AN ACT AMENDING PROVISIONS OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT TO CLARIFY STATUTES REGARDING A POLL OF THE LEGISLATURE CONCERNING ADMINISTRATIVE RULES; AMENDING SECTIONS 2-4-306, 2-4-403, AND 2-4-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 2-4-306, MCA, is amended to read:

"2-4-306. Filing, format, and adoption and effective dates -- dissemination of emergency rules. (1) Each agency shall file with the secretary of state a copy of each rule adopted by it or a reference to the rule as contained in the proposal notice. A rule is adopted on the date that the adoption notice is filed with the secretary of state and is effective on the date referred to in subsection (4), except that if the secretary of state requests corrections to the adoption notice, the rule is adopted on the date that the revised notice is filed with the secretary of state.

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 The secretary of state shall keep and maintain a permanent register of all notices and rules filed, including superseded and repealed rules, that must be open to public inspection and shall provide copies of any notice or rule upon request of any person.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

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

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

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

(b) subject to applicable constitutional or statutory provisions:

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

following publication in the register; and

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

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

(i) the committee withdraws its objection under 2-4-406 before the proposed rule is adopted; or

(ii) the rule or portion of a rule objected to is adopted with changes that in the opinion of a majority of the committee members, as communicated in writing to the committee presiding officer and staff, make it comply with the committee's objection and concerns."

Section 2. 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 is consistent with the intent of the legislature.

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

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

Section 3. Section 2-4-404, MCA, is amended to read:

"2-4-404. Evidentiary value of legislative poll. In the event that If the appropriate administrative rule review committee has conducted a poll of the legislature in accordance with 2-4-403, the results of the poll must be admissible in any court proceeding involving the validity of the proposed rule or the validity of the adopted rule if the rule was adopted by the agency. In the event that If the poll determines that a majority of the members of

both houses find that the proposed rule <u>or adopted rule</u> is contrary to the intent of the legislature, the <u>proposed rule or adopted</u> rule must be conclusively presumed to be contrary to the legislative intent in any court proceeding involving its validity."

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applicability. [This act] applies to a rule proposed for adoption after [the effective date of this act] or a rule proposed for adoption before but adopted after [the effective date of this act].

- END -

I hereby certify that the within bill,

HB 0067, originated in the House.

_____

Chief Clerk of the House

_____

Speaker of the House

Signed this _____ day

of _____ , 2019.

_____

President of the Senate

Signed this _____ day

of _____ , 2019.

HOUSE BILL NO. 67

INTRODUCED BY R. HEINERT

BY REQUEST OF THE STATE ADMINISTRATION AND VETERANS' AFFAIRS INTERIM COMMITTEE

AN ACT AMENDING PROVISIONS OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT TO CLARIFY STATUTES REGARDING A POLL OF THE LEGISLATURE CONCERNING ADMINISTRATIVE RULES; AMENDING SECTIONS 2-4-306, 2-4-403, AND 2-4-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.