

SENATE BILL NO. 127

INTRODUCED BY DEBBY BARRETT

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4 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO ADMINISTRATIVE RULES AND THE DUTIES OF
5 ADMINISTRATIVE RULE REVIEW COMMITTEES; REQUIRING AN ADMINISTRATIVE RULE REVIEW
6 COMMITTEE TO REVIEW SUMMARIES OF RULES INTENDED TO BE PROPOSED DURING A LEGISLATIVE
7 SESSION; PROHIBITING THE PROPOSAL OF A RULE DURING A LEGISLATIVE SESSION FOR WHICH A
8 SUMMARY WAS NOT SUBMITTED TO THE COMMITTEE; REQUIRING AN ADMINISTRATIVE RULE REVIEW
9 COMMITTEE TO REQUEST AN EXPLANATION FROM AN AGENCY OF THE FAILURE TO ADOPT CERTAIN
10 ADMINISTRATIVE RULES; AND AMENDING SECTION 2-4-305, MCA."
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12 WHEREAS, Title 5, chapter 5, part 2, MCA, requires that the various interim committees of the
13 Legislature review administrative rules proposed and adopted by executive branch agencies; and

14 WHEREAS, interim committees of the Legislature do not meet during a legislative session and, for that
15 reason, those legislative committees do not review proposed or adopted administrative rules during a legislative
16 session; and

17 WHEREAS, individual members of the interim committees are so busy during a legislative session that
18 it is difficult to find the time to see what rules are being proposed by an administrative agency; and

19 WHEREAS, it would assist the work of the interim committees to receive summaries of rules to be
20 proposed during a legislative session; and

21 WHEREAS, there are some statutory requirements to adopt rules pursuant to which no rules have yet
22 been adopted and that therefore could be repealed or amended to delete the rulemaking delegation.

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

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26 **NEW SECTION. Section 1. Review of rule summaries to be proposed during legislative session.**
27 Except for emergency rules adopted in accordance with 2-4-303, an administrative rule review committee shall
28 review a summary prepared by an agency of an administrative rule intended to be proposed during the next
29 legislative session. The summary must contain a short description of the rule and the approximate date on which
30 the proposal will be published in the register. More than one rule may be contained in a summary. A rule may

1 not be proposed for adoption during a legislative session unless a summary of the proposed rule is provided to
2 a committee as required in this section.

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4 **NEW SECTION. Section 2. Failure to adopt required rule -- appearance before administrative rule**
5 **review committee required.** If an agency fails to adopt a rule required by law within 18 months of the effective
6 date of the requirement to adopt the rule, the administrative rule review committee with monitoring function with
7 regard to the agency shall set on its agenda for the meeting following the expiration of that 18-month period an
8 appearance by the director, executive director, or other administrative head of the agency to explain to the
9 committee the lack of adoption of the required rules. If the director or other executive head of the agency believes
10 that the adoption of rule is unnecessary, the committee shall request that legislation be drafted to repeal the
11 requirement that the rule be adopted.

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13 **Section 3.** Section 2-4-305, MCA, is amended to read:

14 **"2-4-305. Requisites for validity -- authority and statement of reasons.** (1) (a) The agency shall fully
15 consider written and oral submissions respecting the proposed rule, including comments submitted by the primary
16 sponsor of the legislation prior to the drafting of the substantive content and wording of a proposed rule that
17 initially implements legislation.

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

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

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

30 (3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking authority

1 pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and adopted rule must
2 include a citation to the specific section or sections in the Montana Code Annotated that the rule purports to
3 implement. A substantive rule may not be proposed or adopted unless:

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

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

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

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

14 (6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules
15 to implement, interpret, make specific, or otherwise carry out the provisions of the statute, an adoption,
16 amendment, or repeal of a rule is not valid or effective unless it is:

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

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

28 (7) A rule is not valid unless notice of it is given and it is adopted in substantial compliance with 2-4-302,
29 2-4-303, or 2-4-306 and this section and unless notice of adoption of the rule is published within 6 months of the
30 publishing of notice of the proposed rule. The measure of whether an agency has adopted a rule in substantial

1 compliance with 2-4-302, 2-4-303, or 2-4-306 and this section is not whether the agency has provided notice of
2 the proposed rule, standing alone, but rather must be based on an analysis of the agency's substantial
3 compliance with 2-4-302, 2-4-303, or 2-4-306 and this section. If an amended or supplemental notice of either
4 proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be
5 determined with reference to the latest notice in all cases.

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

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

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

16 (9) If a majority of the members of the appropriate administrative rule review committee notify the
17 committee presiding officer that those members object to a notice of proposed rulemaking, the committee shall
18 notify the agency in writing that the committee objects to the proposal notice and will address the objections at
19 the next committee meeting. Following notice by the committee to the agency, the proposal notice may not be
20 adopted until publication of the last issue of the register that is published before expiration of the 6-month period
21 during which the adoption notice must be published, unless prior to that time, the committee meets and does not
22 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) Except as provided in 2-4-303, a rule for which a notice of proposed rulemaking is published during
25 a session of the legislature must have been submitted in a summary in compliance with [section 1]. A notice of
26 proposed rulemaking for which no summary has been submitted in accordance with [section 1] is of no effect."
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28 **NEW SECTION. Section 4. Codification instruction.** [Sections 1 and 2] are intended to be codified
29 as an integral part of Title 2, chapter 4, and the provisions of Title 2, chapter 4, apply to [sections 1 and 2].

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