

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Rules
Relating to Expedited Licensing for
Veterans and Housekeeping Updates,
Minnesota Rules, Chapter 1800

**ORDER ON REVIEW OF
RULES UNDER
MINN. STAT. § 14.26**

The Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design (Board) is seeking review and approval of the above-entitled rules, which were adopted by the agency pursuant to Minn. Stat. § 14.26 (2014). On September 14, 2015, the Office of Administrative Hearings (OAH) received the documents that must be filed by the Board under Minn. Stat. § 14.26 and Minn. R. 1400.2310 (2015).

Based upon a review of the written submissions and filings, Minnesota Statutes, Minnesota Rules, and for the reasons in the Memorandum that follows,

IT IS HEREBY DETERMINED:

1. The Board has the statutory authority to adopt the rules.
2. The rules were adopted in compliance with the procedural requirements of Minnesota Statutes, Chapter 14 (2014), and Minnesota Rules, Chapter 1400 (2015).
3. The record demonstrates that the rules are rationally related to the Board's objectives and are needed and reasonable.
4. The adopted rules are not substantially different from the originally proposed rules.

IT IS HEREBY ORDERED THAT:

The rules are **APPROVED**.

Dated: September 17, 2015

s/Ann C. O'Reilly

ANN C. O'REILLY
Administrative Law Judge

MEMORANDUM

Proposed Rule 1800.0450 provides for the issuance of a temporary license or certificate to active duty military personnel, spouses of active duty military personnel, and veterans honorably or generally discharged within two years of the application for a temporary license or certificate. This proposed rule was drafted in response to Minn. Stat. § 197.4552 (2014), a new law passed during the 2014 legislative session.¹

Minnesota Statutes section 197.4552 requires that each professional licensing board defined in Minn. Stat. § 214.01, subds. 2 and 3 (2014),² establish procedures: (1) to expedite the issuance of a license or certification; and (2) to issue a temporary license or certification to individuals who are active duty military members, spouses of active duty military members, or veterans honorably or generally discharged from service within two years of application for a license or certification or temporary license or certification. Section 197.4552, subd. 3 further provides that each licensing board “may adopt rules to carry out the provisions of this section.”

The rules and statutes applicable to administrative rulemaking establish certain procedural requirements for agencies seeking to adopt administrative rules. Pursuant to Minn. Stat. § 14.101, an agency must solicit comments from the public on the subject matter of a possible rulemaking proposal under consideration by an agency by publishing a Request for Comments in the *State Register* at least 60 days before the publication of the Notice of Intent to Adopt or Notice of Hearing related to those proposed rules. Section 14.101 further provides that the Request for Comments “must be published within 60 days of the effective date of any new or amendatory law **requiring** rules to be adopted, amended, or repealed.”³

The enabling statute for Proposed Rule 1800.0450 is Minn. Stat. § 197.4552. Section 197.4552 was enacted in May 2014 and became effective on August 1, 2014.⁴

The Board published its Request for Comments in the *State Register* on January 20, 2015.⁵ On June 1, 2015, the Board published its Dual Notice of Intent to Adopt Rules and Notice of Hearing.⁶ Thus, while the Board published its Dual Notice of Intent to Adopt Rules and Notice of Hearing more than 60 days after the publication of its Request for Comments, the Board did not publish its Request for Comments within 60 days of the effective date of the statute enabling the passage of the rules (Minn. Stat. § 197.4552).

The fact that the Board did not publish its Requests for Comments within 60 days of the effective date of Section 197.4552 is not a procedural defect in this case because the enabling statute does not require the Board to adopt the proposed rules. The statute

¹ See 2014 Minn. Laws Ch. 312, art. 4, § 18.

² The Board is included in the professional licensing boards defined in Minn. Stat. § 214.01, subd. 3 (2014).

³ Emphasis added.

⁴ 2014 Minn. Laws Ch. 312, art. 4, § 18.

⁵ *State Register* Vol. 39, No. 29 (January 20, 2015).

⁶ *State Register* Vol. 39, No. 48 (June 1, 2015).

merely allows, but does not require, the Board to establish the procedures by administrative rule.

By their clear terms, subdivisions 1 and 2 of Minn. Stat. § 197.4552 require the boards to establish procedures to expedite the issuance of licenses and certifications and to issue temporary licenses and certifications to certain classes of military personnel and spouses. The statute does not, however, mandate how a board may adopt such procedures. Subdivision 3 of section 197.4552 expressly provides that a board “**may**” adopt rules to carry out the provisions of the law. It does not require that boards initiate rulemaking proceedings to adopt the required procedures.

Because the adoption of administrative rules to carry out the requirements of Minn. Stat. § 197.4552 is merely permissive, not mandatory, the 60-day Requests for Comments provision of Minn. Stat. § 14.101 does not apply. Consequently, there is no procedural defect in the proposed rules resulting from the Board’s failure to publish its Request for Comments within 60 days of the effective date of Section 197.4552.

But even if the 60-day Request for Comments provision in Section 14.101 did apply, the fact that the Board did not publish its Request for Comments until January 20, 2015, is not a material defect in the rulemaking process. It is clear that the Board published its Request for Comments well over 60 days prior to its Notice of Intent to Adopt and Notice for Hearing, thus giving the public ample opportunity to comment and weigh in on the Board’s proposed rules. The fact that the Request for Comments was published more than 60 days after the effective date of the enabling statute, did not, in any way, affect the public’s right to participate in the rulemaking process. Nor does it establish a failure by the Board to comply with Minnesota law. At most, it is a harmless error under Minn. Stat. § 14.15, subd. 5 because it “did not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process.”⁷

Minnesota Statutes section 14.101, subdivision 3 provides that “If an agency has made a good faith effort to comply with [Section 14.101], a rule may not be invalidated on the grounds that the contents of [the] notice are insufficient or inaccurate.” Here, the Board has established that it made a good faith effort to comply with Minn. Stat. §§ 14.101 and 197.4552. Accordingly, the Administrative Law Judge finds no material defect in the procedural requirements set forth in Minn. Stat. ch. 14 and Minn. R. ch. 1400. The proposed rules are, therefore, **APPROVED**.

A.C.O.

⁷ Minn. Stat. § 14.15, subd. 5.