

1 HOUSE BILL NO. 159

2 INTRODUCED BY K. REGIER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA ADMINISTRATIVE
5 PROCEDURE ACT; REQUIRING AGENCIES TO PREPARE ECONOMIC IMPACT STATEMENTS FOR THE
6 PROPOSED ADOPTION, AMENDMENT, OR REPEAL OF ANY RULE; AUTHORIZING AN ADMINISTRATIVE
7 RULE REVIEW COMMITTEE TO REQUEST AN ANALYSIS FROM THE LEGISLATIVE FISCAL ANALYST;
8 REQUIRING ECONOMIC IMPACT STATEMENTS TO BE PROVIDED TO MEMBERS OF THE LEGISLATURE;
9 AND AMENDING SECTIONS 2-4-305 AND 2-4-405, MCA."

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

12
13 **Section 1.** 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) A rule is not valid unless:

29 (i) notice of it is given and it is adopted in substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and
30 this section;

1 (ii) an economic impact statement has been completed as provided in 2-4-405 and filed with the
2 appropriate administrative rule review committee before it is adopted; and

3 (iii) ~~and unless~~ notice of adoption of the rule is published within 6 months of the publishing of notice of
4 the proposed rule.

5 (b) The measure of whether an agency has adopted a rule in substantial compliance with 2-4-302,
6 2-4-303, or 2-4-306 and this section is not whether the agency has provided notice of the proposed rule, standing
7 alone, but rather must be based on an analysis of the agency's substantial compliance with 2-4-302, 2-4-303, or
8 2-4-306 and this section.

9 (c) If an amended or supplemental notice of either proposed or final rulemaking, or both, is published
10 concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases.

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

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

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

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

29

30 **Section 2.** Section 2-4-405, MCA, is amended to read:

1 **"2-4-405. Economic impact statement.** (1) ~~Upon written request of the appropriate administrative rule~~
2 ~~review committee based upon the affirmative request of a majority of the members of the committee at an open~~
3 ~~meeting, an~~ Prior to final agency action, an agency shall prepare a statement of the economic impact of the
4 adoption, amendment, or repeal of a rule as proposed. ~~The agency shall also prepare a statement upon receipt~~
5 ~~by the agency or the committee of a written request for a statement made by at least 15 legislators. If the request~~
6 ~~is received by the committee, the committee shall give the agency a copy of the request, and if the request is~~
7 ~~received by the agency, the agency shall give the committee a copy of the request. As an alternative, the~~
8 ~~committee may, by contract, prepare the estimate.~~

9 (2) ~~Except to the extent that the request expressly waives any one or more of the following, the~~
10 ~~requested~~ The statement must include ~~and the statement prepared by the committee may include:~~

11 (a) a description of the classes of persons, governmental entities, school districts, or other groups who
12 will be affected by the proposed rule, including classes, governmental entities, school districts, or other groups
13 that will bear the costs of the proposed rule and ~~classes~~ that will benefit from the proposed rule;

14 (b) a description of the probable economic impact of the proposed rule upon affected classes of persons,
15 governmental entities, school districts, or other groups, including but not limited to providers of services under
16 contracts with the state and affected small businesses, and quantifying, to the extent practicable, that impact;

17 (c) the probable costs to the agency and to any other agency of the implementation and enforcement
18 of the proposed rule and any anticipated effect on state revenue;

19 (d) an analysis comparing the costs and benefits of the proposed rule to the costs and benefits of
20 inaction;

21 (e) an analysis that determines whether there are less costly or less intrusive methods for achieving the
22 purpose of the proposed rule;

23 (f) an analysis of any alternative methods for achieving the purpose of the proposed rule that were
24 seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;

25 (g) a determination as to whether the proposed rule represents an efficient allocation of public and
26 private resources; and

27 (h) a quantification or description of the data upon which subsections (2)(a) through (2)(g) are based and
28 an explanation of how the data was gathered.

29 (3) ~~A request to an agency for a statement or a decision to contract for the preparation of a statement~~
30 ~~must be made prior to the final agency action on the rule.~~ The statement must be filed with the appropriate

1 administrative rule review committee within 3 months ~~of the request or decision~~ of the date the proposal notice
2 is filed with the secretary of state and at least 15 days before the adoption notice is filed with the secretary of
3 state. A request or decision for an economic impact statement may be withdrawn at any time.

4 (4) (a) Upon receipt of an impact statement, the committee shall determine the sufficiency of the
5 statement. If the committee determines that the statement is insufficient, the committee may return it to the
6 agency ~~or other person who prepared the statement~~ and request that corrections or amendments be made. In
7 addition to returning the statement to the agency, the committee may request the legislative fiscal analyst to
8 assess the statement and prepare an analysis that addresses any insufficiencies in the statement prepared by
9 the agency.

10 (b) If the committee determines that the statement is sufficient, a notice, including a summary of the
11 statement ~~and indicating that indicates~~ where a copy of the statement may be obtained, must be filed with the
12 secretary of state for publication in the register by the agency preparing the statement, ~~or by the committee, if the~~
13 ~~statement is prepared under contract by the committee, and~~ If the legislative fiscal analyst prepared a separate
14 analysis, the legislative fiscal analyst shall file a copy of the analysis with the secretary of state for publication in
15 the register.

16 (c) The statement and any analysis must be mailed to persons who have registered ~~advance~~ for notice
17 of the agency's rulemaking proceedings and to all members of the legislature. In lieu of sending a copy by mail,
18 the statement prepared by the agency and any analysis prepared by the legislative fiscal analyst may be sent
19 electronically.

20 (5) This section does not apply to rulemaking pursuant to 2-4-303.

21 (6) The final adoption, amendment, or repeal of a rule is not subject to challenge in any court as a result
22 of the inaccuracy or inadequacy of a statement required under this section.

23 (7) An environmental impact statement prepared pursuant to 75-1-201 that includes an analysis of the
24 factors listed in this section satisfies the provisions of this section."

25 - END -