

1 HOUSE BILL NO. 40

2 INTRODUCED BY K. PETERSON

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA ADMINISTRATIVE PROCEDURE ACT;
5 CHANGING THE STANDARD FOR ADOPTION OF ADMINISTRATIVE RULES TO REQUIRE NECESSITY FOR
6 THE ADOPTION OF A RULE; PROHIBITING THE ADOPTION OF A SPECIFIC FEDERAL REGULATION BY
7 A STATE AGENCY WITHOUT EXPRESS AUTHORITY FROM THE LEGISLATURE; AMENDING SECTIONS
8 2-4-110, 2-4-302, 2-4-305, 2-4-307, 15-7-306, 15-30-2104, 37-22-201, 37-67-202, 50-71-114, AND 75-2-301,
9 MCA; AND PROVIDING AN APPLICABILITY DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12

13 **Section 1.** Section 2-4-110, MCA, is amended to read:

14 **"2-4-110. Departmental review of rule notices.** (1) The head of each department of the executive
15 branch shall appoint an existing attorney, paralegal, or other qualified person from that department to review each
16 departmental rule proposal notice, adoption notice, or other notice relating to administrative rulemaking. Notice
17 of the name of the person appointed under this subsection and of any successor must be given to the secretary
18 of state and the appropriate administrative rule review committee within 10 days of the appointment.

19 (2) The person appointed under subsection (1) shall review each notice by any division, bureau, or other
20 unit of the department, including units attached to the department for administrative purposes only under
21 2-15-121, for compliance with this chapter before the notice is filed with the secretary of state. The reviewer shall
22 pay particular attention to 2-4-302 and 2-4-305. The review must include but is not limited to consideration of:

23 (a) the adequacy of the statement of ~~reasonable~~ necessity for the intended action and whether the
24 intended action is ~~reasonably~~ necessary to effectuate the purpose of the code section or sections implemented;

25 (b) whether the proper statutory authority for the rule is cited;

26 (c) whether the citation of the code section or sections implemented is correct;

27 (d) whether the intended action is contrary to the code section or sections implemented or to other law;

28 and

29 (e) for a rule that initially implements legislation, whether the intended action is contrary to any comments
30 submitted to the department by the primary sponsor of the legislation for the purposes of 2-4-302.

1 (3) The person appointed under subsection (1) shall sign each notice for which this section requires a
2 review. The act of signing is an affirmation that the review required by this section has been performed to the best
3 of the reviewer's ability. The secretary of state may not accept for filing a notice that does not have the signature
4 required by this section."

5

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

7 **"2-4-302. Notice, hearing, and submission of views.** (1) (a) Prior to the adoption, amendment, or
8 repeal of any rule, the agency shall give written notice of its proposed action. The proposal notice must include
9 a statement of either the terms or substance of the intended action or a description of the subjects and issues
10 involved, the ~~reasonable~~ necessity for the proposed action, and the time when, place where, and manner in which
11 interested persons may present their views on the proposed action. The ~~reasonable~~ statement of necessity must
12 be written in plain, easily understood language.

13 (b) The agency shall state in the proposal notice the date on which and the manner in which contact was
14 made with the primary sponsor as required in subsection (2)(d). If the notification to the primary sponsor was
15 given by mail, the date stated in the proposal notice must be the date on which the notification was mailed by the
16 agency. If the proposal notice fails to state the date on which and the manner in which the primary sponsor was
17 contacted, the filing of the proposal notice under subsection (2)(a) is ineffective for the purposes of this part and
18 for the purposes of the law that the agency cites in the proposal notice as the authority for the proposed action.

19 (c) If the agency proposes to adopt, increase, or decrease a monetary amount that a person shall pay
20 or will receive, such as a fee, cost, or benefit, the notice must include an estimate, if known, of:

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

22 (ii) the number of persons affected.

23 (2) (a) The proposal notice must be filed with the secretary of state for publication in the register, as
24 provided in 2-4-312. Within 3 days of publication, a copy of the published proposal notice must be sent to
25 interested persons who have made timely requests to the agency to be informed of its rulemaking proceedings,
26 and to the office of any professional, trade, or industrial society or organization or member of those entities who
27 has filed a request with the appropriate administrative rule review committee when the request has been
28 forwarded to the agency as provided in subsection (2)(b). Each agency shall create and maintain a list of
29 interested persons and the subject or subjects in which each person on the list is interested. A person who
30 submits a written comment or attends a hearing in regard to proposed agency action under this part must be

1 informed of the list by the agency. An agency complies with this subsection if it includes in the proposal notice
2 an advisement explaining how persons may be placed on the list of interested persons and if it complies with
3 subsection (7).

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

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

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

14 (A) obtain the legislator's comments;

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

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

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

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

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

28 (4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons
29 at least 20 days' notice of a hearing and at least 28 days from the day of the original notice to submit data, views,
30 or arguments, orally or in writing. If an amended or supplemental notice is filed, additional time may be allowed

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

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

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

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

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

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

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

24 (b) An agency has complied with the primary bill sponsor contact requirements of this section when the
25 agency has attempted to reach the primary bill sponsor at the legislator's address, e-mail address, and telephone
26 number on file with the secretary of state pursuant to subsection (8)(a)."

27

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

29 **"2-4-305. Requisites for validity -- authority and statement of reasons.** (1) (a) The agency shall fully
30 consider written and oral submissions respecting the proposed rule, including comments submitted by the primary

1 sponsor of the legislation prior to the drafting of the substantive content and wording of a proposed rule that
2 initially implements legislation.

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

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

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

15 (3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking authority
16 pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and adopted rule must
17 include a citation to the specific section or sections in the Montana Code Annotated that the rule purports to
18 implement. A substantive rule may not be proposed or adopted unless:

19 (a) a statute granting the agency authority to adopt rules clearly and specifically lists the subject matter
20 of the rule as a subject upon which the agency shall or may adopt rules; or

21 (b) the rule implements and relates to a subject matter or an agency function that is clearly and
22 specifically included in a statute to which the grant of rulemaking authority extends.

23 (4) Each rule that is proposed and adopted by an agency and that implements a policy of a governing
24 board or commission must include a citation to and description of the policy implemented. Each agency rule
25 implementing a policy and the policy itself must be based on legal authority and otherwise comply with the
26 requisites for validity of rules established by this chapter.

27 (5) To be effective, each substantive rule adopted must be within the scope of authority conferred and
28 in accordance with standards prescribed by other provisions of law.

29 (6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules
30 to implement, interpret, make specific, or otherwise carry out the provisions of the statute, an adoption,

1 amendment, or repeal of a rule is not valid or effective unless it is:

2 (a) consistent and not in conflict with the statute; and

3 (b) ~~reasonably~~ necessary to effectuate the purpose of the statute. A statute mandating that the agency
4 adopt rules establishes the necessity for rules but does not, standing alone, constitute ~~reasonable~~ necessity for
5 a particular rule. The agency shall also address the ~~reasonableness component of the reasonable~~ necessity
6 requirement by, as indicated in 2-4-302(1) and subsection (1) of this section, stating the principal reasons and
7 the rationale for its intended action and for the particular approach that it takes in complying with the mandate
8 to adopt rules. Subject to the provisions of subsection (8), ~~reasonable~~ necessity must be clearly and thoroughly
9 demonstrated for each adoption, amendment, or repeal of a rule in the agency's notice of proposed rulemaking
10 and in the written and oral data, views, comments, or testimony submitted by the public or the agency and
11 considered by the agency. A statement that merely explains what the rule provides is not a statement of the
12 ~~reasonable~~ necessity for the rule.

13 (7) A rule is not valid unless notice of it is given and it is adopted in substantial compliance with 2-4-302,
14 2-4-303, or 2-4-306 and this section and unless notice of adoption of the rule is published within 6 months of the
15 publishing of notice of the proposed rule. The measure of whether an agency has adopted a rule in substantial
16 compliance with 2-4-302, 2-4-303, or 2-4-306 and this section is not whether the agency has provided notice of
17 the proposed rule, standing alone, but rather must be based on an analysis of the agency's substantial
18 compliance with 2-4-302, 2-4-303, or 2-4-306 and this section. If an amended or supplemental notice of either
19 proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be
20 determined with reference to the latest notice in all cases.

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

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

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

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

9

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

11 **"2-4-307. Omissions from ARM or register.** (1) An agency may adopt by reference any model code,
12 ~~federal agency rule,~~ rule of any agency of this state, or other similar publication, except a federal regulation, if the
13 publication of the model code, rule, or other publication would be unduly cumbersome, expensive, or otherwise
14 inexpedient. A federal regulation may be adopted only with the express approval of the legislature, as provided
15 in law passed by the legislature. Following approval by the legislature, the adoption of the regulation must comply
16 with and is subject to the requirements of subsections (2) through (6) unless the bill approving the adoption of
17 the regulation expressly provides otherwise.

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

23 (3) A rule originally adopting by reference any model code or rule provided for in subsection (1) may not
24 adopt any later amendments or editions of the material adopted. Except as provided in subsection (5), each later
25 amendment or edition may be adopted by reference only by following the rulemaking procedure required by this
26 chapter.

27 (4) If requested by a three-fourths vote of the appropriate administrative rule review committee, an
28 agency shall immediately publish the full or partial text of any pertinent material adopted by reference under this
29 section. The committee may not require the publication of copyrighted material. Publication of the text of a rule
30 previously adopted does not affect the date of adoption of the rule, but publication of the text of a rule before

1 publication of the notice of final adoption must be in the form of and is considered to be a new notice of proposed
2 rulemaking.

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

13 (6) If a hearing is requested under subsection (5), the petition for hearing must contain a request for an
14 amendment and may contain suggested language, reasons for an amendment, and any other information
15 pertinent to the subject of the rule."
16

17 **Section 5.** Section 15-7-306, MCA, is amended to read:

18 **"15-7-306. Rules.** The department of revenue may prescribe such rules as are ~~reasonably~~ necessary
19 to facilitate and expedite the provisions and administration of this part."
20

21 **Section 6.** Section 15-30-2104, MCA, is amended to read:

22 **"15-30-2104. Tax on nonresident.** (1) (a) A tax is imposed upon each nonresident equal to the tax
23 computed under 15-30-2103 as if the nonresident were a resident during the entire tax year, multiplied by the ratio
24 of Montana source income to total income from all sources.

25 (b) This subsection (1) does not permit any items of income, gain, loss, deduction, expense, or credit
26 to be counted more than once in determining the amount of Montana source income, and the department may
27 adopt rules that are ~~reasonably~~ necessary to prevent duplication or to provide for allocation of particular items
28 of income, gain, loss, deduction, expense, or credit.

29 (2) Pursuant to the provisions of Article III, section 2, of the Multistate Tax Compact, each nonresident
30 taxpayer required to file a return and whose only activity in Montana consists of making sales and who does not

1 own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales
2 made in Montana during the taxable year does not exceed \$100,000 may elect to pay an income tax of 1/2 of 1%
3 of the dollar volume of gross sales made in Montana during the taxable year. The tax is in lieu of the tax imposed
4 under 15-30-2103 and subsection (1)(a) of this section. The gross volume of sales made in Montana during the
5 tax year must be determined according to the provisions of Article IV, sections 16 and 17, of the Multistate Tax
6 Compact."

7

8 **Section 7.** Section 37-22-201, MCA, is amended to read:

9 **"37-22-201. Duties of board.** The board:

10 (1) shall recommend prosecutions for violations of 37-22-411, 37-23-311, and Title 37, chapter 37, to
11 the attorney general or the appropriate county attorney, or both;

12 (2) shall meet at least once every 3 months to perform the duties described in Title 37, chapters 1, 23,
13 and 37 and this chapter. The board may, once a year by a consensus of board members, determine that there
14 is no necessity for a board meeting.

15 (3) shall adopt rules that set professional, practice, and ethical standards for social workers, marriage
16 and family therapists, and professional counselors and other rules as may be ~~reasonably~~ necessary for the
17 administration of chapters 23 and 37 and this chapter; and

18 (4) may adopt rules governing the issuance of licenses of special competence in particular areas of
19 practice as a licensed professional counselor. The board shall establish criteria for each particular area for which
20 a license is issued."

21

22 **Section 8.** Section 37-67-202, MCA, is amended to read:

23 **"37-67-202. Rulemaking.** The board may adopt rules, including rules of procedure, ~~reasonably~~
24 necessary for the proper performance of its duties and the regulation of the proceedings before it."

25

26 **Section 9.** Section 50-71-114, MCA, is amended to read:

27 **"50-71-114. Rulemaking -- variances.** (1) The department may adopt appropriate standards for safety
28 and health by administrative rule, including:

29 (a) any safety or health regulations promulgated by the federal occupational safety and health
30 administration; and

- 1 (b) standards that are not inconsistent with federal safety and health regulation but that provide for a
2 greater level of protection for employees.
- 3 (2) The department may adopt other rules that are ~~reasonably~~ necessary to implement this part.
- 4 (3) (a) The department may by rule:
- 5 (i) provide a procedure to grant a temporary variance from the particular provisions of a standard; and
6 (ii) permit the temporary use of other or different devices or methods than provided by the standard.
- 7 (b) A temporary variance may be granted only if the public sector employer:
- 8 (i) has an effective program for complying with the standard as quickly as is practicable;
9 (ii) is taking all available steps to safeguard public sector employees against the hazards covered by the
10 standard; and
- 11 (iii) is unable to comply with the standard because:
- 12 (A) professional or technical personnel needed to implement compliance with the standard are
13 temporarily unavailable;
- 14 (B) material or equipment needed to comply with the standard is temporarily unavailable; or
15 (C) necessary construction or alteration of facilities cannot be completed by the effective date of the
16 standard."

- 17
- 18 **Section 10.** Section 75-2-301, MCA, is amended to read:
- 19 **"75-2-301. Local air pollution control programs -- consistency with state and federal regulations**
20 **-- procedure for public notice and comment required.** (1) After public hearing, a municipality or county may
21 establish and administer a local air pollution control program if the program is consistent with this chapter and
22 is approved by the board.
- 23 (2) If a local air pollution control program established by a county encompasses all or part of a
24 municipality, the county and each municipality shall approve the program in accordance with subsection (1).
- 25 (3) (a) Except as provided in subsection (5), the board by order may approve a local air pollution control
26 program that:
- 27 (i) subject to subsection (4), provides by rule, ordinance, or local law for requirements compatible with,
28 more stringent than, or more extensive than those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212, 75-2-215,
29 75-2-217 through 75-2-219, and 75-2-402 and rules adopted under these sections;
- 30 (ii) provides for the enforcement of requirements established under subsection (3)(a)(i) by appropriate

1 administrative and judicial processes; and

2 (iii) provides for administrative organization, staff, financial resources, and other resources necessary
3 to effectively and efficiently carry out the program. As part of meeting these requirements, a local air pollution
4 control program may administer the permit fee provisions of 75-2-220. The permit fees collected by a local air
5 pollution control program must be deposited in a county special revenue fund to be used by the local air pollution
6 control program for administration of permitting activities.

7 (b) Board approval of a rule, ordinance, or local law that is more stringent than the comparable state law
8 is subject to the provisions of subsection (4).

9 (4) (a) A local air pollution control program may, subject to approval by the board, adopt a rule,
10 ordinance, or local law to implement this chapter that is more stringent than comparable state or federal
11 regulations or guidelines only if:

12 (i) a public hearing is held;

13 (ii) public comment is allowed; and

14 (iii) the board or the local air pollution control program makes a written finding after the public hearing and
15 comment period that is based on evidence in the record that the proposed local standard or requirement:

16 (A) protects public health or the environment of the area;

17 (B) can mitigate harm to the public health or the environment; and

18 (C) is achievable with current technology.

19 (b) The written finding required under subsection (4)(a)(iii) must reference information and peer-reviewed
20 scientific studies contained in the record that form the basis for the board's or the local air pollution control
21 program's conclusion. The written finding must also include information from the hearing record regarding costs
22 to the regulated community that are directly attributable to the proposed local standard or requirement.

23 (c) (i) A person or entity affected by a rule, ordinance, or local law approved or adopted after January
24 1, 1996, and before May 1, 2001, that the person or entity believes is more stringent than comparable state or
25 federal regulations or guidelines may petition the board or the local air pollution control program to review the rule,
26 ordinance, or local law.

27 (ii) If the board or local air pollution control program determines that the rule, ordinance, or local law is
28 more stringent than state or federal regulations or guidelines, the board or local air pollution control program shall
29 either revise the rule, ordinance, or local law to conform to the state or federal regulations or guidelines or follow
30 the process provided in subsections (4)(a) and (4)(b) within a reasonable period of time, not to exceed 6 months

1 after receiving the petition.

2 (5) Except for those emergency powers provided for in 75-2-402, the board may not delegate to a local
3 air pollution control program the authority to control any air pollutant source that:

4 (a) requires the preparation of an environmental impact statement in accordance with Title 75, chapter
5 1, part 2;

6 (b) is subject to regulation under the Montana Major Facility Siting Act, as provided in Title 75, chapter
7 20; or

8 (c) has the potential to emit 250 tons a year or more of any pollutant subject to regulation under this
9 chapter, including fugitive emissions, unless the authority to control the source was delegated to a local air
10 pollution control program prior to January 1, 1991.

11 (6) If the board finds that the location, character, or extent of particular concentrations of population, air
12 pollutant sources, or geographic, topographic, or meteorological considerations or any combination of these make
13 impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control
14 program, the board may determine the boundaries within which the program is necessary and require it as the
15 only acceptable alternative to direct state administration.

16 (7) If the board has reason to believe that any part of an air pollution control program in force under this
17 section is either inadequate to prevent and control air pollution in the jurisdiction to which the program relates or
18 is being administered in a manner inconsistent with this chapter, the board shall, on notice, conduct a hearing
19 on the matter.

20 (8) If, after the hearing, the board determines that any part of the program is inadequate to prevent and
21 control air pollution in the jurisdiction to which it relates or that it is not accomplishing the purposes of this chapter,
22 it shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

23 (9) If the jurisdiction fails to take these measures within the time required, the department shall
24 administer within that jurisdiction all of the provisions of this chapter, including the terms contained in any
25 applicable board order, that are necessary to correct the deficiencies found by the board. The department's
26 control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements in the
27 affected jurisdiction. The cost of the department's action is a charge on the jurisdiction.

28 (10) If the board finds that the control of a particular air pollutant source because of its complexity or
29 magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and
30 economically performed at the state level, it may direct the department to assume and retain control over that air

1 pollutant source. A charge may not be assessed against the jurisdiction. Findings made under this subsection
2 may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size
3 of the communities in which they are located.

4 (11) A jurisdiction in which the department administers all or part of its air pollution control program under
5 subsection (9) may, with the approval of the board, establish or resume an air pollution control program that
6 meets the requirements of subsection (3).

7 (12) A municipality or county may administer all or part of its air pollution control program in cooperation
8 with one or more municipalities or counties of this state or of other states.

9 (13) Local air pollution control programs established under this section shall provide procedures for public
10 notice, public hearing, public comment, and appeal for any proposed new or revised rules, ordinances, or local
11 laws adopted pursuant to this section. The procedures must comply with the following requirements:

12 (a) The local air pollution control program shall create and maintain a list of interested persons who wish
13 to be informed of actions related to rules, ordinances, or local laws adopted by the local air pollution control
14 program.

15 (b) At least 30 days prior to the adoption, revision, or repeal of a rule, ordinance, or law, the local air
16 pollution control program shall give written notice of its intended action.

17 (c) The notice required under subsection (13)(b) must include:

18 (i) a statement of the terms or substance of the intended action or a description of the subjects and
19 issues affected by the intended action;

20 (ii) an explanation of the procedure for a person to be included on the list of interested persons
21 established pursuant to subsection (13)(a);

22 (iii) an explanation of the procedures and deadlines for presentation of oral or written comments related
23 to the intended action;

24 (iv) an explanation of the process for requesting a public hearing as provided in subsection (13)(f); and

25 (v) the rationale for the intended action. The rationale must:

26 (A) include an explanation of why the intended action is reasonably necessary to implement the goals
27 and purposes of the local air pollution control program;

28 (B) specifically address those intended actions for which there are no similar state or federal regulations
29 or guidelines; and

30 (C) be written in plain, easily understood language.

1 (d) For the purposes of subsection (13)(c)(v), a statement of authority to adopt a rule, ordinance, or local
2 law does not, standing alone, constitute a showing of ~~reasonable~~ necessity for the intended action.

3 (e) The local air pollution control program shall mail a copy of the proposed rule, ordinance, or local law
4 to all interested persons on the list established pursuant to subsection (13)(a) who have made timely requests
5 to be included on the list.

6 (f) If at least 10 of the persons who will be directly affected by the proposed rule, ordinance, or local law
7 request a public hearing, the local air pollution control program shall hold a hearing to hear comments from the
8 public on the intended action.

9 (g) The local air pollution control program shall prepare a written response to all comments submitted
10 in writing or presented at the public hearing for consideration prior to adoption, revision, or repeal of the proposed
11 rule, ordinance, or local law.

12 (h) A person who submits a written comment on a proposed action or who attends a public hearing in
13 regard to a proposed action must be informed of the final action."

14
15 **NEW SECTION. Section 11. Applicability.** [This act] applies to an administrative rule, as rule is defined
16 in 2-4-102, proposed or adopted on or after October 1, 2011.

17 - END -