

## SENATE BILL NO. 139

INTRODUCED BY WALKER, ARTHUN, BLASDEL, BOULANGER, BRENDEN, BRODEHL, D. BROWN,  
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A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT A SMALL BUSINESS IMPACT ANALYSIS BE  
CONDUCTED PRIOR TO THE ADOPTION OF AN ADMINISTRATIVE RULE; DEFINING "SMALL BUSINESS";  
AMENDING SECTION 2-4-102, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

**NEW SECTION. Section 1. Small business impact analysis -- assistance.** (1) Prior to the adoption  
of a proposed rule, the agency that has proposed the rule shall determine if the rule will adversely or positively  
impact small businesses. If the agency determines that the proposed rule will impact small businesses, the  
determination must be published in the register when the proposed rule is published. If the agency determines  
that the proposed rule may have an adverse or positive impact on small businesses AND IF SUBSECTION (4) DOES  
NOT APPLY, the agency shall prepare a small business impact analysis that, at a minimum, must:

(a) identify by class or group the small businesses probably affected by the proposed rule;

(b) include a statement of the probable adverse or positive effects of the proposed rule on the small  
businesses identified in subsection (1)(a); and

(c) include a description of any alternative methods that may be reasonably implemented to minimize  
or eliminate adverse effects described in subsection (1)(b), while still achieving the purpose of the proposed rule.

(2) The agency shall provide documentation for the estimates, statements, and descriptions required  
under subsection (1).

(3) The office of economic development, established in 2-15-218, shall advise and assist agencies in  
complying with this section.

(4) AN AGENCY IS NOT REQUIRED TO PREPARE A SEPARATE SMALL BUSINESS IMPACT ANALYSIS UNDER THIS  
SECTION IF THE AGENCY PURSUANT TO 2-4-405 IS PREPARING OR HAS PREPARED AN ECONOMIC IMPACT STATEMENT  
REGARDING ADOPTION, AMENDMENT, OR REPEAL OF A RULE.

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- 2       **Section 2.** Section 2-4-102, MCA, is amended to read:
- 3       **"2-4-102. Definitions.** For purposes of this chapter, the following definitions apply:
- 4       (1) "Administrative rule review committee" or "committee" means the appropriate committee assigned
- 5 subject matter jurisdiction in Title 5, chapter 5, part 2.
- 6       (2) (a) "Agency" means an agency, as defined in 2-3-102, of state government, except that the provisions
- 7 of this chapter do not apply to the following:
- 8       (i) the state board of pardons and parole, except that the board is subject to the requirements of 2-4-103,
- 9 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the ARM and the register;
- 10       (ii) the supervision and administration of a penal institution with regard to the institutional supervision,
- 11 custody, control, care, or treatment of youth or prisoners;
- 12       (iii) the board of regents and the Montana university system;
- 13       (iv) the financing, construction, and maintenance of public works;
- 14       (v) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C. 252
- 15 and 69-3-837.
- 16       (b) The term does not include a school district, a unit of local government, or any other political
- 17 subdivision of the state.
- 18       (3) "ARM" means the Administrative Rules of Montana.
- 19       (4) "Contested case" means a proceeding before an agency in which a determination of legal rights,
- 20 duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes
- 21 but is not restricted to ratemaking, price fixing, and licensing.
- 22       (5) (a) "Interested person" means a person who has expressed to the agency an interest concerning
- 23 agency actions under this chapter and has requested to be placed on the agency's list of interested persons as
- 24 to matters of which the person desires to be given notice.
- 25       (b) The term does not extend to contested cases.
- 26       (6) "License" includes the whole or part of an agency permit, certificate, approval, registration, charter,
- 27 or other form of permission required by law but does not include a license required solely for revenue purposes.
- 28       (7) "Licensing" includes an agency process respecting the grant, denial, renewal, revocation,
- 29 suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.
- 30       (8) "Party" means a person named or admitted as a party or properly seeking and entitled as of right to

1 be admitted as a party, but this chapter may not be construed to prevent an agency from admitting any person  
2 as a party for limited purposes.

3 (9) "Person" means an individual, partnership, corporation, association, governmental subdivision,  
4 agency, or public organization of any character.

5 (10) "Register" means the Montana Administrative Register.

6 (11) (a) "Rule" means each agency regulation, standard, or statement of general applicability that  
7 implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice  
8 requirements of an agency. The term includes the amendment or repeal of a prior rule.

9 (b) The term does not include:

10 (i) statements concerning only the internal management of an agency or state government and not  
11 affecting private rights or procedures available to the public, including rules implementing the state personnel  
12 classification plan, the state wage and salary plan, or the statewide accounting, budgeting, and human resource  
13 system;

14 (ii) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

15 (iii) rules relating to the use of public works, facilities, streets, and highways when the substance of the  
16 rules is indicated to the public by means of signs or signals;

17 (iv) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when there is  
18 a statutory requirement for the publication of the rules and rules adopted annually or biennially relating to the  
19 seasonal recreational use of lands and waters owned or controlled by the state when the substance of the rules  
20 is indicated to the public by means of signs or signals; or

21 (v) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in  
22 accordance with 2-4-306 and must be published in the ARM.

23 (12) (a) "Significant interest to the public" means agency actions under this chapter regarding matters  
24 that the agency knows to be of widespread citizen interest. These matters include issues involving a substantial  
25 fiscal impact to or controversy involving a particular class or group of individuals.

26 (b) The term does not extend to contested cases.

27 (13) "Small business" means a business entity, including its affiliates, that is independently owned and  
28 operated and that employs fewer than 50 full-time employees.

29 ~~(13)~~(14) "Substantive rules" are either:

30 (a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated

1 authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid;  
2 or

3 (b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under  
4 express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law."  
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6 NEW SECTION. **Section 3. Saving clause.** [This act] does not affect rights and duties that matured,  
7 penalties that were incurred, or proceedings that were begun before [the effective date of this act].  
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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].  
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12 NEW SECTION. **Section 5. Effective date.** [This act] is effective July 1, 2013.  
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