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FROM: Stephanie James, Senate Counsel (651/296-0103)
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RE: Legislative Oversight of Rulemaking

Several provisions in Minnesota law specify a role for the legislature in oversight of rulemaking, preventing a rule from going into effect, or handling complaints or petitions by people who are aggrieved by an adopted rule.

A. The legislature's standing committees can advise an agency not to adopt a rule (Minn. Stat. section 14.126)

An agency cannot adopt a rule if the relevant standing committees in the house and senate both vote to advise the agency that the proposed rule should not be adopted. This preclusion lasts until the legislature adjourns the annual legislative session that began after the committees voted to advise the agency not to adopt. This gives the legislature the opportunity to pass a law to prevent the subject rule from becoming law, for example by modifying a statute or the agency's rulemaking authority.

B. Rules that cost over \$25,000 do not apply to small businesses or cities, unless approved by the legislature (Minn. Stat. section 14.127)

If a cost of complying with a rule is over \$25,000 for any small business or small city, then the rule doesn't apply to a small business or city that submits a statement to an agency claiming an exemption, unless the rule is approved by a law. Small businesses are those with fewer than 50 full-time employees; small cities are those with fewer than 10 full-time employees.

C. The LCC can hear complaints from individuals aggrieved by a rule. Also, the LCC or the State Government committees can object to rules and can take certain civil law actions. (Minn. Stat. section 3.842)

The Legislative Coordinating Commission is permitted to "hold public hearings to investigate complaints with respect to rules if it considers the complaints meritorious and worthy of attention."

The LCC, or the standing committee in the house or senate with jurisdiction over state governmental operations, can raise an objection to a rule by filing the objection with the Secretary of State. Within 14 days, the agency must respond. Unless the LCC or committee then withdraws its objection, the agency has the burden of establishing the validity of the rule in any proceeding for judicial review or enforcement of the rule.

The LCC, or the standing committee in the house or senate with jurisdiction over state governmental operations, may petition a court for a declaratory judgment to determine the validity of a rule that the LCC objects to.

Finally, the LCC, or the standing committee in the house or senate with jurisdiction over state governmental operations, can intervene in litigation arising from agency action regarding a rule.

D. An agency cannot adopt or increase fees without legislative approval (Minn. Stat. section 16A.1283; Minn. Stat. section 14.18, subd. 2)

An agency cannot impose a new fee or increase an existing fee unless approved by law. Certain fees are exempted.

E. An individual or a local government can petition an agency about a rule (Minn. Stat. sections 14.09 and 14.091)

Any person can petition an agency requesting adoption, amendment, or repeal of any rule.

The elected governing body of a city, county, or sanitary district can petition an agency to amend or repeal of a rule or a portion of a rule.

F. The legislature can direct an agency to amend or repeal a rule.

Of course, the legislature can overrule decisions made by agencies about adopted rules. The legislature can enact a law that explicitly repeals a rule or implicitly repeals a rule by enacting preemptive or irreconcilable statutory language, or by repealing the authorizing statute. The legislature can enact a law that directs an agency to amend a rule in a particular manner.

G. The legislature receives notices about agency rulemaking (Minn. Stat. section 14.116)

Agencies are required to:

- submit their rulemaking docket to chairs and ranking minority members of relevant legislative committees by Jan 15 each year;
- mail their notice of intent to adopt rules, with the related statement of need and reasonableness, to chairs and ranking minority members of relevant committees, and to the LCC. This must also be sent to authors of bills that authorized the rulemaking if within two years of the effective date of the enactment of the bill authorizing the rulemaking.