

## Guidelines to Interim Committees for Best Practices in Administrative Rules Objection Polling

### Background

Pursuant to section 2-4-403, MCA, of the Montana Administrative Procedures Act, two interim committees have conducted polls of legislative intent this interim following formal objections to proposed agency rules. The objections that precipitated the polling were initiated by individual legislators; when the statutorily required 20 legislators provided evidence of objection, the committees each responded with the required poll of the entire Legislature.

- The Revenue and Transportation Interim Committee (RTIC) polled on one rule out of a total of three new rules proposed by the Department of Revenue.
- The State Administration and Veterans Affairs Interim Committee (SAVA) polled on 16 rules out of a total of 65 rules proposed (12 new, 5 transferred, 43 transferred and amended, and 5 repealed) by the Commissioner of Political Practices.

Potential statutory changes to clarify language found confusing:

1) COPP rules were changed between notice of proposed rules and adopted rules. Would it make sense to allow poll objections after final rules are adopted? Section 2-4-403, MCA, states, “(1) If the legislature is not in session, the committee may poll all members of the legislature by mail to determine whether a proposed rule is consistent with the intent of the legislature.” Should the objection be time-limited?

2) Should poll results be published in the Administrative Rules of Montana (ARM), which is the permanent database of rules, as opposed to the Montana Administrative Register (MAR), a biweekly publication? Section 2-4-306, MCA, states, “(3) If the appropriate administrative rule review committee has conducted a poll of the legislature in accordance with 2-4-403, the results of the poll must be published with the rule if the rule is adopted by the agency.”

3) Section 2-4-404, MCA, says, “If the poll determines that a majority of the members of both houses find that the rule....” Legal staff determined to count whether there was a majority of the members within each house and also combined for a majority of members of both houses. The margins were so great in these two polls that it did not matter, but the question arose whether the majority of the members from each chamber (26 and 51 or over, respectively) were required and therefore combined for a majority of the members of the total of both houses (76 or more), or if it meant that a majority could be determined out of the total number of legislators in both houses (76/150) regardless of whether a majority was in one of the chambers, e.g., 80 house members and no senate necessary, or all senators (50) and only 26 representatives necessary.

4) Section 2-4-403, MCA, states, “The committee may poll all members...to determine whether a proposed rule **is consistent with the intent of the legislature**”. Section 2-4-404, MCA, states, “If the poll determines that a majority of the members...find that the proposed rule or adopted rule **is contrary to the intent of the legislature**....” A simplified statement that a majority of legislators *agree or disagree that the rule is consistent with the intent of the legislature* may be helpful.

5) Administration of the poll itself. We were able to administer the poll in both cases, but it is outside of the normal work flow. Would it be more appropriate to direct the Secretary of the State’s Office to administer a poll in the event 20 legislators or a committee trigger the poll provisions? The SOS has the polling history and responsibility for legislation and has the workflow and experience in polling legislators. Staff was concerned that had there been any challenges to the validity of the polling results, being within the legislative branch there was no outside adjudication.

Chart on Best Practices

The following chart provides some basic information about the interim committees' objection process and the items each had to make decisions on. The chart provides a recommendation to the Legislative Council for "Guidelines to Interim Committees for Best Practices in Administrative Rules Objection Polling".

<b>Decision Items</b>	<b>RTIC</b>	<b>SAVA</b>	<b>Recommendation</b>	<b>LC Decision</b>
Method of sending poll ballot – "by mail" in statute.	Hardcopy by mail and email	Hard copy by mail	Hard copy mail allows use of numbered ballots. Email does not, but with limited time and unnumbered ballots, email could be used. Email is effective for follow up with individual legislators.	
Method of response.	In person, by mail, by fax, scanned signed ballot by email.	In person, by mail, by fax, scanned signed ballot by email.	In person, by mail, by fax, scanned signed ballot by email.	
What to include with ballot.	Cover letter, proposed rule, bill, ballot, envelope, agency response.	Cover letter, proposed rules, pertinent statutes, ballot, envelope, agency response.	Cover letter, text of objected proposed rules, bill or pertinent statutes, ballot, envelope, agency response.	
Include agency response with ballot mailing?	Yes, include with mailing (as long as it is not extensive).	Yes.	Yes, if possible – may be a timing issue. Give agency informal heads up and 4-5 days to prepare.	
Numbering of ballots	No, require House District or Senate District numbers. Some members did not place district number on the ballot, and on one occasion it was really hard to figure out the signature. Eventually the signature was authenticated by the member.	Yes, used House District and Senate District numbers for unique ballot number (made requesting second ballot more difficult but allowed ballots to be tracked for ballot security; ballot numbering adapted from Secretary of State's Office practices).	Using numbered ballots is best practice. Use a combination of ballot number and district number (based on Secretary of State's Office). Allows use of mail merge and hard copy ballots sent in mail.	

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Reminder email of impending deadline/late ballots accepted?	The Committee voted on the question of whether to accept late ballots and ultimately they were counted. The Committee knew the late ballots would not change the outcome when they voted.	Members who did not return ballots were reminded via email at least twice, no technically late ballots were received (one was received after the deadline but it was a duplicate of one already received).	Hard deadline – may use group emails for follow-up and reminders. Late ballots not allowed.	
Deadline to be returned.	2 weeks, in time to meet next meeting and SOS publication.	20 days	Best practice: 2 weeks minimum, more time as process allows. Driven by SOS publication dates, poll published with MAR adoption notice.	
Allow legislator to change ballot.	No. The Committee specifically determined before the ballots were sent that changes were not allowed. No one asked the committee to change a vote.	Yes. Last ballot received was counted to account for any changes made and corrections had to be initialed on both pages and ballot signed on both pages.	[House/Senate rules allow changing vote if it does not impact outcome.]  1. Signature on last page of ballot.  2. Allow changes, last ballot received is accepted.	
Online materials.	Yes. MAR notice, legislator objections, legislative debate 2 <sup>nd</sup> reading, committee minutes, hearing links, executive action, LAWS reports, poll results.	Yes. MAR notice, proposed rules text, text of amended proposed rules after comments and changes, legislative debate 2 <sup>nd</sup> reading, committee minutes, hearing links, executive action, LAWS reports, poll results, statutes for implementing rules, IC meeting links.	Best practice to post all materials related to original bill (hearings, executive, floor), rule notices, polling materials, polling results, related interim committee agenda items.  (Saves on mailing costs and allows public access to materials)	

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Authentication – opportunity to go through ballots and verify independently after staff compiles results.	Interim committee	By chair and vice-chair (delegated by the Committee for resolving issues and authenticating poll because of holiday timeline)	Interim committee as a best practice. Timing may be an issue and chair/vice-chair should be allowed if interim committee approves.	
What was finally published by SOS with rule adoption notice.	Rule and poll results	Rule and poll results	Publication of poll is required by statute. Preference for publishing the overall cumulative poll results with adoption notice in MAR, if possible.	
Time from proposal to adoption notice.	Oct. 15, 2015 to Dec. 24, 2015	Aug. 13, 2015 to (Nov. 24, 2015) pub. Jan. 8, 2016	N/A	
Committee time spent on issue.	Sept. 24, 2015, preliminary rule review. Nov. 4, 2015, conference call. Nov. 30, 2015 IC committee.	Nov. 17, 2015, IC Committee and rule review. Nov. 24, 2015, conference call. Feb. 10, 2016, poll wrap-up and committee results letter.	Dependent on rule proposal and adoption process – no record.	
Costs, staff time.	16 hours clerical, 54 hours legal, 7 hours research (approximately \$2,700). Mailing \$328.52 (envelopes not included). Conference call \$30. MAR publication cost: \$100  Total: \$3,128.52	50 hours clerical, 125 hours legal, 54 hours research (approximately \$7,508). Mailing \$1,155.80 (envelopes not included). Conference call \$3.28. MAR publication cost: \$450  Total: \$9,113.80	Protocol may assist in fewer legal and committee hours. Copying and mailing costs dependent on number of rules objected and materials mailed.	