

25.3 LCC AND POLICY COMMITTEE AUTHORITY

Statutory authority for legislative oversight of administrative rules still exists with the LCC. However, the LCC seldom has used this authority. The LCC is authorized to establish joint subcommittees or similar bicameral groups to assist the commission in carrying out its duties.¹ Unlike the LCRAR, which was established permanently in statute, joint subcommittees created by the LCC exist only for a legislative biennium, unless renewed by action of the LCC. The LCC consistently has granted authority for creation of a subcommittee to review administrative rules. However, the House and the Senate have not always appointed members, and the LCC generally has not been active in overseeing administrative rules.

Like the LCRAR, the LCC's enabling legislation² directs the commission to promote adequate and proper rules by state agencies and an understanding by the public of those rules. To that end, the commission is empowered to investigate complaints made regarding agency rules and to hold public hearings on those complaints if the commission believes the complaints to be "meritorious and worthy of attention." The commission is required to meet on a call signed by two of its members or any five members of the legislature.³

The LCC has two major statutory powers with respect to state agency rules. The first is the power to request an agency to hold a hearing pursuant to Minnesota Statutes section 3.843 on recommendations made by the commission to improve the agency's rules. This action must be taken by a majority vote for a motion that requests the agency to amend the rule complained of. The agency must publish notice⁴ of a hearing on the commission's recommendations within sixty days after the receipt of the request unless a longer time period is specified by the commission in its request. The recommendations made by the commission pursuant to this section may be more or less specific, depending on the complaint and the degree of consensus reached by the interested parties and the commission members.

The second power is the power to object to rules.⁵ Such an objection can occur when the commission considers the rule "to be beyond the procedural or substantive authority delegated to the agency."⁶ The House of Representatives and Senate governmental operations committees have the same authority to object to rules. The objection is filed in the Office of the Secretary of State along with the reasons for the action. The Secretary of State then certifies the objection and sends a certified copy to the agency whose rules are in question and to the Revisor of Statutes. The commission or committee publishes the objection in the *State Register* and when the rule is published in the *State Register*, the rule will indicate the existence of the objection.

¹ MINN. STAT. § 3.305, subd. 6 (2014).

² *Id.* §§ 3.841-.843.

³ *Id.* § 3.305, subd. 8.

⁴ *Id.* § 14.14, subd. 1.

⁵ The LCC does not have the same power that the LCRAR had to temporarily suspend an agency rule. *See* 1997 Minn. Laws ch. 98, § 17, at 718 (repealing MINN. STAT. §§ 3.842, subd. 4, .844, .845 regarding the suspension of rules); *see also* § 25.4 (providing further discussion of the suspension of rules).

⁶ MINN. STAT. § 3.842, subd. 4a (2014).

The responsible agency has 14 days after the filing of an objection to respond in writing to the objection. The commission or committee then has the power to modify or withdraw its objection. If any part of the objection remains, the burden is then on the agency to defend its position in any proceeding for judicial review or for enforcement of the rule to establish the validity of the rule. The commission or committee may petition for a declaratory judgment to determine the validity of a rule and may intervene in litigation arising from agency action.

The LCC and the House and Senate governmental operations committees also have authority over other rulemaking proceedings. When the chief administrative law judge (ALJ) determines an agency has failed to establish the need for and the reasonableness of a proposed rule, and the agency chooses not to accept the chief ALJ's recommendations for correcting the defects, the agency must submit the proposed rule to the LCC and to the governmental operations committees for advice and comment.⁷ The commission and the committees have sixty days in which to render nonbinding advice and comment. In addition, if an agency fails to submit its notice of adoption, amendment or repeal of rules to the *State Register* within 180 days from the administrative law judge's report or the day that the comment period for the rule is over, the rule is automatically withdrawn. The agency is to report the failure to adopt the rules within the 180 days and the reason for the failure to the LCC.⁸ The LCC also receives the annual report of agencies which lists the obsolete rules of the agency.⁹

Another means of legislative oversight over rules is that the authority of the standing committees of both the house *and* senate with jurisdiction over the subject matter of a proposed rule to advise an agency not to adopt the proposed rule.¹⁰ Upon receiving this advice from both committees, the agency must delay adoption of the rule until after the end of the annual legislative session that begins after the vote of the committees. A committee vote must be by a majority of the committee and may occur at any time after publication of the rulemaking notice and prior to adoption of the rule. The notice of a committee's vote is published in the "State Register."

Finally, section 3.842 allows the LCC to periodically review statutory exemptions to the rulemaking provision of chapter 14. In 1997, a rule exemption bill was passed as a result of a study conducted by the LCC subcommittee on rules.¹¹ The subcommittee examined all the rulemaking exemptions there were currently in statute and decided whether those exemptions should continue, be terminated, or be modified. Their recommendations were passed into law in 1997.

⁷ *Id.* §§ 14.15, subd. 4, .26, subd. 3(c).

⁸ *Id.* §§ 14.19, .26, subd. 1.

⁹ *Id.* § 14.05, subd. 5.

¹⁰ *Id.* § 14.126, subd. 1.

¹¹ 1997 Minn. Laws ch. 187, at 1285-1340.