

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO LEGISLATIVE
5 OVERSIGHT OF ADMINISTRATIVE RULES; REQUIRING AN AGENCY TO FILE NOTICE OF ITS ACTION
6 WITH THE APPROPRIATE ADMINISTRATIVE COMMITTEE 30 DAYS BEFORE PUBLISHING PUBLIC
7 NOTICE OF ITS PROPOSED ACTION; PROHIBITING THE ADOPTION OF RULES IN THE LAST QUARTER
8 OF A YEAR BEFORE A LEGISLATIVE SESSION; PROVIDING EXCEPTIONS; REVISING RULEMAKING
9 AUTHORITY; AMENDING SECTIONS 2-4-302, 2-4-303, 2-4-305, 2-4-306, 2-4-307, 2-4-402, AND 2-4-403,
10 MCA; AND PROVIDING AN APPLICABILITY DATE."

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

13
14 **Section 1.** Section 2-4-302, MCA, is amended to read:

15 **"2-4-302. Notice, hearing, and submission of views.** (1) (a) Prior to the adoption, amendment, or
16 repeal of any rule, the agency shall give written notice of its proposed action. The proposal notice must include
17 a statement of either the terms or substance of the intended action or a description of the subjects and issues
18 involved, and the reasonable necessity for the proposed action. The reasonable necessity must be written in
19 plain, easily understood language. The agency shall file the written notice with the appropriate administrative
20 rule review committee.

21 (b) No less than 30 days after the agency files the notice with the appropriate administrative rule
22 review committee, the agency shall give written notice of its proposed action to the public, including the
23 substantive statement and the reasonable necessity provided to the committee under subsection (1)(a), along
24 with, and the time when, place where, and manner in which interested persons may present their views on the
25 proposed action. The reasonable necessity must be written in plain, easily understood language.

26 (b)(c) The agency shall state in the proposal notice under subsection (1)(b) the date on which and the
27 manner in which contact was made with the primary sponsor as required in subsection (2)(d). If the notification
28 to the primary sponsor was given by mail, the date stated in the proposal notice must be the date on which the

1 notification was mailed by the agency. If the proposal notice fails to state the date on which and the manner in
2 which the primary sponsor was contacted, the filing of the proposal notice under subsection (2)(a)(i) is
3 ineffective for the purposes of this part and for the purposes of the law that the agency cites in the proposal
4 notice as the authority for the proposed action.

5 ~~(e)~~(d) If the agency proposes to adopt, increase, or decrease a monetary amount that a person shall
6 pay or will receive, such as a fee, cost, or benefit, the proposal notice under subsection (1)(b) must include an
7 estimate, if known, of:

- 8 (i) the cumulative amount for all persons of the proposed increase, decrease, or new amount; and
- 9 (ii) the number of persons affected.

10 (2) (a) (i) The proposal notice under subsection (1)(b) must be filed with the secretary of state for
11 publication in the register, as provided in 2-4-312. Except as provided in subsection (2)(a)(ii), within 3 days of
12 publication, a copy of the published proposal notice must be sent to interested persons who have made timely
13 requests to the agency to be informed of its rulemaking proceedings, and to the office of any professional,
14 trade, or industrial society or organization or member of those entities who has filed a request with the
15 appropriate administrative rule review committee when the request has been forwarded to the agency as
16 provided in subsection (2)(b).

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

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

27 (b) The appropriate administrative rule review committee shall forward a list of all organizations or
28 persons who have submitted a request to be informed of agency actions to the agencies that the committee

1 oversees that publish rulemaking notices in the register. The list must be amended by the agency upon request
2 of any person requesting to be added to or deleted from the list.

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

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

9 (A) obtain the legislator's comments;

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

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

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

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

21 (3) If a statute provides for a method of publication different from that provided in subsection (2), the
22 affected agency shall comply with the statute in addition to the requirements contained in this section. However,
23 the notice period for the published notice under subsection (1)(b) may not be less than 30 days or more than 6
24 months.

25 (4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons
26 at least 20 days' notice of a hearing and at least 28 days from the day of the original notice published under
27 subsection (1)(b) to submit data, views, or arguments, orally or in writing. If an amended or supplemental notice
28 is ~~filed~~ published, additional time may be allowed for oral or written submissions. In the case of substantive

1 rules, the notice of proposed rulemaking under subsection (1)(b) must state that opportunity for oral hearing
2 must be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected
3 by the proposed rule, by a governmental subdivision or agency, by the appropriate administrative rule review
4 committee, or by an association having not less than 25 members who will be directly affected. If the proposed
5 rulemaking involves matters of significant interest to the public, the agency shall schedule an oral hearing.

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

9 (6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the
10 agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a
11 new proposal for purposes of compliance with this chapter.

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

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

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

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

25 (b) An agency has complied with the primary bill sponsor contact requirements of this section when
26 the agency has attempted to reach the primary bill sponsor at the legislator's address, e-mail address, and
27 telephone number on file with the secretary of state pursuant to subsection (8)(a). If the agency is able to
28 contact the primary sponsor by using less than all of these three methods of contact, the other methods need

1 not be used.

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

5

6 **Section 2.** Section 2-4-303, MCA, is amended to read:

7 **"2-4-303. Emergency ~~or~~ rules -- temporary rules.** (1) (a) If an agency finds that an imminent peril
 8 to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days' public notice and
 9 states in writing its reasons for that finding, it may proceed upon special notice filed with the appropriate
 10 administrative rule review committee, without prior notice or hearing or upon any abbreviated notice and
 11 hearing that it finds practicable, to adopt an emergency rule. The rule may be effective for a period not longer
 12 than 120 days, after which a new emergency rule with the same or substantially the same text may not be
 13 adopted, but the adoption of an identical rule under 2-4-302 is not precluded. Because the exercise of
 14 emergency rulemaking power precludes the people's constitutional right to prior notice and participation in the
 15 operations of their government, it constitutes the exercise of extraordinary power requiring extraordinary
 16 safeguards against abuse. An emergency rule may be adopted only in circumstances that truly and clearly
 17 constitute an existing imminent peril to the public health, safety, or welfare that cannot be averted or remedied
 18 by any other administrative act. The sufficiency of the reasons for a finding of imminent peril to the public
 19 health, safety, or welfare is subject to judicial review upon petition by any person. The matter must be set for
 20 hearing at the earliest possible time and takes precedence over all other matters except older matters of the
 21 same character. The sufficiency of the reasons justifying a finding of imminent peril and the necessity for
 22 emergency rulemaking must be compelling and, as written in the rule adoption notice, must stand on their own
 23 merits for purposes of judicial review. The dissemination of emergency rules required by 2-4-306 must be
 24 strictly observed and liberally accomplished.

25 (b) An emergency rule may not be used to implement an administrative budget reduction.

26 (c) An emergency rule is exempt from the requirement to file the proposed rule with the appropriate
 27 administrative rule review committee under 2-4-302(1)(a) at least 30 days before publishing notice of the rule,
 28 but the agency shall give the committee special notice as provided in subsection (1)(a) of this section.

1 (2) (a) A statute enacted or amended to be effective prior to October 1 of the year of enactment or
 2 amendment may be implemented by a temporary administrative rule, adopted before October 1 of that year,
 3 upon any abbreviated notice or hearing that the agency finds practicable, but the rule may not be filed with the
 4 secretary of state until at least 30 days have passed since publication of the notice of proposal to adopt the
 5 rule. The temporary rule is effective until October 1 of the year of adoption. The adoption of an identical rule
 6 under 2-4-302 is not precluded during the period that the temporary rule is effective.

7 (b) A temporary rule is exempt from the requirement to file the proposed rule with the appropriate
 8 administrative rule review committee under 2-4-302(1)(a) at least 30 days before publishing notice of the rule."

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

11 **"2-4-305. Requisites for validity -- authority and statement of reasons.** (1) (a) The agency shall
 12 fully consider written and oral submissions respecting the proposed rule, including comments submitted by the
 13 primary sponsor of the legislation prior to the drafting of the substantive content and wording of a proposed rule
 14 that initially implements legislation.

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

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

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

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

1 authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and adopted
2 rule must include a citation to the specific section or sections in the Montana Code Annotated that the rule
3 purports to 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
5 matter 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
15 rules 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
19 agency adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable
20 necessity for a rule. The agency shall also address the reasonableness component of the reasonable necessity
21 requirement by, as indicated in 2-4-302(1) and subsection (1) of this section, stating the principal reasons and
22 the rationale for its intended action and for the particular approach that it takes in complying with the mandate
23 to adopt rules. Subject to the provisions of subsection (8), reasonable necessity must be clearly and thoroughly
24 demonstrated for each adoption, amendment, or repeal of a rule in the agency's ~~notice~~ notices of proposed
25 rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the
26 agency and considered by the agency. A statement that merely explains what the rule provides is not a
27 statement of the reasonable 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-

1 302, 2-4-303, or 2-4-306 and this section, ~~and~~ unless notice of adoption of the rule is published within 6 months
2 of the publishing of notice of the proposed rule, and unless the adoption is in compliance with the prohibitions of
3 subsection (11). The measure of whether an agency has adopted a rule in substantial compliance with 2-4-302,
4 2-4-303, or 2-4-306 and this section is not whether the agency has provided notice of the proposed rule,
5 standing alone, but rather must be based on an analysis of the agency's substantial compliance with 2-4-302,
6 2-4-303, or 2-4-306 and this section. If an amended or supplemental notice of either proposed or final
7 rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with
8 reference to the latest notice in all cases.

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

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

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

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

28 (10) This section applies to the department of labor and industry adopting a rule relating to a

1 commercial drug formulary as provided in 39-71-704. This section does not apply to the automatic updating of
 2 department of labor and industry rules relating to commercial drug formularies as provided in 39-71-704.

3 (11) (a) In the year preceding the year in which the legislature meets in regular session, an agency
 4 may not adopt a rule between October 1 through the end of the year.

5 (b) This subsection (11) does not apply to emergency rules adopted under 2-4-303."
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7 **Section 4.** Section 2-4-306, MCA, is amended to read:

8 **"2-4-306. Filing and format -- adoption and effective dates -- dissemination of emergency rules.**

9 (1) Each agency shall file with the secretary of state a copy of each rule adopted by it or a reference to the rule
 10 as contained in the proposal notice. A rule is adopted on the date that the adoption notice is filed with the
 11 secretary of state and is effective on the date referred to in subsection (4), except that if the secretary of state
 12 requests corrections to the adoption notice, the rule is adopted on the date that the revised notice is filed with
 13 the secretary of state.

14 (2) Pursuant to 2-15-401, the secretary of state may prescribe rules to effectively administer this
 15 chapter, including rules regarding the printed or electronic format, style, and arrangement for notices and rules
 16 that are filed with the secretary of state pursuant to this chapter, and may refuse to accept the filing of any
 17 notice or rule that is not in compliance with this chapter and the secretary of state's rules. The secretary of state
 18 shall keep and maintain a permanent register of all notices and rules filed with the secretary of state, including
 19 superseded and repealed rules, that must be open to public inspection and shall provide copies of any
 20 published notice or rule upon request of any person. Unless otherwise provided by statute, the secretary of
 21 state may require the payment of the cost of providing copies.

22 (3) If the appropriate administrative rule review committee has conducted a poll of the legislature in
 23 accordance with 2-4-403, the results of the poll must be published with the rule if the rule is adopted by the
 24 agency.

25 (4) Each rule is effective after publication in the register, as provided in 2-4-312, except that:

26 (a) if a later date is required by statute or specified in the rule, the later date is the effective date;

27 (b) subject to applicable constitutional or statutory provisions:

28 (i) a temporary rule is effective immediately upon filing with the secretary of state or at a stated date

1 following publication in the register; and

2 (ii) an emergency rule is effective at a stated date following publication in the register or immediately
3 upon filing with the secretary of state if the agency finds that this effective date is necessary because of
4 imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons for
5 the finding must be filed with the rule. The agency shall, in addition to the required publication in the register,
6 take appropriate and extraordinary measures to make emergency rules known to each person who may be
7 affected by them.

8 (c) if, following written administrative rule review committee notification to an agency under 2-4-
9 305(9), the committee meets and under 2-4-406(1) objects to all or some portion of a proposed rule before the
10 proposed rule is adopted, the proposed rule or portion of the proposed rule objected to is not effective until the
11 day after final adjournment of the regular session of the legislature that begins after the notice proposing the
12 rule was published by the secretary of state, unless, following the committee's objection under 2-4-406(1):

- 13 (i) the committee withdraws its objection under 2-4-406 before the proposed rule is adopted; or
- 14 (ii) the rule or portion of a rule objected to is adopted with changes that in the opinion of a majority of
15 the committee members, as communicated in writing to the committee presiding officer and staff, make it
16 comply with the committee's objection and concerns.

17 (5) An agency may not enforce, implement, or otherwise treat as effective a rule proposed or adopted
18 by the agency until the effective date of the rule as provided in this section. Nothing in this subsection prohibits
19 an agency from enforcing an established policy or practice of the agency that existed prior to the proposal or
20 adoption of the rule as long as the policy or practice is within the scope of the agency's lawful authority.

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

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25 **Section 5.** Section 2-4-307, MCA, is amended to read:

26 **"2-4-307. Omissions from ARM or register.** (1) An agency may adopt by reference any model code,
27 federal agency rule, rule of any agency of this state, or other similar publication if:

- 28 (a) the publication of the model code, rule, or other publication would be unduly cumbersome,

1 expensive, or otherwise inexpedient; and

2 (b) it is reasonable for the agency to adopt the model code, rule, or other publication for the state of
3 Montana.

4 (2) The model code, rule, or other publication must be adopted by reference in a rule adopted under
5 the rulemaking procedure required by this chapter. The rule must contain a citation to the material adopted by
6 reference and a statement of the general subject matter of the omitted rule and must state where a copy of the
7 omitted material may be obtained. Upon request of the secretary of state, a copy of the omitted material must
8 be filed with the secretary of state.

9 (3) (a) The model code, rule, or other publication to be adopted by an agency pursuant to subsection
10 (1):

11 (i) must be in existence at the time that the agency's notice of proposed rulemaking is filed with the
12 appropriate administrative rule review committee and published in the register;

13 (ii) must be available to the public for comment, through either publication in the register or publication
14 in an electronic format on the agency's web page, during the time that the rule adopting the model code, rule, or
15 other publication is itself subject to public comment; and

16 (iii) except as provided in subsection (3)(b), may not be altered between the time of ~~publication of the~~
17 ~~notice of proposed rulemaking~~ notice is sent to the appropriate administrative rule review committee and the
18 publication of the notice of adoption by the agency proposing the rule unless the alteration is required in order
19 to respond to comments in the rulemaking record of the adopting agency.

20 (b) If the model code, rule, or other publication is altered by the agency between the time ~~of the~~
21 ~~publication of the notice of proposed rulemaking~~ is filed with the appropriate administrative rule review
22 committee and the notice of adoption, the part of the model code, rule, or other publication that is altered by the
23 agency is not adopted unless that part is also subject to a separate process of adoption as provided in this
24 section.

25 (c) If the model code, rule, or other publication is made available on the agency's website, the website
26 may provide either the full text of the model code, rule, or other publication or a link to the source of the official
27 electronic text of the model code, rule, or other publication.

28 (4) A rule originally adopting by reference any model code or rule provided for in subsection (1) may

1 not adopt any later amendments or editions of the material adopted. Except as provided in subsection (6), each
 2 later amendment or edition may be adopted by reference only by following the rulemaking procedure required
 3 by this chapter.

4 (5) If requested by a three-fourths vote of the appropriate administrative rule review committee, an
 5 agency shall immediately publish the full or partial text of any pertinent material adopted by reference under this
 6 section. The committee may not require the publication of copyrighted material. Publication of the text of a rule
 7 previously adopted does not affect the date of adoption of the rule, but publication of the text of a rule before
 8 publication of the notice of final adoption must be in the form of and is considered to be a new published notice
 9 of proposed rulemaking.

10 (6) Whenever later amendments of federal regulations must be adopted to comply with federal law or
 11 to qualify for federal funding, only a notice of incorporation by reference of the later amendments must be filed
 12 in the register. This notice must contain the information required by subsection (2) and must state the effective
 13 date of the incorporation. The effective date may be no sooner than 30 days after the date upon which the
 14 notice is published unless the 30 days causes a delay that jeopardizes compliance with federal law or
 15 qualification for federal funding, in which event the effective date may be no sooner than the date of publication.
 16 A hearing is not required unless requested under 2-4-315 by either 10% or 25, whichever is less, of the persons
 17 who will be directly affected by the incorporation, by a governmental subdivision or agency, or by an association
 18 having not less than 25 members who will be directly affected. Further notice of adoption or preparation of a
 19 replacement page for the ARM is not required.

20 (7) If a hearing is requested under subsection (6), the petition for hearing must contain a request for
 21 an amendment and may contain suggested language, reasons for an amendment, and any other information
 22 pertinent to the subject of the rule.

23 (8) This section does not apply to the automatic updating of department of labor and industry rules
 24 relating to commercial drug formularies as provided in 39-71-704."
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26 **Section 6.** Section 2-4-402, MCA, is amended to read:

27 **"2-4-402. Powers of committees -- duty to review rules.** (1) The administrative rule review
 28 committees shall review all proposed rules filed with the committee or with the secretary of state.

- 1 (2) The appropriate administrative rule review committee may:
- 2 (a) request and obtain an agency's rulemaking records for the purpose of reviewing compliance with
- 3 2-4-305;
- 4 (b) prepare written recommendations for the adoption, amendment, or rejection of a rule and submit
- 5 those recommendations to the department proposing the rule and submit oral or written testimony at a
- 6 rulemaking hearing;
- 7 (c) require that a rulemaking hearing be held in accordance with the provisions of 2-4-302 through 2-
- 8 4-305;
- 9 (d) institute, intervene in, or otherwise participate in proceedings involving this chapter in the state
- 10 and federal courts and administrative agencies;
- 11 (e) review the incidence and conduct of administrative proceedings under this chapter."

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Section 7. Section 2-4-403, MCA, is amended to read:

"2-4-403. Legislative intent -- poll. (1) If the legislature is not in session, the committee may poll all members of the legislature by mail to determine whether a proposed rule published in the register is consistent with the intent of the legislature.

(2) If 20 or more legislators object to a proposed rule published in the register, the committee shall poll the members of the legislature.

(3) The poll must include an opportunity for the agency to present a written justification for the proposed rule to the members of the legislature."

NEW SECTION. Section 8. Applicability. (1) [This act] applies to rule proposals published in the register as required by 2-4-302 on or after [the effective date of this act].

(2) [This act] does not apply to rule proposals published in the register prior to [the effective date of this act], even if the rule is subject to a final adoption after [the effective date of this act].

- END -