

SENATE BILL NO. 323

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA ADMINISTRATIVE
 PROCEDURE ACT; REQUIRING AN ECONOMIC IMPACT STATEMENT FOR RULE PROPOSALS BE
PREPARED BY A QUALIFIED ENTITY IDENTIFIED BY THE BUDGET DIRECTOR; RESCINDING
 LEGISLATIVE DELEGATIONS OF RULEMAKING POWER CONCERNING RULES THAT HAVE AN
 ESTIMATED ECONOMIC IMPACT OF MORE THAN \$1 MILLION; REPEALING PROVISIONS CONCERNING
 SMALL BUSINESS IMPACT ANALYSES; PROVIDING FOR CONTINGENT VOIDNESS; AMENDING
 SECTION 2-4-405, MCA; REPEALING SECTION 2-4-111, MCA; AND PROVIDING AN APPLICABILITY
 DATE."

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

NEW SECTION. **Section 1. Rulemaking authority -- restriction.** As of [the effective date of this
 act], any rulemaking authority delegated by statute to an agency to adopt, amend, or repeal a rule that has an
 economic impact estimated by the agency to be \$1 million or more in a year is rescinded.

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

"2-4-405. Economic impact statement. (1) ~~Upon written request of the appropriate administrative
 rule review committee based upon the affirmative request of a majority of the members of the committee at an
 open meeting, an~~ AN ENTITY QUALIFIED TO GIVE ECONOMIC IMPACT ANALYSES THAT IS SELECTED BY THE
BUDGET DIRECTOR ON OR BEFORE [THE EFFECTIVE DATE OF THIS ACT], shall prepare a statement of the economic
 impact of the adoption, amendment, or repeal of a rule as proposed. THE SELECTED ENTITY SHALL PROVIDE THE

1 ECONOMIC IMPACT TO THE RELEVANT AGENCY. ~~The agency shall also prepare a statement upon receipt by the~~
 2 ~~agency or the committee of a written request for a statement made by at least 15 legislators. If the request is~~
 3 ~~received by the committee, the committee shall give the agency a copy of the request, and if the request is~~
 4 ~~received by the agency, the agency shall give the committee a copy of the request. As an alternative, the~~
 5 ~~committee may, by contract, prepare the estimate.~~

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

8 (a) a description of the classes of persons who will be affected by the proposed rule, including classes
 9 that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

10 (b) a description of the probable economic impact of the proposed rule upon affected classes of
 11 persons, including but not limited to providers of services under contracts with the state and affected small
 12 businesses, and quantifying, to the extent practicable, that impact;

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

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

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

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

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

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

25 (3) ~~A request to an agency for a statement or a decision to contract for the preparation of a statement~~
 26 ~~must be made prior to the final agency action on the rule. The statement must be filed with the appropriate~~
 27 ~~administrative rule review committee within 3 months of the request or decision. A request or decision for an~~
 28 ~~economic impact statement may be withdrawn at any time.~~ (a) At the time a rule is proposed, an-~~THE~~ economic

1 impact statement must be filed with the appropriate administrative rule review committee BY THE AGENCY.

2 (b) If the appropriate administrative rule review committee has adjourned its final regularly scheduled
 3 meeting of the biennial interim, in lieu of filing the economic impact statement with the committee, the agency
 4 shall publish the economic impact statement with the proposal notice in the register.

5 (4) (a) Upon receipt of an impact statement under subsection (3)(a), the committee shall determine
 6 the sufficiency of the statement.

7 (i) If the committee determines that the statement is insufficient,

8 (A) the committee may return it to the agency or other person who ENTITY THAT prepared the
 9 statement and request that corrections or amendments be made; or

10 (B) the committee, or at least 20 legislators, may instruct the committee to contract for an
 11 independent economic impact statement.

12 (ii) If the committee determines that the statement is sufficient, a notice, including a summary of the
 13 statement and indicating where a copy of the statement may be obtained, must be filed with the secretary of
 14 state for publication in the register by the agency preparing the statement or by the committee, if the statement
 15 is prepared under contract by the committee, and must be mailed to persons who have registered advance
 16 notice of the agency's rulemaking proceedings.

17 (b) If an economic impact statement is published in the register under subsection (3)(b), when the
 18 appropriate administrative rule review committee convenes, it may review the statement and request
 19 corrections or amendments be made to the statement.

20 (5) Except as provided by subsection (6) and in accordance with [section 1], an agency may not
 21 adopt, amend, or repeal a rule if the agency estimates that the adoption, amendment, or repeal of the rule has
 22 an economic impact of \$1 million or more in a year. In this case, the adoption, amendment, or repeal of the rule
 23 may only be accomplished pursuant to a legislative bill.

24 ~~(5)(6)~~ This section does not apply to:

25 (a) rulemaking pursuant to 2-4-303; and

26 (b) rulemaking delegated to an agency by the Montana constitution.

27 ~~(6)(7)~~ The final adoption, amendment, or repeal of a rule is not subject to challenge in any court as a
 28 result of the inaccuracy or inadequacy of a statement required under this section.

1 ~~(7)~~(8) An environmental impact statement prepared pursuant to 75-1-201 that includes an analysis of
 2 the factors listed in this section satisfies the ~~provisions of preparation of an economic impact statement~~
 3 pursuant to this section."
 4

5 NEW SECTION. Section 3. Repealer. The following section of the Montana Code Annotated is
 6 repealed:

7 2-4-111. Small business impact analysis -- assistance.
 8

9 NEW SECTION. Section 4. Codification instruction. [Section 1] is intended to be codified as an
 10 integral part of Title 2, chapter 4, part 1, and the provisions of Title 2, chapter 4, part 1, apply to [section 1].
 11

12 NEW SECTION. SECTION 5. CONTINGENT VOIDNESS. (1) IF THE BUDGET DIRECTOR IS UNABLE TO IDENTIFY
 13 AND SECURE AN ENTITY THAT MEETS THE QUALIFICATIONS IN THIS SECTION ON OR BEFORE [THE EFFECTIVE DATE OF THIS
 14 ACT] TO FULFILL THE DUTIES OF AN ECONOMIC IMPACT PROVIDER IN [THIS ACT], THEN [THIS ACT] IS VOID. THE ENTITY
 15 MUST BE:

16 (A) CAPABLE AND QUALIFIED TO GIVE ECONOMIC IMPACT ANALYSES FOR EACH RULE PROPOSED BY EACH
 17 AGENCY AFTER [THE EFFECTIVE DATE OF THIS ACT] IN PERPETUITY, SUCH AS THE ECONOMICS DEPARTMENT OF A
 18 COLLEGE OR UNIVERSITY;

19 (B) LOCATED IN MONTANA; AND

20 (C) WILLING TO PROVIDE ECONOMIC IMPACT STATEMENTS FOR EACH PROPOSED RULE AT NO COST TO THE
 21 STATE.

22 (2) THE BUDGET DIRECTOR SHALL NOTIFY THE CODE COMMISSIONER IF THE CONTINGENCY IN THIS SECTION
 23 OCCURS.
 24

25 NEW SECTION. Section 6. Applicability. (1) [This act] applies to rule proposals published in the
 26 register as required by 2-4-302 on or after [the effective date of this act].

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

