

HOUSE BILL NO. 70
INTRODUCED BY E. CLARK
BY REQUEST OF THE SECRETARY OF STATE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING REQUIREMENTS RELATING TO THE PREPARATION OF MODEL ADMINISTRATIVE RULES AND THE PUBLICATION AND DISTRIBUTION OF ADMINISTRATIVE RULES; AND AMENDING SECTIONS 2-4-202, 2-4-302, 2-4-312, AND 2-4-313, MCA."

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

Section 1. Section 2-4-202, MCA, is amended to read:

"2-4-202. Model rules. (1) The ~~attorney general~~ secretary of state shall prepare a model form for a rule describing the organization of agencies and model rules of practice for agencies to use as a guide for the rulemaking process and in fulfilling the requirements of 2-4-201. The attorney general shall prepare model rules of practice for agencies to use as a guide for contested case hearings and declaratory rulings. The secretary of state and attorney general shall add to, amend, or revise the model rules from time to time as ~~he considers~~ necessary for the proper guidance of agencies.

(2) The model rules and additions, amendments, or revisions ~~thereto shall~~ must be appropriate for the use of as many agencies as is practicable and ~~shall~~ must be filed with the secretary of state and provided to any agency upon request. The adoption by an agency of all or part of the model rules does not relieve the agency from following the rulemaking procedures required by this chapter."

Section 2. Section 2-4-302, MCA, is amended to read:

"2-4-302. Notice, hearing, and submission of views. (1) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its intended action. The notice must include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the reasonable necessity for the intended action, and the time when, place where, and manner in which interested persons may present their views on the intended action. The reasonable necessity must be written in plain, easily understood language. If the agency proposes to adopt, increase, or decrease a monetary amount that a person shall pay or will receive, such as a fee, cost, or benefit, the notice must include an estimate, if known, of:

(a) the cumulative amount for all persons of the proposed increase, decrease, or new amount; and

(b) the number of persons affected.

(2) (a) The notice must be filed with the secretary of state for publication in the register, as provided in 2-4-312, and ~~mailed sent~~ within 3 days of publication to the sponsor of the legislative bill that enacted the section that is cited as implemented in the notice if the notice is the initial proposal to implement the section, to interested persons who have made timely requests to the agency to be informed of its rulemaking proceedings, and to the office of any professional, trade, or industrial society or organization or member of those entities who has filed a request with the appropriate administrative rule review committee when the request has been forwarded to the agency as provided in subsection (2)(b). Each agency shall create and maintain a list of interested persons and the subject or subjects in which each person on the list is interested. A person who submits a written comment or attends a hearing in regard to proposed agency action under this part must be informed of the list by the agency. An agency complies with this subsection if it includes in the notice an advisement explaining how persons may be placed on the list of interested persons and if it complies with subsection (7).

(b) The appropriate administrative rule review committee shall forward a list of all organizations or persons who have submitted a request to be informed of agency actions to the agencies that the committee oversees that publish rulemaking notices in the register. The list must be amended by the agency upon request of any person requesting to be added to or deleted from the list.

(c) The notice required by subsections (1) and (2)(a) must be published and ~~mailed sent~~ at least 30 days in advance of the agency's intended action. In addition to publishing and ~~mailing sending~~ the notice under subsection (2)(a), the agency shall post the notice on a state electronic access system or other electronic communications system available to the public.

(d) The agency shall also, at the time that its personnel begin to work on the substantive content and the wording of the initial rule proposal to implement one or more statutes, notify the sponsor of the legislative bill that enacted the section.

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

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and at least 28 days from the day of the original notice to submit data, views, or arguments, orally or in writing. If an amended or supplemental notice is filed, additional time may be allowed for oral or written submissions. In the case of substantive rules, the notice of proposed rulemaking must state that opportunity for oral hearing must be granted if requested by either 10% or 25, whichever is less, of the persons

who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the appropriate administrative rule review committee, or by an association having not less than 25 members who will be directly affected. If the proposed rulemaking involves matters of significant interest to the public, the agency shall schedule an oral hearing.

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

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

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

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

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

(8) For purposes of notifying sponsors under subsections (2)(a) and (2)(d) who are no longer members of the legislature, a former legislator who wishes to receive notice may keep the former legislator's name, address, e-mail address, and telephone number on file with the secretary of state. An agency proposing rules shall consult the register when providing sponsor notice."

Section 3. Section 2-4-312, MCA, is amended to read:

"2-4-312. Publication and arrangement of register. (1) The secretary of state shall publish in the register all notices, rules, and interpretations filed with the secretary of state at least once a month but not more often than twice a month.

(2) The secretary of state shall send the register without charge to each person listed in 2-4-313(1) and to each member of the legislature requesting the register. The secretary of state shall send the register to any other person who pays a subscription fee, which must be established and deposited in accordance with 2-15-405. The register must be sent in electronic format unless a hard copy is requested.

(3) The register must contain three sections, a rules section, a notice section, and an interpretation section, as follows:

(a) The rules section of the register must contain all rules filed since the compilation and publication of the preceding issue of the register, together with the concise statement of reasons required under 2-4-305(1).

(b) The notice section of the register must contain all rulemaking notices filed with the secretary of state pursuant to 2-4-302 since the compilation and publication of the preceding register.

(c) The interpretation section of the register must contain all opinions of the attorney general and all declaratory rulings of agencies issued since the publication of the preceding register.

(4) Each issue of the register must contain the issue number and date of the register and a table of contents. Each page of the register must contain the issue number and date of the register of which it is a part. The secretary of state may include with the register information to help the user in relating the register to the ARM."

Section 4. Section 2-4-313, MCA, is amended to read:

"2-4-313. Distribution, costs, and maintenance. (1) The secretary of state shall distribute copies of the ARM and supplements or revisions to the ARM to the following in an electronic format unless a hard copy is requested:

(a) attorney general, one copy;

(b) clerk of United States district court for the district of Montana, one copy;

(c) clerk of United States court of appeals for the ninth circuit, one copy;

(d) county commissioners or governing body of each county of this state, for use of county officials and the public, at least one but not more than two copies, which may be maintained in a public library in the county seat or in the county offices as the county commissioners or governing body of the county may determine;

(e) state law library, one copy;

(f) state historical society, one copy;

(g) each unit of the Montana university system, one copy;

(h) law library of the university of Montana-Missoula, one copy;

(i) legislative services division, two copies;

(j) library of congress, one copy;

(k) state library, one copy.

(2) The secretary of state, each county in the state, and the librarians for the state law library and the university of Montana-Missoula law library shall maintain a complete, current set of the ARM, including supplements or revisions to the ARM. The designated persons shall also maintain the register issues published

during the preceding 2 years. The secretary of state shall maintain a permanent set of the registers.

(3) The secretary of state shall make copies of and subscriptions to the ARM and supplements or revisions to the ARM and the register available to any person for a fee set in accordance with subsection (5). Fees are not refundable.

(4) The secretary of state may charge agencies a filing fee for all material to be published in the ARM or the register.

(5) The secretary of state shall set and deposit the fees authorized in this section in accordance with 2-15-405."

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