

## 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 AND A TERMINATION 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~~  
~~SIGNIFICANTLY AND DIRECTLY~~ 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~~ A SIGNIFICANT AND DIRECT 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~~ SIGNIFICANT AND DIRECT 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 ANY POTENTIAL adverse effects ~~described in subsection (1)(b)~~ OF ADOPTING THE PROPOSED RULE, 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

1 SECTION IF THE AGENCY PURSUANT TO 2-4-405 IS PREPARING OR HAS PREPARED AN ECONOMIC IMPACT STATEMENT  
 2 REGARDING ADOPTION, AMENDMENT, OR REPEAL OF A RULE.

3 (5) THE FINAL ADOPTION, AMENDMENT, OR REPEAL OF A RULE IS NOT SUBJECT TO CHALLENGE IN ANY COURT AS  
 4 A RESULT OF THE INACCURACY OR INADEQUACY OF A SMALL BUSINESS IMPACT ANALYSIS REQUIRED UNDER THIS SECTION.

5

6 **Section 2.** Section 2-4-102, MCA, is amended to read:

7 **"2-4-102. Definitions.** For purposes of this chapter, the following definitions apply:

8 (1) "Administrative rule review committee" or "committee" means the appropriate committee assigned  
 9 subject matter jurisdiction in Title 5, chapter 5, part 2.

10 (2) (a) "Agency" means an agency, as defined in 2-3-102, of state government, except that the provisions  
 11 of this chapter do not apply to the following:

12 (i) the state board of pardons and parole, except that the board is subject to the requirements of 2-4-103,  
 13 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the ARM and the register;

14 (ii) the supervision and administration of a penal institution with regard to the institutional supervision,  
 15 custody, control, care, or treatment of youth or prisoners;

16 (iii) the board of regents and the Montana university system;

17 (iv) the financing, construction, and maintenance of public works;

18 (v) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C. 252  
 19 and 69-3-837.

20 (b) The term does not include a school district, a unit of local government, or any other political  
 21 subdivision of the state.

22 (3) "ARM" means the Administrative Rules of Montana.

23 (4) "Contested case" means a proceeding before an agency in which a determination of legal rights,  
 24 duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes  
 25 but is not restricted to ratemaking, price fixing, and licensing.

26 (5) (a) "Interested person" means a person who has expressed to the agency an interest concerning  
 27 agency actions under this chapter and has requested to be placed on the agency's list of interested persons as  
 28 to matters of which the person desires to be given notice.

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

30 (6) "License" includes the whole or part of an agency permit, certificate, approval, registration, charter,

1 or other form of permission required by law but does not include a license required solely for revenue purposes.

2 (7) "Licensing" includes an agency process respecting the grant, denial, renewal, revocation,  
3 suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

4 (8) "Party" means a person named or admitted as a party or properly seeking and entitled as of right to  
5 be admitted as a party, but this chapter may not be construed to prevent an agency from admitting any person  
6 as a party for limited purposes.

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

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

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

13 (b) The term does not include:

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

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

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

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

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

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

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

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

3           ~~(13)~~(14) "Substantive rules" are either:

4           (a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated  
5 authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid;  
6 or

7           (b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under  
8 express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law."  
9

10           NEW SECTION. Section 3. Saving clause. [This act] does not affect rights and duties that matured,  
11 penalties that were incurred, or proceedings that were begun before [the effective date of this act].  
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13           NEW SECTION. Section 4. Codification instruction. [Section 1] is intended to be codified as an  
14 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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16           NEW SECTION. Section 5. Effective date. [This act] is effective July 1, 2013.  
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18           NEW SECTION. SECTION 6. TERMINATION. [THIS ACT] TERMINATES JULY 1, 2015.  
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