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## INTERIM COMMITTEE POWERS RELATING TO ADMINISTRATIVE RULES

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The following is a list of an interim committee's (and the EQC's) powers relating to administrative rules.

(1) Review the incidence and conduct of administrative proceedings under the Montana Administrative Procedure Act (MAPA) by the agencies that the committee has jurisdiction over. 2-4-402(2)(e), MCA. The exact words used in subsection (2)(e) are "administrative proceedings under this **chapter**". Since the chapter includes contested case procedures as well as rulemaking procedures, the committee may review the incidence and conduct of contested cases as well as the incidence and conduct of rulemaking. Both rulemaking and contested cases are "administrative proceedings under this chapter". "Contested case" is defined in 2-4-102, MCA, as "a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for a hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing".

(2) Review rules of the agencies that the committee has jurisdiction over. 2-4-402(1) and 5-5-215(1)(a), MCA. Since the committee can "review administrative rules within its jurisdiction" under 5-5-215(1)(a), MCA, and can "monitor the operation of assigned executive branch agencies" under 5-5-215(1)(c), MCA, and "has administrative rule review, program evaluation, and monitoring functions" for the agencies that the committee has jurisdiction over, arguably,

the committee can look into anything whatever that relates to rules, including but not limited to the application of a particular rule in a particular case and the substance of a proposed or existing rule.

- (3) Require an agency proposing a rule to hold a hearing on the rule. 2-4-402(2)(c), MCA.
- (4) Submit oral and written testimony at an agency's rulemaking hearing. 2-4-402(2)(b), MCA.
- (5) Require an agency to prepare an economic impact statement regarding a rule proposal. As an alternative, the committee may contract to have an economic impact statement made. Notice of the economic impact statement and of where a copy can be obtained is published in the Montana Administrative Register (MAR). 2-4-405, MCA.
- (6) Require an agency to publish the full or partial text of rule material adopted and incorporated by reference. 2-4-307(4), MCA.
- (7) Obtain an agency's rulemaking records for the purpose of reviewing compliance with 2-4-305, MCA. 2-4-402(2)(a), MCA.
- (8) Petition an agency for the adoption, amendment, or repeal of a rule. 2-4-315, MCA.
- (9) Make a written recommendation to an agency for the adoption, amendment, or rejection of a rule. 2-4-402(2)(b), MCA.
- (10) Make a written objection to an agency regarding a proposed or adopted rule. The agency must respond in writing. If the committee does not withdraw or substantially modify its objection, the committee may require publication of the text of its objection next to the rule in both the MAR and the Administrative Rules of Montana (ARM). After such publication, the agency has the burden, in any action challenging the legality of the rule, of proving that the rule was adopted in substantial compliance with 2-4-302, 2-4-303, and 2-4-305, MCA. 2-4-406, MCA.
- (11) Delay the effective date of a new rule or of the amendment or repeal of a rule until the day after final adjournment of the next regular session of the Legislature that begins after the rulemaking proposal notice was published in the MAR. 2-4-305(9) and 2-4-306(4)(c), MCA.
- (12) Poll the Legislature to determine whether a proposed rule is consistent with the Legislature's intent in adopting the grant of rulemaking authority, the statute implemented by the rule, or both. The results of the poll are admissible in any court proceeding involving the validity of the rule. If a majority of both houses finds that the proposed rule is contrary to the intent of the Legislature, the rule is conclusively presumed to be contrary to the legislative intent in any court proceeding involving the rule's validity. 2-4-403 and 2-4-404, MCA.
- (13) Make a recommendation to the Legislature regarding an agency's grant of rulemaking authority. For example, the committee could recommend that the statute granting rulemaking

authority be amended or repealed. 2-4-314, MCA.

(14) Prepare legislation relating to MAPA; an agency's grant of rulemaking authority; an adopted, amended, or repealed rule; or any other matter relating to rules. 5-5-215(2), MCA.

(15) Petition an agency for a declaratory ruling on the applicability of a rule. The ruling is subject to judicial review at the committee's request. 2-4-501, MCA.

(16) Seek judicial review of the sufficiency of the reasons for a finding of imminent peril to the public health, safety, or welfare that is the basis for adoption of an emergency rule. 2-4-303, MCA.

(17) Institute, intervene in, or otherwise participate in proceedings involving MAPA in the state and federal courts and administrative agencies. 2-4-402(2)(d), MCA.

(18) Require an agency to give the committee copies of documents filed in a proceeding involving the interpretation of MAPA or an agency rule. 2-4-410, MCA.