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**CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM
COMMITTEE**
67th Montana Legislature

SENATE MEMBERS

John Esp
Mary McNally
Albert Olszewski
Diane Sands

HOUSE MEMBERS

Barbara Bessette
Mary Caferro
Dennis Lenz
Frederick (Eric) Moore
Gordon Pierson
Tom Welch

COMMITTEE STAFF

Sue O'Connell - Research Analyst
Alexis Sandru - Attorney
Fong Hom - Secretary

**MINUTES LOG
ZOOM CONFERENCE CALL**

August 12, 2020
Remote Room 102, Capitol Building

Please note: This document is a Minutes Log and provides annotation of the time elapsed between the beginning of the meeting and the time at which the item was presented or discussed, a motion was made, or a vote was taken. The narrative presented here is provided only as a guide to the audio or video recording of the meeting. The official discussion, motion, or vote is available on the audio or video archive of this meeting. The Legislature does not prepare a transcript of the meeting activities. The time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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ROLL CALL

Members Present:

Rep. Frederick (Eric) Moore, Chair
Sen. Diane Sands, Vice Chair
Rep. Barbara Bessette
Rep. Mary Caferro
Sen. John Esp
Rep. Dennis Lenz
Sen. Mary McNally
Rep. Gordon Pierson (*joined the meeting at 3:17 p.m.*)
Rep. Tom Welch
Sen. Albert Olszewski (*joined the meeting at 3:09 p.m.*)

Staff Present:

Sue O'Connell, Research Analyst
Alexis Sandru, Attorney
Fong Hom, Secretary

AGENDA (Attachment 1)

Committee Business Summary

In a special meeting, the committee reviewed and took public comment on materials related to a legislative poll the committee must, by law, undertake after 20 legislators objected to an administrative rule proposed by the Department of Public Health and Human Services to ban flavored vaping products.

After hearing public comment, Chairman Moore directed that the following poll materials be sent by mail to members of the Legislature no later than August 17:

- a letter explaining the statutory polling requirements for the poll and the polling process the committee will use;
- a ballot;
- MAR Notice No. 37-923, the proposed administrative rule on vaping products;
- a copy of 50-1-202, the statute that DPHHS cited as authorizing the rules; and
- the letter DPHHS provided to the committee on August 10, justifying its reasons for proposing the rule.

Rep. Moore also directed that:

- ballots must be postmarked no later than September 8 to be counted;
- results of the poll be provided to the Secretary of State for publication in the Montana Administrative Register;
- other materials relevant to the rule and the poll be posted on the committee's website; and
- staff work with the chairman and vice chairman on any issues or questions that may arise during the polling process.

CALL TO ORDER/ROLL CALL

15:05:05 Rep. Moore called the meeting to order at 3:05 p.m. The secretary called roll. Sen. Olszewski and Rep. Pierson were excused and joined the meeting later. Rep. Moore gave opening remarks about the purpose of the meeting and the statutory requirements for conducting the poll.

AGENCY OVERSIGHT: Administrative Rule Review - MAR Notice No. 37-923

15:06:39 Alexis Sandru, Staff Attorney, provided an overview of the Montana Administrative Procedure Act requirements regarding the poll, provided a brief background on how the poll was triggered and reviewed the draft poll materials: poll instructions ([Exhibit 1](#)); MAPA Poll-Related Statutes ([Exhibit 2](#)); letter to Rep. Eric Moore stating the objection from 19 of the 20 legislators who objected ([Exhibit 3](#)); and letter to Director Sheila Hogan, DPHHS, notifying DPHHS of the pending poll, along with the Department's response ([Exhibit 4](#)). She also discussed the attachments that were included in the packet of information: Attachment A-text of the proposed rulemaking ([Exhibit 5](#)); Attachment B-authorizing statute 50-1-202 for proposed rule ([Exhibit 6](#)); Attachment C-Department's response and draft ballot ([Exhibit 7](#)).

Committee Questions/Discussion

- 15:14:33 Rep. Moore asked if the DPHHS's written justification for rulemaking has to go out with the poll packet. Rep. Moore asked what has been done historically with regard to a 2-week or a 3-week period for legislators to respond to the poll.
- 15:15:52 *Rep. Pierson joined the meeting at 3:17 p.m.*

Public Comment on Poll Procedure

- 15:17:11 Sheila Hogan, Director, DPHHS
- 15:21:07 Lora Wier, Executive Director, Montana Public Health Association
- 15:22:21 Claire Oakley, Director of Health Promotion, RiverStone Health
- 15:25:22 Nancy Crawford, Bozeman mother and advocate against vaping products
- 15:26:52 Lori Byron, Hardin, Montana
- 15:28:37 Beth Morrison, Prevention Specialist, Cascade County
- 15:30:33 Lauren Wilson, representing pediatricians in Montana
- 15:31:22 Amanda Cahill, American Heart Association and American Stroke Association
- 15:33:19 Alysa Curry, Member, Alliance for Youth, Great Falls
- 15:34:39 Rep. Mary Ann Dunwell, House District 84
- 15:39:18 Amy Barkley, Campaign for Tobacco Free Kids
- 15:40:45 Sen. Jason Ellsworth, Senate District 43

GENERAL PUBLIC COMMENT

None.

DIRECTION TO STAFF

- 15:43:34 Rep. Moore provided instructions to the staff with regard to the polling documents and further directed staff that other relevant materials be posted on the Children and Families' website. He directed that the ballots be sent by mail only and that voted ballots be postmarked on or before September 8. He said he will put this in a memo to be posted on the committee's website.

Motion for committee to reject the call for a poll

- 15:45:20 Sen. Sands moved that the committee reject the call for a poll because it is within the emergency powers of the Department to institute the rules during the COVID-19 pandemic.

Discussion on Motion

- 15:45:51 Sen. Esp said that the motion is out of order at this time because Rep. Moore has already ruled as the chair that the poll will be sent. The only motion that is in order is whether the committee wishes to override the chair's ruling.
- 15:46:34 Rep. Moore asked for a legal interpretation of Sen. Esp's comment.
- 15:47:03 Ms. Sandru asked Sen. Sands whether she is objecting to Rep. Moore's directive or whether her motion is that the committee should reject the poll in its entirety.
- Rep. Moore said that the question before the committee is whether Sen. Sands' motion is in order.
- Ms. Sandru said that her interpretation of the MAPA is that once we received the 20 objections, we are required by statute to conduct the poll.
- 15:48:23 Sen. Olszewski agreed with Sen. Esp that Sen. Sands' motion is out of order.
- 15:49:13 Rep. Moore said that he will rule that Sen. Sands' motion is in order.

Vote

- 15:49:13 The motion failed on a roll call vote, 7-3, with Senators Esp, Olszewski, and Representatives Caferro, Lenz, Moore, Pierson and Welch voting no; and Senators McNally, Sands, and Rep. Bessette voting yes.

ADJOURNMENT

- 15:52:03 Rep. Moore adjourned the meeting at 3:52 p.m.