally distinguishes among several types of bias. A decisionmaker is not necessarily disqualified because of a preconceived position about the law, policy, or legislative facts but may be disqualified because of prejudgment of issues relating to adjudicative facts, a personal prejudice or partiality, or a self-interest in the proceedings.[180] A decisionmaker otherwise incapacitated by bias may decide a case when necessity requires it, but in such a case, the reviewing court will examine the agency decision with special scrutiny.[181] One state has sustained a challenge to agency action when there is an appearance of partiality, even if actual bias is not shown.[182]

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the Commissioner of the Department of Education, because parents' waiver of expulsion hearing was not "knowing" as they were not specifically advised in the Notice of Intent to Expel - as required by statute - that free or low cost legal assistance may be available and that a legal resource list could be obtained from the Department); *see also Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632-35 (Minn. 2012) (concluding City's "potentially dangerous" and "dangerous" animal designations did not deprive procedural due process protections); *Obara v. Minn. Dep't of Health*, 758 N.W. 2d 873, 879 (Minn. Ct. App. 2008) (exploring state and federal due process protections and adopting the federal standard, rejecting relator's due process challenge).

[177] This is contrasted with procedures before local agencies, where even the basic rudiments of due process may not be required by statute or rule. *See Pearson*, 356 N.W.2d at 441 (finding school board's refusal to utilize independent hearing examiner in teacher discipline or layoff hearings violated respondent's special education director's right to due process).

[178] The ALJ in a contested case must withdraw when "he or she deems himself or herself disqualified for any reason." Minn. R. 1400.6400 (2013). The rule provides for the use of an affidavit of prejudice to disqualify the ALJ. Id.

[179] *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970); *see Urban Council on Mobility*, 289 N.W.2d at 736 ("So long as the decision-maker remains unbiased, the combination of functions by an agency does not conflict with the dictates of due process."); *In re Khan*, 804 N.W.2d 132,143 (Minn. App. 2011) (holding that the ALJ was not biased in favor of city of Minneapolis).

[180] *See* § 4.6 in this volume. *See generally* 2 K. Davis, Administrative Law Treatise § 9.8 (3rd ed. 1994).

[181] *Wis. Tel. Co. v. Pub. Serv. Comm'n*, 232 Wis. 274, 287 N.W. 122,149 (1939).

[182] *Fleming v. City of Tacoma*, 81 Wash. 2d 292, 300, 502 P.2d 327, 332 (1972). *But see Raynes v. City of Leavenworth*, 118 Wash. 2d 237, 246-47, 821 P.2d 1204, 1208-09 (1992) (recognizing subsequent statutory limits to the appearance of fairness doctrine).

15.4.2(2) In Excess of Agency Authority or Jurisdiction

Decisions that are in excess of the agency's statutory authority[183] or jurisdiction[184] will be reversed. When an agency acts in a legislative capacity, the standard of review applied is whether the agency exceeded its statutory authority.[185] This may also be a basis for an action to preclude agency action before it is taken, as discussed in sections 7.1.4 and 15.2.2 in this volume. The party seeking appellate review of an agency's action has the burden of proving that the agency exceeded its statutory authority or jurisdiction.[186] The agency need not have

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[183] *See, e.g., In re Application of Minn. Power*, 838 N.W.2d 747, 757 (Minn. 2013) (holding PUC did not exceed its statutory authority by considering factors outside those listed in Minn. Stat. § 216B.16, subd. 3(b), in determining whether exigent circumstances were present); *In re Hubbard*, 778 N.W. 2d. 313, 325 (Minn. 2010) (concluding DNR lacks express or implied authority to certify City of Lakeland's variance decision); *In re Haslund*, 781 N.W.2d 349, 356 (Minn. 2010) (holding Lower St. Croix Act does not authorize the DNR to enforce a state rule over the plain language of the Bluffland/Shoreland Management ordinance); *Peoples Natural Gas Co. v. Minn. Pub. Utils. Comm'n*, 369 N.W.2d 530, 534 (Minn. 1985) (finding commission lacked statutory authority to order refunds of past revenue collections); *Francis v. Minn. Bd. of Barber Exam'rs*, 256 N.W.2d 521, 525 (Minn. 1977) (finding no statutory authority, either expressed or implied, for board to adopt disputed rule); *G.H. Holding v. Minn. Dep't of Commerce v. Minn. Petroleum Tank Release Comp. Bd.*, 840 N.W.2d 838, 842-43 (Minn. Ct. App. 2013) (concluding Minnesota Petroleum Tank Release Compensation Board exceed its statutory authority in issuing a rule limiting evidence in a contested case to the written record previously submitted to the board); *In re Petitions for Enlargement*, 781 N.W.2d 417, 422-23 (Minn. Ct. App. 2010) (finding plain language of Minn. Stat. § 103D.261 did not allow modification of any aspect of an enlargement petition); *In re Certificate of Auth. of Mut. Protective Ins. Co.*, 633 N.W.2d 567,569-70 (Minn. Ct. App. 2001) (finding commissioner of commerce did not have statutory authority to issue a cease and desist order related to an insurance company's unsafe financial condition, but rather should have issued an order to show cause which would have required the commissioner to prove the allegations at a hearing before taking action); *Ojala v. St. Louis Cnty.*, 522 N.W.2d 342, 343 (Minn. Ct. App. 1994); *In re Combined Air & Waste Permit No. 2211-91-OT-l*, 489 N.W.2d 811, 816-17 (Minn. Ct. App. 1992) (holding that the MPCA exceeded its authority in denying permit on waste management preference list where metropolitan council had found permit consistent with long range policy plans); *Dep't of Natural Res. v. Todd Cnty. Hearings Unit*, 356 N.W.2d 703, 707 (Minn. Ct. App. 1984) (finding designation of meandering lakes as "wetlands" exceeded the hearings unit's statutory authority).

[184] *No Power Line v. Minn. Envtl. Quality Council*, 262 N.W.2d 312, 319-22 (Minn. 1977); *Berne Area Alliance for Quality Living v. Dodge Cnty. Bd. of Comm'rs*, 694 N.W.2d 577, 581-82 (Minn. Ct. App. 2005) (finding county lacked jurisdiction to decide whether construction of proposed feedlot required an environmental impact statement because state rules required all applications for feedlots of a certain physical capacity to be forwarded to the Pollution Control Agency); *Rowe v. Dep't of Employment & Econ. Dev.*, 704 N.W.2d 191, 194 (Minn. Ct. App. 2005) ("An administrative agency's jurisdiction depends entirely on the statute under which it operates.").

[185] *In re Request of Interstate Power Co.*, 574 N.W.2d 408,412-13 (Minn. 1998); *St. Paul Area Chamber of Commerce v. Minn. Pub. Serv. Comm'n*, 312 Minn. 250, 262, 251 N.W.2d 350, 358 (1977).

[186] *In re Hubbard*, 778 N.W.2d 313, 318 (Minn. 2010); *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 375 (Minn. 1996); *Markwardt v. State Water Res. Bd.*, 254 N.W.2d 371, 374 (Minn. 1977); *In re Appeal of the Exclusion of Molnar*, 720 N.W.2d 604, 611 (Minn. Ct. App. 2006) (finding racing commission did not exceed the authority granted in Minn. Stat. § 240.27); *Hiawatha Aviation of Rochester, Inc. v. Minnesota Dept. of Health*, 375 N.W.2d 496, 502 (Minn. Ct. App. 1985), *aff'd*, 389 N.W.2d 507 (Minn. 1986)(finding the Commissioner made a decision upon unlawful procedure where she failed to consider hearing records as required by statute).

express authority for its actions. Authority that may be implied from the agency's express authority is adequate.[187]

15.4.2(3) Made on Unlawful Procedure

Procedural irregularities may exist in the form of violations of the procedural requirements of the APA, the rules of the OAH, or the agency's own procedural rules.[188]

Section 14.69 expressly requires a showing that the improper procedure may have prejudiced the substantial rights of the petitioner. The agency decision will not be reversed without this showing of prejudice.[189]

Although the merits of the agency decision will be reviewed only on the record, additional evidence may be taken in conjunction with the appeal in order to determine the essential facts pertaining to alleged procedural defects that are not shown on the record.[190] The court of appeals may transfer the case to the district court to take testimony and to decide the procedural issues, and that decision may be appealed as in other civil cases.[191]

Limited discovery is permissible in order to assist in the determination of procedural questions. For example, whether those involved in the decision-making process properly followed the procedures required by law. Such discovery has been limited and tightly regulated. Written interrogatories may be submitted within thirty days of the date of the appeal.[192] The questions are limited to the following:

1. Whether the agency adhered to all statutory and administrative procedural rules;
2. If not, what deviations occurred;
3. Whether the agency official read the entire record prior to rendering a decision;
4. Whether the agency official relied on information outside the record in making the decision;
5. If yes, what information was relied upon outside of the record in making the decision.[193]

If this discovery reveals no new evidence, the agency decisionmakers should not be called to testify at a trial.[194] These restrictions are laid down in the last Minnesota Supreme Court opinion on this issue, in which the court was critical of the delay in the appeal process

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[187] *In re Nw. Bell Tel. Co.*, 371 N.W.2d 563, 565-66 (Minn. Ct. App. 1985).

[188] *See N. Messenger v. Airport Couriers*, 359 N.W.2d 302, 305 (Minn. Ct. App. 1984).

[189] *Power Line*, 262 N.W.2d at 322-29.

[190] Minn. Stat. § 14.68 (2014).

[191] *Id.*; *see Hard Times Cafe v. City of Minneapolis*, 625 N.W.2d 165, 173-74 (Minn. Ct. App. 2001) (finding substantial evidence of procedural irregularities where city council members considered evidence outside the record; transferring case to district court to take testimony); *In re Dakota Cnty. Mixed Mun. Solid Waste Incinerator*, 483 N.W.2d 105,106-07 (Minn. Ct. App. 1992) (finding transfer to district court for further testimony and evidence on alleged procedural irregularities inappropriate where permit applicants failed to show that information became known only after agency proceedings).

[192] *In re Lecy*, 304 N.W.2d 894, 900 (Minn. 1981).

[193] *Id.*

[194] *Id.*

caused by discovery conducted under the rule of its earlier opinions.[195] Therefore, the inference is that the interrogatories above are the only permissible means of discovery. Discovery may not be used to probe the "mental processes"[196] by which a decision is made or "the process of judicial decision-making which is judgmental rather than procedural in nature."[197]

15.4.2(4) Affected by Other Error of Law

On a question of law, the court is free to substitute its judgment for that of the agency. It is not bound by the decision of the agency and need not defer to agency expertise.[198]

Agency interpretation of a statute "may be entitled to some weight" if the statute is technical in nature and the agency's interpretation is a long-standing one.[199] The court has no

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[195] *People for Envtl. Enlightenment & Responsibility (PEER) v. Minn. Envtl. Quality Council*, 266 N.W.2d 858, 873 (Minn. 1978) (finding district court erred in failing to require commission to respond to written interrogatories and requests for admissions); *Mampel v. Eastern Heights State Bank*, 254 N.W.2d 375,378 (Minn. 1977) (granting writ of prohibition preventing overbroad discovery into procedural matters of agency review); *see also Urban Council on Mobility v. Minn. Dep't of Natural Res.*, 289 N.W.2d 729, 736 (Minn. 1980) (taking into account commission's answers interrogatories which demonstrate commission's adequate consideration of evidence submitted at hearing).

[196] *Mampel*, 254 N.W.2d at 378.

[197] *PEER*, 266 N.W.2d at 873.

[198] *Matter of NorthMet Project Permit to Mine Application Dated Dec. 2017*, 959 N.W.2d 731, 757 (Minn. 2021), *reh'g denied* (June 15, 2021); *No Power Line v. Minn. Envtl. Quality Council*, 262 N.W.2d 312, 320 (Minn. 1977); *see St. Otto's Home v. Dep't of Human Servs.*, 437 N.W.2d 35, 39-40 (Minn. 1989); *Dep't of Human Servs. v. Muriel Humphrey Residences*, 436 N.W.2d 110,117 (Minn. Ct. App. 1989) (holding that the application of equitable estoppel is a question of law, and therefore, the agency's ruling on the application of equitable estoppel to the fact of the case is subject to the court's independent review); *State by Khalifa v. Russell Dieter Enters.*, 418 N.W.2d 202, 204 (Minn. Ct. App. 1988); *In re Assessment by Minn. Ins. Guar. Ass'n,* 428 N.W.2d 824, 827 (Minn. Ct. App. 1988); *In re Minn. Joint Underwriting Ass'n*, 408 N.W.2d 599, 605 (Minn. Ct. App. 1987); *Five Star Trucking v. Minn. Transp. Regulation Bd.*, 370 N.W.2d 666, 669-70 (Minn. Ct. App. 1985); *see also In re Rate Appeal of Benedictine Health Ctr.*, 728 N.W.2d 497, 507 (Minn. 2007) (holding an agency policy that has not been promulgated as a rule and is, in whole or in part, inconsistent with promulgated rules or other policies is not entitled to deference); *In re Wren Residential Relocation Claim*, 699 N.W.2d 758, 760 (Minn. 2005); *In re Denial of Eller Media Co.'s Applications for Outdoor Advertising Device Permits*, 664 N.W.2d 1, 7 (Minn. 2003) (holding court retains authority to review de novo errors of law which arise when an agency decision is based upon the meaning of words in a statute); *In re Application for PERA Disability Benefits of Brittain*, 705 N.W.2d 576, 578-579 (Minn. Ct. App. 2006) (reversing agency's decision based on its interpretation of plain language of statute). *But see In re Westling Mfg., Inc.*, 442 N.W.2d 328, 331 (Minn. Ct. App. 1989) ("Because the facts of this case do not permit only one conclusion, we shall review the denial of equitable estoppel here as a fact question.").

[199] *Arvig Tel. Co. v. Nw. Bell Tel. Co.*, 270 N.W.2d 111, 114 (Minn. 1978); *see Martin v. Occup'l Safety & Health Review Comm'n*, 499 U.S. 144,149 (1991) (noting agency's construction of its own regulation is entitled to substantial deference); *Krumm v. R.A. Nadeau Co.*, 276 N.W.2d 641, 644 (Minn. 1977) ("When the meaning of a statute is doubtful, courts should give great weight to a construction placed upon it by the department charged with its administration."); *In re Rate Appeals of Lyngblomsten Care Ctr. & Camilia Rose Care Ctr.*, 578 N.W.2d 1, 3 (Minn. Ct. App. 1998) (giving DHS interpretation of statute in medical assistance reimbursement action "great weight" due to technical and ambiguous nature of the governing statutes); *In re Space Ctr. Transp.*, 444 N.W.2d 575, 579 (Minn. Ct. App. 1989); *In re Hibbing Taconite Co.*, 431 N.W.2d 885, 889 (Minn. Ct. App. 1988); *Henry v. Metro. Waste Control Comm'n*, 401 N.W.2d 401, 404 (Minn. Ct. App. 1987).

obligation to respect administrative interpretation of a statute if it is one of first impression and the statute is not ambiguous, particularly when the agency interpretation expands its jurisdiction.[200] Courts will defer to an agency's interpretation of its own rule if the rule is so technical that only a specialized agency can properly understand it, but courts will not defer to agency interpretation if the language or standard in the rule is clear and understandable.[201]

Deference also extends to any agency's expertise and special knowledge in the interpretation of statutes[202] or federal regulation[203] that the agency is charged with administering. Courts will give "considerable deference" to an agency's construction of its own rule when the rule is unclear or susceptible to different interpretations.[204] An agency's interpretation of an ambiguous rule will be upheld if it is reasonable.[205] When application of a regulation is "primarily factual and necessarily requires application of the agency's technical knowledge and expertise to the facts present"[206] deference will also be granted to an agency's expertise and knowledge. However, a long-standing administrative practice or interpretation will be invalidated if it is contrary to the plain meaning of the statute.[207]

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[200] *Minn. Microwave v. Pub. Serv. Comm'n*, 190 N.W.2d 661, 665 (Minn. 1971); *see Waller v. Powers Dep't Store*, 343 N.W.2d 655, 657 (Minn. 1984) ("Neither agencies nor courts may under the guise of statutory interpretation enlarge the agency's powers beyond that which was contemplated by the legislative body."); *The Work Connection, Inc. v. Bui*, 749 N.W.2d 63, 69-70, 72-73 (Minn. Ct. App. 2008) (deferring to ULJ interpretation of statute); *In re Maltreatment & Disqualification of Kleven*, 736 N.W.2d 707, 709 (Minn. Ct. App. 2007) (upholding Department of Human Services' interpretation of statute).

[201] *Matter of NorthMet Project*, 959 N.W.2d at 757; *In re Rate Appeal of Benedictine Health Ctr.*, 728 N.W.2d 497, 503 (Minn. 2007); *Resident v. Noot*, 305 N.W.2d 311, 312 (Minn. 1981); *In re Contested Case of Ebenezer Soc. v. Minn. Dep't of Human Servs.*, 433 N.W.2d 436, 439 (Minn. Ct. App. 1988); *see also Citizens Advocating Responsible Dev. v. Kandiyohi Cnty. Bd. of Comm'rs*, 713 N.W.2d 817, 827 (Minn. 2006) ("When the plain meaning of a rule is contrary to an agency's interpretation, we cannot ignore the plain meaning by deferring to the agency's interpretation."); *Hy-Vee Food Stores, Inc. v. Minn. Dep't of Health*, 705 N.W.2d 181, 190 (Minn. 2005) (citing *Mammenga v. Dep't of Human Servs.*, 442 N.W.2d 786, 789 (Minn. 1989)) (reiterating that if a rule is clear and unambiguous, the mere fact that application of the rule yields harsh or undesirable result in a particular case does not make the rule invalid).

[202] *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264,278 (Minn. 2001) ("The agency decision-maker is presumed to have the expertise necessary to decide technical matters within the scope of the agency's authority, and judicial deference, rooted in the separation of powers doctrine, is extended to an agency decision-maker in the interpretation of statutes that the agency is charged with administering and enforcing." (citation and footnote omitted)).

[203] *In re Cities of Annandale & Maple Lake Permit Issuance*, 731 N.W.2d 502, 509-10 (Minn. 2007).

[204] *St. Otto's Home v. Dep't of Human Servs.*, 437 N.W.2d 35,40 (Minn. 1989) (citing *Udall v. Tailman*, 380 U.S. 1,16(1965)).

[205] *Id.*; *see also In re Excess Surplus Status of BCBS*, 624 N.W.2d at 279 (according deference to agency interpretation of a statute where interpretation reflects agency's technical expertise).

[206] *In re Review of 2005 Automatic Adjustment of Charges*, 768 N.W.2d 112,119 (Minn. 2009) (quoting *Minn. Ctr. for Env't Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 464 (Minn.2002)); *see also In re Application of Minn. Power*, 838 N.W.2d 747, 762 (Minn. 2013) (applying deferential standard of review where there was no evidence commission failed to make a full review and fair review); *In re Request for SDS General Permit*, 769 N.W.2d 312, 321 (Minn. Ct. App. 2009) (giving deference to agency's review involving special knowledge related to agency's technical training, education, and experience).

[207] *Twin Ports Convalescent, Inc. v. Minn. State Bd. of Health*, 257 N.W.2d 343, 348 (Minn. 1977); *Ingebritson v. Tjernlund Mfg. Co.*, 289 Minn. 232,237,183 N.W.2d 552,554-55 (1971); *In re City of Redwood Falls*, 756 N.W.2d 133,137-38 (Minn. Ct. App. 2008).

In the 2007 case *In re Annandale*,[208] the Minnesota Supreme Court summarized what factors the courts should consider when determining whether to give deference to an agency's interpretation:

> In summary, we glean from our case law that review of an agency's interpretation of its own regulations is a question of law that courts review de novo. When answering this question, there are several factors courts need to consider when determining whether to give deference to an agency's interpretation. These factors include whether the agency is legally required to enforce and administer the regulation under review and whether the meaning of the words in the regulation is clear and unambiguous or is unclear and susceptible to different reasonable interpretations— ambiguous. If a court concludes the meaning of the words in the regulation is clear and unambiguous, it need not defer to the agency's interpretation and may substitute its own judgment for that of the agency. If a court concludes that the meaning of the words in an agency's regulation is unclear and susceptible to different reasonable interpretations, the court must then determine whether the agency's interpretation is reasonable. When determining whether an agency's interpretation is reasonable, courts may consider the agency's expertise and special knowledge, especially when the construction of the regulation's language is so technical in nature that the agency's field of technical training, education, and experience is necessary to understand the regulation. When a court concludes that the language of the agency's regulation is unclear and susceptible to different reasonable interpretations and that the agency's interpretation of the regulation is reasonable, then the court will generally defer to the agency's interpretation.[209]

These principles have been applied in several subsequent cases weighing deference to an agency's interpretation.[210]

15.4.2(5) Unsupported by Substantial Evidence

When an agency, acting in a quasi-judicial capacity, makes factual determinations and resolves disputed claims of rights, the applicable standard of review for reviewing those factual determinations is the substantial evidence test.[211] Judicial deference to the agency reaches its

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[208] 731 N.W.2d 502 (Minn. 2007); *see supra* text accompanying notes 164-174 (discussing the Annandale decision).

[209] 731 N.W.2d at 516.

[210] *Matter of NorthMet Project*, 959 N.W.2d at 758; *In re Reichmann Land & Cattle, LLP*, 867 N.W.2d 502, 506 (Minn. 2015);*In re Review of 2005 Annual Automatic Adjustment*, 768 N.W.2d at 119; *In re Alexandria Lake Area Sanitary Dist.*, 763 N.W.2d 303, 310-11 (Minn. 2009); *Greene v. Comm'r of Minn. Dep't of Human Servs.*, 755 N.W.2d 713, 722 (Minn. 2008) (finding Minnesota Family Investment Program is a complex regulatory scheme that required technical expertise of the commissioner; deferring to commissioner's interpretation); *In re Request for SDS General Permit*, 769 N.W.2d at 317 (discussing the Annandale principles).

[211] *In re Application of Minn. Power for Auth. to Increase Rates for Elec. Serv.*, 838 N.W.2d 747, 757

peak here and with the arbitrary or capricious standard. Obtaining a reversal of the agency action on either basis is difficult.

Factual determinations of the agency will be sustained unless they are not supported by "substantial evidence in view of the entire record as submitted. "[212] This test applies only to the factual findings made by the agency decisionmaker.[213] It does not apply to conclusions or conclusions of law. As is the case with appellate review of jury verdicts or trial court findings of fact, the court grants a very substantial deference to the agency findings of fact.

Conflicts in testimony, the weight to be given facts, the credibility of witnesses, and inferences to be drawn from the evidence are to be resolved by the agency; the court may not exercise its own judgment or substitute its own findings of fact.[214] The entire record must be considered, rather than simply focusing on the evidence that relates expressly to a specific finding.[215]

The comprehensive and accepted definition of substantial evidence was first stated by the Minnesota Supreme Court in *Reserve Mining Co. v. Herbst*.[216] [217]

(Minn. 2013) ("[W]e review factual determinations made within the scope of the agency's statutory authority under the substantial evidence standard.") *In re Request of Interstate Power Co.*, 574 N.W.2d 408,413 (Minn. 1998); *St. Paul Area Chamber of Commerce v. Minn. Pub. Serv. Comm'n*, 312 Minn. 250, 261-62, 251 N.W.2d 350, 357-58 (1977).

[212] Minn. Stat. § 14.69(e) (2014); *see In re Hildebrant*, 701 N.W.2d 293, 300-01 (Minn. Ct. App. 2005) (holding that the Public Employee Retirement Association's decision was not supported by substantial evidence because the record did not support the agency's determination concerning the cause of the applicant's disability); *Carter v. Olmsted Cnty. Hous. & Redev. Authority*, 574 N.W.2d 725, 730-31 (Minn. Ct. App. 1998); *see also In re Application of Minn. Power*, 838 N.W.2d at 762 (finding substantial evidence supports MPUC's interim rate decision); *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533-34 (Minn. Ct. App. 2007) (concluding ULJ findings supported by substantial evidence; upholding ULJ decision regarding unemployment benefits); *Skarhus v. Davanni's, Inc.*, 721 N.W.2d 340, 344 (Minn. Ct. App. 2006) (upholding ULJ unemployment benefits decision).

[213] *Minnesota Dep't of Nat. Res. v. Chippewa/Swift Joint Bd. of Commissioners*, 925 N.W.2d 244, 246 (Minn. 2019) *Signal Delivery Serv. v. Brynwood Transfer Co.*, 288 N.W.2d 707, 710 (Minn. 1980).

[214] *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn.2001) ("We defer to an agency decisionmaker's conclusions regarding conflicts in testimony, the weight given to expert testimony and the inferences to be drawn from testimony.") *Quinn Distrib. Co. v. Quast Transfer, Inc.*, 288 Minn. 442, 448, 181 N.W.2d 696, 699-700 (1970); *Gibson v. Civil Serv. Bd.*, 285 Minn. 123,126,171 N.W.2d 712, 715 (1969); *see In re Peoples Natural Gas Co.*, 413 N.W.2d 607, 615 (Minn. Ct. App. 1987) ("The agency's judgment concerning the inferences to be drawn from the facts shall not be rejected even though the court may be inclined to draw contrary inferences, unless there is manifest injustice."); *Minn. Life & Health Ins. Guar. Ass'n v. Dep't of Com.*, 400 N.W.2d 769, 774 (Minn. Ct. App. 1987); *Big Fish Lake Sportsmen Club, Inc. v. Water Res. Bd.*, 400 N.W.2d 416, 421 (Minn. Ct. App. 1987); *see also Minn. Ctr. for Envtl. Advocacy v. MPCA*, 644 N.W.2d 457, 469 (Minn. 2002) (substituting the court's judgment for that of the PCA rather than applying the substantial evidence standard of review when the court of appeals required an environmental impact statement).

[215] *Liffrig v. Indep. Sch. Dist. No. 442*, 292 N.W.2d 726, 729 (Minn. 1980) ("To determine whether the board's findings are supported by substantial evidence, a view of the entire record is required, since evidence which might be conclusive if unexplained may lose all probative force when supplemented and explained by other testimony."); *Minn. Ctr. for Envtl. Advocacy v. City of St. Paul Park*, 711 N.W.2d 526, 534 (Minn. Ct. App. 2006).

[216] 256 N.W.2d 808 (1977).

[217] Prior courts defined substantial evidence as "the same as the test on review of a jury verdict,"

> We view that by the "substantial evidence" test is meant: 1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; 2) more than a scintilla of evidence; 3) more than "some evidence"; 4) more than "any evidence"; and 5) evidence considered in its entirety.[218]

The first component of the *Reserve Mining* definition, namely, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion,"[219] has become a common short-form definition of substantial evidence.[220] Whatever definition is used, the

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Minneapolis Van & Warehouse Co. v. St. Paul Terminal Warehouse Co., 180 N.W.2d 175,178 (Minn. 1970), and the amount of evidence that would allow a court to reject a motion for directed verdict, *Soo Line Ry. v. United States*, 271 F. Supp. 869, 872 (D. Minn. 1967).

[218] *Reverse Mining*, 256 N.W.2d at 825 (quoting the trial court). This definition has been reiterated in numerous subsequent cases. *E.g., re Matter of NorthMet,* 959 N.W.2d at 749 (Minn. 2021); *Citizens Advocating Responsible Dev. v. Kandiyohi Cnty. Bd. of Comm'rs*, 713 N.W.2d 817, 832 (Minn. 2006) (finding county's determinations that proposed projects did not create the potential for significant environmental effects on groundwater or due to erosion were supported by substantial evidence); *Minn. Ctr. for Envtl. Advocacy*, 644 N.W.2d at 464; *Cable Commc'ns Bd. v. Nor-West Cable Commc'ns P'ship*, 356 N.W.2d 658, 668-69 (Minn. 1984); *Taylor v. Beltrami Elec. Co-op.*, 319 N.W.2d 52,56 (Minn. 1982); *In re Toberman*, 527 N.W.2d 138,141 (Minn. Ct. App. 1995); *In re Space Ctr. Transp.*, 444 N.W.2d 575, 580 (Minn. Ct. App. 1989) (finding substantial evidence supported denial by Transportation Regulation Board of petition for transfer of permit); *In re Schroeder*, 415 N.W.2d 436, 439 (Minn. Ct. App. 1987) (finding substantial evidence supported disciplinary action imposed by Board of Psychology); *Big Fish Eake Sportsmen's Club*, 400 N.W.2d at 419; *Peoples Natural Gas Co. v. Minn. Pub. Utils. Comm'n*, 342 N.W.2d 348, 351 (Minn. Ct. App. 1983).

[219] *Reverse Mining*, 256 N.W.2d at 825.

[220] *See, e.g., In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 274 (Minn. 2001); *Minn. Power & Light Co. v. Minn. Pub. Utils. Comm'n*, 342 N.W.2d 324, 329 (Minn. 1983); *Patzwold v. Pub. Emp't Relations Bd.*, 306 N.W.2d 118, 120 (Minn. 1981); *In re Plum Grove Lake*, 297 N.W.2d 130,135 (Minn. 1980); *Urban Council on Mobility v. Minn. Dep't of Natural Res.*, 289 N.W.2d 729, 733 (Minn. 1980); *Rubin v. Winona State Univ.*, 842 N.W.2d 469,473 (Minn. Ct. App. 2014); *Zahler v. Minn. Dep't of Human Servs.*, 624 N.W.2d 297, 301 (Minn. Ct. App. 2001); *In re City of Mankato v. Mahoney*, 542 N.W.2d 689, 692 (Minn. Ct. App. 1996); *Dep't of Human Servs. v. Muriel Humphrey Residences*, 436 N.W.2d 110,114 (Minn. Ct. App. 1989); *In re Hibbing Taconite Co.*, 431 N.W.2d 885, 891 (Minn. Ct. App. 1988); *In re Minn. Power's Transfer*, 399 N.W.2d 147,149 (Minn. Ct. App. 1987); *Brinks v. Minn. Pub. Utils. Comm'n*, 355 N.W.2d 446, 450 (Minn. Ct. App. 1984); *In re Peoples Natural Gas Co.*, 413 N.W.2d at 614; *see also Pietsch v. Bd. of Chiropractic Exam'rs*, 683 N.W.2d 303, 308-09 (Minn. 2004) (finding that the chiropractor's use of "runners" or "cappers" did not constitute unprofessional conduct "per se" when there was no evidence in the record of an industry standard); *Shockency v. Jefferson Lines*, 439 N.W.2d 715, 718 (Minn. 1989) (finding determination by Minneapolis Commission on Civil Rights, that bus company had discriminated against black employee, not supported by the evidence); *In re Application of the Grand Rapids Pub. Utils. Comm'n*, 731 N.W.2d 866, 871 (Minn. Ct. App. 2007) (finding MPUC's decision was based on substantial evidence when its rejection of ALJ recommendation was based on policy considerations and value judgments); *In re Shannon O'Boyle*, 655 N.W.2d 331,334-35 (Minn. Ct. App. 2002) (finding no substantial evidence in record to support a conclusion that appellant fell within the statutory definition of caregiver nor any findings on the statutory exceptions to a maltreatment determination relied on by the appellant; stating an agency is obligated to make findings and conclusions on defenses presented where exceptions are claimed); *Hazelton v. Comm'r of the Dep't of Human Servs.*, 612 N.W.2d 468, 472 (Minn. Ct. App. 2000) (holding record lacked substantial evidence of a violation by a public assistance recipient where the finding relied on two confusing forms and testimony of "standard agency practice"); *In re Minn. Power &*

petitioner's burden in seeking to overturn an agency finding of fact is "heavy."[221]

The *Reserve Mining* definition has been called a "quantitative" test.[222] Substantial evidence also includes a qualitative component, however. Although the rules of evidence are not strictly applied in agency proceedings, a decision is not supported by substantial evidence where all the supporting evidence is "inherently unreliable," such as hearsay that would be inadmissible in a judicial proceeding.[223] There is also a third component, one that goes not to the nature of the supporting evidence but to the way in which that evidence is explained or evaluated by the agency in its findings.

Prior to 1983, the adequacy of the agency's findings (as opposed to the sufficiency of the underlying evidence) was essentially a procedural matter. Substantial evidence review could not occur if the findings were inadequate, and the case would be remanded for additional or amended findings before judicial review could proceed.[224] As a result of the Minnesota Supreme Court's opinion in *Minnesota Power & Light Co. v. Minnesota Public Utilities Commission*,[225] however, it appears that substantiality of the evidence can be controlled by the manner in which it is evaluated by the agency in its findings.[226]

In *Minnesota Power & Light Co.*, the supreme court had initially affirmed a district court

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Light Co., 435 N.W.2d 550, 554, 557 (Minn. Ct. App. 1989) (agreeing that substantial evidence supported establishment of rates by Public Utilities Commission).

[221] State *ex rel. Indep. Sch. Dist. No. 276 v. Dep't of Educ.*, 256 N.W.2d 619, 627 (Minn. 1977).

[222] *Minn. Power & Light Co.*, 342 N.W.2d at 328.

[223] *Indep. Sch. Dist. No. 276*, 256 N.W.2d at 627; *see also Morey v. Sch. Bd. of Indep. Sch. Dist. No. 492*, 271 Minn. 445, 449,136 N.W.2d 105, 108 (1965) (commenting that although "incompetent evidence is not fatal to [the board's determination] evidence which is calculated to support the charges [against teacher] should be relevant and have probative value"); *In re Expulsion of E.J.W. from Indep. Sch. Dist. No. 500*, 632 N.W.2d 775, 782 (Minn. Ct. App. 2001) (concluding substantial evidence was lacking where decision was based on contradictory hearsay statements of non-testifying witnesses); *Carter v. Olmsted Cnty. Hous. & Redev. Authority*, 574 N.W.2d 725, 730-32 (Minn. Ct. App. 1998) (concluding record lacked substantial evidence to support agency determination where the only evidence to support allegations of section 8 violation was hearsay unsupported by other evidence in the record).

[224] *E.g.*, *People for Envtl. Enlightenment & Responsibility (PEER) v. Minn. Envtl. Quality Council*, 266 N.W.2d 858, 874 (Minn. 1978) (remanding to district court for further hearings to permit affected homeowners to submit evidence as to uniqueness of their residencies); *Markwardt v. State Water Res. Bd.*, 254 N.W.2d 371, 375 (Minn. 1977) (recommending the board make additional explicit findings as "a good practice" in future cases); *Bryan v. Cmty. State Bank of Bloomington*, 285 Minn. 226, 233,172 N.W.2d 771,776 (1969) (citing Minn. Stat. § 15.0424, subd. 5 (1968) (renumbered Minn. Stat. § 14.69, subsequently amended)) (noting that the APA "authorizes a reviewing court to remand the case For [sic] further proceedings"); *Morey*, 136 N.W.2d at 108 (remanding matter to the board for a second time to make further findings of facts "so that a reviewing court can determine from the record whether the facts furnish justifiable reason for its action").

[225] 342 N.W.2d 324 (Minn. 1983).

[226] Agency decisions may still be remanded for additional findings. Minn. Stat. § 14.69 (2014); *see, e.g., In re Expulsion of N.Y.B. from Indep. Sch. Dist. No. 11*, 750 N.W.2d 318, 326-27 (Minn. Ct. App. 2008) (remanding and directing school board to explain its decision in "sufficient detail," as required by the Pupil Fair Dismissal Act, Minn. Stat. § 121A.47, by articulating, at a minimum: 1. the basis for determining the relative egregiousness of the student's conduct; 2. the factual context; 3. an explanation of the board's determination in comparing this case to others; and 4. the board's consideration of mitigating circumstances).

ruling that the agency decision was not supported by substantial evidence. On remand, the agency did not take additional evidence. It merely issued additional findings of fact and conclusions of law detailing the original evidence and explaining in greater detail the reasons for its decision. The district court reversed again because it believed that "further explanation or rationalization of the PUC's finding cannot create 'substantial evidence.'"[227] The supreme court stated the issue to be "[w]hether, upon remand for the lack of substantial evidence to support an agency's ruling, the [substantial evidence] standard may be met, without the submission of further evidence, by the agency's expert analysis of the record, setting forth explanations for its conclusions. "[228] It answered this question affirmatively, holding that "we are now satisfied that the PUC's order is supported by substantial evidence. "[229]

15.4.2(6) Arbitrary or Capricious

For a time it appeared that arbitrary or capricious was an entirely separate standard of review that did not duplicate or overlap the substantial evidence test. In *Reserve Mining Co. v. Herbst*,[230] a leading case for the articulation of many of the principles of judicial review, the Minnesota Supreme Court stated that the substantial evidence standard applies to an agency's findings, while the arbitrary or capricious standard applies to its conclusions.[231] This distinction was not supported by the statutory language.[232] However, the arbitrary or capricious standard has since been applied to the agency's findings, determination, action, decision, and order.[233]

The arbitrary or capricious standard incorporates a high degree of judicial deference to the agency, with the court declining to substitute its judgment for that of the agency.[234] As used in the APA, the phrase arbitrary or capricious has essentially been defined as requiring a showing that the agency's determination "represents its will and not its judgment. "[235] If a

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[227] *Minn. Power & Light Co.*, 342 N.W.2d at 327.

[228] *Id.*

[229] *Id*. at 332

[230] 256 N.W.2d 808 (Minn. 1977).

[231] *Id*. at 827.

[232] *See* Minn. Stat. §§ 15.0424, subds. 5 (new evidence, hearing by agency), 6 (procedure on review), 15.0425 (scope of judicial review) (1976). All six bases for review are listed now in Minn. Stat. § 14.69 (2014), without distinction, as applying to "the administrative finding, inferences, conclusion, or decision."

[233] *Peoples Natural Gas Co. v. Minn. Pub. Utils. Comm'n*, 342 N.W.2d 348, 353-54 (Minn. Ct. App.1983) ; *see also Cable Commc'ns Bd. v. Nor-West Cable Commc'ns P'ship*, 356 N.W.2d 658, 668-69 (Minn.1984) ; *Sunstar Foods v. Uhlendorf*, 310 N.W.2d 80, 84 (Minn. 1981); *Crookston Cattle Co. v. Minn. Dep't of Natural Res.*, 300 N.W.2d 769, 777 (Minn. 1980); *Minn. Loan & Thrift Co. v. Commerce Comm'n*, 278 N.W.2d 522, 525 (Minn. 1979); *Reserve Mining*, 256 N.W.2d at 823.

[234] *See In re Rocheleau*, 686 N.W.2d 882, 892-93 (Minn. Ct. App. 2004) (giving substantial judicial deference to an administrative board's fact-finding process; finding board's decision not unreasonable or arbitrary); *In re Max Schwartzman & Sons*, 670 N.W.2d 746, 755 (Minn. Ct. App. 2003) (deferring to agency due to agency's expertise); *Town of Forest Lake v. Minn. Mun. Bd.*, 497 N.W.2d 289, 291 (Minn. Ct. App.1993) (stating that reviewing court may not substitute its views for that of the agency).

[235] *Kind Heart Daycare, Inc. v. Comm'r of Human Servs.*, 905 N.W.2d 1, 17 (Minn. 2017); *Markwardt v. State Water Res. Bd.*, 254 N.W.2d 371, 374 (Minn. 1977); *Bryan v. Cmty. State Bank of Bloomington*, 285 Minn. 226, 234, 172 N.W.2d 771, 776 (1969); *In re Hutchinson*, 440 N.W.2d 171, 177 (Minn. Ct. App. 1989); N.

"decision represents a reasonable judgment, " it is not arbitrary or capricious.[236] If the decision is not "entirely wrong" or not "clearly wrong, " the court will not substitute its judgment.[237] So long as an agency engaged in reasoned decision-making, the court will affirm, even though it may have reached a different conclusion had it been the factfinder.[238] Moreover, "[where there is room for two opinions on the matter, such action is not 'arbitrary and capricious,' even though it may be believed that an erroneous conclusion has been reached. "[239] An agency decision on the amount of time needed to correct a violation is reviewed under the arbitrary and capricious standard and a reviewing court will likely defer to the agency as to a deadline for correction of the violation where the matter is within the agency's expertise.[240]

An agency action is arbitrary and capricious if:

Memorial Med. Ctr. v. Minn. Dep't of Health, 423 N.W.2d 737, 740 (Minn. Ct. App. 1988); *In re Minn. Joint Underwriting Ass'n,* 408 N.W.2d 599, 605 (Minn. Ct. App. 1987); *In re Minn. Power's Transfer*, 399 N.W.2d 147,149 (Minn. Ct. App. 1987); *Peoples Natural Gas Co. v. Minn. Pub. Utils. Comm'n*, 342 N.W.2d 348,351 (Minn. Ct. App. 1983); *see Mammenga v. Dep't of Human Servs.*, 442 N.W.2d 786, 789 (Minn. 1989) ("An agency decision may be arbitrary or capricious if the decision is based on whim or is devoid of articulated reasons."); *In re Revocation of Family Child Care License of Burke*, 666 N. W.2d 724, 728 (Minn. Ct. App. 2003) (finding that the commissioner of human services abused his discretion in revoking a child care license where ALJ recommended less severe discipline and agency failed to explain how record supported revocation; reiterating that license discipline must not exceed seriousness of violation); *Rostamkhani v. City of St. Paul*, 645 N.W.2d 479, 486-87 (Minn. Ct. App. 2002) (holding city council action was arbitrary and capricious where record lacked a letter from landlord setting out remedial action that had been received by a council member a week earlier, because the council had failed to consider an important aspect of the problem before it); *Trout Unlimited Inc. v. Minn. Dep't of Agric.*, 528 N.W.2d 903, 907 (Minn. Ct. App. 1995) ("A decision will be deemed arbitrary and capricious if the agency relied on factors which the legislature had not intended it to consider, if it entirely failed to consider an important aspect of the problem, if it offered an explanation for the decision that runs counter to the evidence, or if the decision is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."); *In re Whitehead*, 399 N.W.2d 226, 229-30 (Minn. Ct. App. 1987) (holding Public Utilities Commission acted arbitrarily and capriciously when it ordered another telephone company to provide telephone service to property); *Big Fish Lake Sportsmen Club, Inc. v. Water Res. Bd.*, 400 N.W.2d 416, 420 (Minn. Ct. App. 1987); *Neujahr v. Ramsey Cnty. Civil Serv. Comm'n*, 370 N.W.2d 446, 448 (Minn. Ct. App. 1985); *cf. In re Application of the Grand Rapids Pub. Utils. Comm'n*, 731 N.W.2d 866, 871-73 (Minn. Ct. App. 2007) (finding MPUC's choice of various methods of cost analysis was not arbitrary and capricious); *In re Detailing Criteria & Standards for Measuring an Elec. Utility's Good Faith Efforts*, 700 N.W.2d 533, 540 (Minn. Ct. App. 2005) (finding Minnesota Public Utilities Commission's adoption of a plain language interpretation of the renewable energy statute reflected its judgment and not its will, so that the decision was not arbitrary and capricious even though it rejected one point of view).

[236] *91 Peoples Natural Gas Co.*, 342 N.W.2d at 353; *see also Mausolf v. Babbitt*, 125 F.3d 661, 670 (8th Cir. 1997) (finding that, even though record was devoid of "definitive, irrefutable evidence" to establish adverse connection between snowmobiling and loss of gray wolves, evidence was sufficient to justify National Park Service's decision to order Park closures and action was not arbitrary or capricious); *In re Review of 2005 Automatic Adjustment of Charges*, 768 N.W.2d 112,121-22 (Minn. 2009).

[237] *Peoples Natural Gas Co.*, 342 N.W.2d at 352.

[238] *Cable Commc'ns Bd.*, 356 N.W.2d at 668-69 (quoting *Reserve Mining*, 256 N.W.2d at 825); *White v. Minn. Dep't of Natural Res.*, 567 N.W.2d 724, 730 (Minn. Ct. App. 1997); *Fahey v. Avnet, Inc.*, 525 N.W.2d 568, 571 (Minn. Ct. App. 1994).

[239] *Brown v. Wells*, 181 N.W.2d 708, 711 (Minn. 1970); *see also In re Review of Annual Automatic Adjustment*, 768 N.W.2d at 120; *In re Toberman*, 527 N.W.2d 138,142 (Minn. Ct. App. 1995).

[240] *In re Max Schwartzman & Sons*, 670 N.W.2d 746, 752 (Minn. Ct. App. 2003).

> the agency relied on factors which the legislature had not intended it to consider, if it entirely failed to consider an important aspect of the problem, if it offered an explanation for the decision that runs counter to the evidence, or if the decision is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. The reviewing court may not supply a reasoned basis for the agency's action that the agency has not given, but must uphold a decision of less than ideal clarity if the agency's path is reasonably discernible.[241]

Rejection by an agency of an ALJ's findings or recommendation is arbitrary or capricious if the agency gives no reason for rejecting them,[242] or if the decision lacks "any rational basis".[243]

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[241] *In re Space Ctr. Transp.*, 444 N.W.2d 575, 581 (Minn. Ct. App. 1989) (citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29,43 (1983)) (affirming action of Transportation Board denying transfer as not arbitrary and capricious); *see In re Application from the Minn. Orchestral Ass'n*, 607 N.W.2d 478,481 (Minn. Ct. App. 2000) (citing *Space Ctr. Transp.*, 444 N.W.2d at 581) (finding that a variance from a noise standard granted by the PCA for an amphitheater was not arbitrary and capricious); *Pope Cnty. Mothers v. MPCA*, 594 N.W.2d 233, 238 (Minn. Ct. App. 1999) (finding PCA's decision not to require an environmental impact statement for a pig feedlot was arbitrary and capricious where agency proceeded without adequate information and issued permits before the EIS comment period expired); *see also In re Application for PERA Ret. Benefits of McGuire*, 756 N.W.2d 517, 520-21 (Minn. Ct. App. 2008) (holding action of PERA Board in rescinding appellant's retirement benefits without addressing equitable estoppel claim was not arbitrary and capricious). *But see Citizens Advocating Responsible Dev. v. Kandiyohi Cnty. Bd. of Comm'rs*, 713 N.W.2d 817, 836-37 (Minn. 2006) (concluding county's use of erroneous propositions as a basis for its determination that proposed gravel pits have no potential for cumulatively causing significant environmental effects is arbitrary and capricious).

[242] *Five Star Trucking v. Minn. Transp. Regulation Bd.*, 370 N.W.2d 666, 670 (Minn. Ct. App. 1985); *Beaty v. Minn. Bd. of Teaching*, 354 N.W.2d 466, 472 (Minn. Ct. App. 1984); *see CUP Foods v. City of Minneapolis*, 633 N.W.2d 557, 565 (Minn. Ct. App. 2001) (finding city council's failure to explain why it rejected the suggestion of the ALJ for conditional licensure, imposing instead a six-month closure, rendered the decision arbitrary and capricious); *Brinks v. Minn. Pub. Utils. Comm'n*, 355 N.W.2d 446, 452 (Minn. Ct. App. 1984) (finding commission's rejection of hearing examiner's findings not arbitrary or capricious where reasons for rejecting the findings were explained); *cf. Bloomquist v. Comm'r*, 704 N.W.2d 184,190 (Minn. Ct. App. 2005) (finding that agency adequately explained its deviation from the contrary recommendation of the ALJ and articulated a rational connection between its factual findings and legal conclusions).

[243] *In re City of Mankato v. Mahoney*, 542 N.W.2d 689, 692 (Minn. Ct. App. 1996); *see In re Application of Minn. Power*, 838 N.W.2d 747,760 (Minn. 2013) (quoting *Reserve Mining*, 256 N.W.2d at 825) ("We uphold the Commission's decision when it is supported by 'such relevant evidence as a reasonable mind might accept as adequate to support [the] conclusion.'"); *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 277 (Minn. 2001) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962) ("[An appellate court] must be guided in its review by the principle that the agency's conclusions are not arbitrary and capricious so long as a 'rational connection between the facts found and the choice made' has been articulated."); *In re Minn. Power*, 807 N.W.2d 484, 490 (Minn. Ct. App. 2011) (finding commission's actions not arbitrary where commission "carefully considered and articulated its basis" for its actions); *In re Temp. Immediate Suspension of Family Child Care License of Strecker*, 777 N.W.2d 41, 45 (Minn. Ct. App. 2010) (quoting *In re Claim for Benefits by Meuleners*, 725 N.W.2d 121,123 (Minn.App.2006)) ("' An agency acts arbitrarily if it fails to articulate a rational connection between facts found and the decision made.'"); *see also In re Expulsion of N.Y.B. from Indep. Sch. Dist. No. 11*, 750 N.W.2d 318, 325-26 (Minn. Ct. App. 2008) (finding school board twice failed to include the "controlling facts" on

In cases of "great importance,"[244] an agency decision made without written findings and reasons is arbitrary and capricious even though the agency was not required to follow contested case procedures.

which it based its expulsion decision as required under statute and, therefore, the court was not able to conclude whether the board's decision was the product of reasoned decision-making).

[244] *Reserve Mining Co. v. Minn. Pollution Control Agency*, 364 N.W.2d 411,414 (Minn. Ct. App. 1985); *see also Johnson v. Comm'r of Health*, 671 N.W.2d 921, 924-25 (Minn. Ct. App. 2003) (finding agency's refusal to set aside relator's disqualification cannot be sustained absent written findings and reasons); *In re Authorization to Discharge & Construct Wastewater Treatment Facilities*, 366 N.W.2d 118,122 (Minn. Ct. App. 1985) (concluding in neighboring state's appeal to agency's provisions in granted sewer overflow discharge permits: "Although this appeal did not arise from a contested case, the MPCA should still have provided written reasons for its decision."); *cf. Matter of Auth. to Provide Alt. Operator Servs. in Minn.*, 490 N.W.2d 920, 924 (Minn. Ct. App. 1992) (finding Commissioner's findings, although "somewhat meager and conclusory," were sufficient).