

1 HOUSE BILL NO. 135

2 INTRODUCED BY S. GUNDERSON

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR REVIEW OF ADMINISTRATIVE RULES BY A
5 LEGISLATIVE ADMINISTRATIVE RULE REVIEW COMMITTEE PRIOR TO ADOPTION; ALLOWING
6 ADOPTION IF THE ADMINISTRATIVE RULE REVIEW COMMITTEE MEETS AND DOES NOT TAKE
7 ACTION; AMENDING SECTIONS 2-4-302 AND 2-4-305, MCA; AND PROVIDING AN IMMEDIATE
8 EFFECTIVE DATE."

9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11

12 **Section 1.** Section 2-4-302, MCA, is amended to read:

13 **"2-4-302. Notice, hearing, and submission of views.** (1) (a) Prior to the adoption, amendment, or
14 repeal of any rule, the agency shall give written notice of its proposed action. The proposal notice must include
15 a statement of either the terms or substance of the intended action or a description of the subjects and issues
16 involved, the reasonable necessity for the proposed action, and the time when, place where, and manner in
17 which interested persons may present their views on the proposed action. The reasonable necessity must be
18 written in plain, easily understood language.

19 (b) The agency shall state in the proposal notice the date on which and the manner in which contact
20 was made with the primary sponsor as required in subsection (2)(d). If the notification to the primary sponsor
21 was given by mail, the date stated in the proposal notice must be the date on which the notification was mailed
22 by the agency. If the proposal notice fails to state the date on which and the manner in which the primary
23 sponsor was contacted, the filing of the proposal notice under subsection (2)(a)(i) is ineffective for the purposes
24 of this part and for the purposes of the law that the agency cites in the proposal notice as the authority for the
25 proposed action.

26 (c) If the agency proposes to adopt, increase, or decrease a monetary amount that a person shall pay
27 or will receive, such as a fee, cost, or benefit, the notice must include an estimate, if known, of:

28 (i) the cumulative amount for all persons of the proposed increase, decrease, or new amount; and

1 (ii) the number of persons affected.

2 (2) (a) (i) The proposal notice must be filed with the secretary of state for publication in the register,
3 as provided in 2-4-312. Except as provided in subsection (2)(a)(ii), within 3 days of publication, a copy of the
4 published proposal notice must be sent to interested persons who have made timely requests to the agency to
5 be informed of its rulemaking proceedings, and to the office of any professional, trade, or industrial society or
6 organization or member of those entities who has filed a request with the appropriate administrative rule review
7 committee when the request has been forwarded to the agency as provided in subsection (2)(b).

8 (ii) In lieu of sending a copy of the published proposal notice to an interested person who has
9 requested the notice, the agency may, with the consent of that person, send that person an electronic
10 notification that the proposal notice is available on the agency's website and an electronic link to the part of the
11 agency's website or a description of the means of locating that part of the agency's website where the notice is
12 available.

13 (iii) Each agency shall create and maintain a list of interested persons and the subject or subjects in
14 which each person on the list is interested. A person who submits a written comment or attends a hearing in
15 regard to proposed agency action under this part must be informed of the list by the agency. An agency
16 complies with this subsection if it includes in the proposal notice an advisement explaining how persons may be
17 placed on the list of interested persons and if it complies with subsection (7).

18 (b) The appropriate administrative rule review committee shall forward a list of all organizations or
19 persons who have submitted a request to be informed of agency actions to the agencies that the committee
20 oversees that publish rulemaking notices in the register. The list must be amended by the agency upon request
21 of any person requesting to be added to or deleted from the list.

22 (c) The proposal notice required by subsection (1) must be published at least 30 days in advance of
23 the agency's proposed action. The agency shall post the proposal notice on a state electronic access system or
24 other electronic communications system available to the public.

25 (d) (i) When an agency begins to work on the substantive content and the wording of a proposal
26 notice for a rule that initially implements legislation, the agency shall contact, as provided in subsection (8), the
27 legislator who was the primary sponsor of the legislation to:

28 (A) obtain the legislator's comments;

1 (B) inform the legislator of the known dates by which each step of the rulemaking process must be
2 completed; and

3 (C) provide the legislator with information about the time periods during which the legislator may
4 comment on the proposed rules, including the opportunity to provide comment to the appropriate administrative
5 rule review committee.

6 (ii) If the legislation affected more than one program, the primary sponsor must be contacted pursuant
7 to this subsection (2)(d) each time that a rule is being proposed to initially implement the legislation for a
8 program.

9 (iii) Within 3 days after a proposal notice covered under subsection (2)(d)(i) has been published as
10 required in subsection (2)(a)(i), a copy of the published notice must be sent to the primary sponsor contacted
11 under this subsection (2)(d).

12 (3) If a statute provides for a method of publication different from that provided in subsection (2), the
13 affected agency shall comply with the statute in addition to the requirements contained in this section. However,
14 the notice period may not be less than 30 days or ~~more longer~~ than 6 months the time required by 2-4-305(7).

15 (4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons
16 at least 20 days' notice of a hearing and at least 28 days from the day of the original notice to submit data,
17 views, or arguments, orally or in writing. If an amended or supplemental notice is filed, additional time may be
18 allowed for oral or written submissions. In the case of substantive rules, the notice of proposed rulemaking must
19 state that opportunity for oral hearing must be granted if requested by either 10% or 25, whichever is less, of
20 the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the
21 appropriate administrative rule review committee, or by an association having not less than 25 members who
22 will be directly affected. If the proposed rulemaking involves matters of significant interest to the public, the
23 agency shall schedule an oral hearing.

24 (5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case
25 procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by
26 statute, nothing in this section alters that requirement.

27 (6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the
28 agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a

1 new proposal for purposes of compliance with this chapter.

2 (7) At the commencement of a hearing on the intended action, the person designated by the agency
3 to preside at the hearing shall:

4 (a) read aloud the "Notice of Function of Administrative Rule Review Committee" appearing in the
5 register; and

6 (b) inform the persons at the hearing of the provisions of subsection (2)(a) and provide them an
7 opportunity to place their names on the list.

8 (8) (a) For purposes of contacting primary sponsors under subsection (2)(d), a current or former
9 legislator who wishes to receive notice shall keep the current or former legislator's name, address, e-mail
10 address, and telephone number on file with the secretary of state. The secretary of state may also use
11 legislator contact information provided by the legislative services division for the purposes of the register. The
12 secretary of state shall update the contact information whenever the secretary of state receives corrected
13 information from the legislator or the legislative services division. An agency proposing rules shall consult the
14 register when providing sponsor contact.

15 (b) An agency has complied with the primary bill sponsor contact requirements of this section when
16 the agency has attempted to reach the primary bill sponsor at the legislator's address, e-mail address, and
17 telephone number on file with the secretary of state pursuant to subsection (8)(a). If the agency is able to
18 contact the primary sponsor by using less than all of these three methods of contact, the other methods need
19 not be used.

20 (9) This section applies to the department of labor and industry adopting a rule relating to a
21 commercial drug formulary as provided in 39-71-704. This section does not apply to the automatic updating of
22 department of labor and industry rules relating to commercial drug formularies as provided in 39-71-704."
23

24 **Section 2.** Section 2-4-305, MCA, is amended to read:

25 **"2-4-305. Requisites for validity -- authority and statement of reasons.** (1) (a) The agency shall
26 fully consider written and oral submissions respecting the proposed rule, including comments submitted by the
27 primary sponsor of the legislation prior to the drafting of the substantive content and wording of a proposed rule
28 that initially implements legislation.

1 (b) (i) Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for
2 and against its adoption, incorporating in the statement the reasons for overruling the considerations urged
3 against its adoption. If substantial differences exist between the rule as proposed and as adopted and the
4 differences have not been described or set forth in the adopted rule as that rule is published in the register, the
5 differences must be described in the statement of reasons for and against agency action. When written or oral
6 submissions have not been received, an agency may omit the statement of reasons.

7 (ii) If an adopted rule that initially implements legislation does not reflect the comments submitted by
8 the primary sponsor, the agency shall provide a statement explaining why the sponsor's comments were not
9 incorporated into the adopted rule.

10 (2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to
11 statutory language in order to convey the meaning of a rule interpreting the language, the reference must
12 clearly indicate the portion of the language that is statutory and the portion that is an amplification of the
13 language.

14 (3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking
15 authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and adopted
16 rule must include a citation to the specific section or sections in the Montana Code Annotated that the rule
17 purports to implement. A substantive rule may not be proposed or adopted unless:

18 (a) a statute granting the agency authority to adopt rules clearly and specifically lists the subject
19 matter of the rule as a subject upon which the agency shall or may adopt rules; or

20 (b) the rule implements and relates to a subject matter or an agency function that is clearly and
21 specifically included in a statute to which the grant of rulemaking authority extends.

22 (4) Each rule that is proposed and adopted by an agency and that implements a policy of a governing
23 board or commission must include a citation to and description of the policy implemented. Each agency rule
24 implementing a policy and the policy itself must be based on legal authority and otherwise comply with the
25 requisites for validity of rules established by this chapter.

26 (5) To be effective, each substantive rule adopted must be within the scope of authority conferred and
27 in accordance with standards prescribed by other provisions of law.

28 (6) Whenever by the express or implied terms of any statute a state agency has authority to adopt

1 rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, an adoption,
2 amendment, or repeal of a rule is not valid or effective unless it is:

3 (a) consistent and not in conflict with the statute; and

4 (b) reasonably necessary to effectuate the purpose of the statute. A statute mandating that the
5 agency adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable
6 necessity for a rule. The agency shall also address the reasonableness component of the reasonable necessity
7 requirement by, as indicated in 2-4-302(1) and subsection (1) of this section, stating the principal reasons and
8 the rationale for its intended action and for the particular approach that it takes in complying with the mandate
9 to adopt rules. Subject to the provisions of subsection (8), reasonable necessity must be clearly and thoroughly
10 demonstrated for each adoption, amendment, or repeal of a rule in the agency's notice of proposed rulemaking
11 and in the written and oral data, views, comments, or testimony submitted by the public or the agency and
12 considered by the agency. A statement that merely explains what the rule provides is not a statement of the
13 reasonable necessity for the rule.

14 (7) (a) A rule is not valid unless notice of it is given and it is adopted in substantial compliance with 2-
15 4-302, 2-4-303, or 2-4-306 and this section and unless notice of adoption of the rule is published within the later
16 of:

17 (i) 6 months ~~of~~ after the publishing of notice of the proposed rule;

18 (ii) 90 days after final adjournment of the next regular session of the legislature in the event the
19 appropriate administrative rule review committee had already adjourned for the interim when the notice of the
20 proposed rule was issued; or

21 (iii) 90 days after final adjournment of the current regular session of the legislature in the event the
22 legislature is in regular session when the notice of the proposed rule is issued.

23 (b) The measure of whether an agency has adopted a rule in substantial compliance with 2-4-302, 2-
24 4-303, or 2-4-306 and this section is not whether the agency has provided notice of the proposed rule, standing
25 alone, but rather must be based on an analysis of the agency's substantial compliance with 2-4-302, 2-4-303, or
26 2-4-306 and this section. If an amended or supplemental notice of either proposed or final rulemaking, or both,
27 is published concerning the same rule, the ~~6-month limit~~ time limit in subsection (7)(a) must be determined with
28 reference to the latest notice in all cases.

1 (8) (a) An agency may use an amended proposal notice or the adoption notice to correct deficiencies
2 in citations of authority for rules and in citations of sections implemented by rules.

3 (b) An agency may use an amended proposal notice but, except for clerical corrections, may not use
4 the adoption notice to correct deficiencies in a statement of reasonable necessity.

5 (c) If an agency uses an amended proposal notice to amend a statement of reasonable necessity for
6 reasons other than for corrections in citations of authority, in citations of sections being implemented, or of a
7 clerical nature, the agency shall allow additional time for oral or written comments from the same interested
8 persons who were notified of the original proposal notice, including from a primary sponsor, if primary sponsor
9 notification was required under 2-4-302, and from any other person who offered comments or appeared at a
10 hearing already held on the proposed rule.

11 (d) In the event the appropriate administrative rule review committee had already adjourned for the
12 interim when the proposal notice was issued, the agency shall either withdraw the proposal notice or amend the
13 proposal notice to provide that the proposed rule is not effective until the time limit in subsection (7)(a)(ii),
14 unless the committee meets and does not make an objection.

15 (9) If a majority of the members of the appropriate administrative rule review committee notify the
16 committee presiding officer that those members object to all or a portion of a notice of proposed rulemaking, the
17 committee shall notify the agency in writing that the committee objects to all or a portion of the proposal notice
18 and will address the objections at the next committee meeting. Following notice by the committee to the
19 agency, all or a portion of the proposal notice that the committee objects to may not be adopted until publication
20 of the last issue of the register that is published before expiration of the ~~6-month period~~ time limit in subsection
21 (7)(a) during which the adoption notice must be published, unless prior to that time, the committee meets and
22 does not make the same objection. A copy of the committee's notification to the agency must be included in the
23 committee's records.

24 (10) This section applies to the department of labor and industry adopting a rule relating to a
25 commercial drug formulary as provided in 39-71-704. This section does not apply to the automatic updating of
26 department of labor and industry rules relating to commercial drug formularies as provided in 39-71-704.

27 (11) An agency rule is not valid unless the appropriate administrative rule review committee meets
28 prior to adoption to consider the notice of proposed rulemaking or the committee fails to make an objection to a

1 proposal notice during the meeting. This subsection does not apply if a committee does not meet within 90 days
2 of final adjournment of the legislature to consider a notice of proposed rule that will be at least 6 months old
3 within 90 days after final adjournment."

4

5 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

6

- END -