

1 SENATE BILL NO. 224

2 INTRODUCED BY DEBBY BARRETT

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA ADMINISTRATIVE PROCEDURE ACT;
 5 REQUIRING AGENCIES TO INITIATE RULEMAKING WITHIN A SPECIFIED TIME FOLLOWING THE
 6 ENACTMENT OF LEGISLATION REQUIRING THE ADOPTION, AMENDMENT, OR REPEAL OF
 7 ADMINISTRATIVE RULES; AMENDING SECTIONS 2-4-302 AND 2-4-305, MCA; AND PROVIDING AN
 8 IMMEDIATE EFFECTIVE DATE."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11
 12 **Section 1.** Section 2-4-302, MCA, is amended to read:
 13 **"2-4-302. Notice, hearing, and submission of views.** (1) (a) Prior to the adoption, amendment, or
 14 repeal of any rule, the agency shall give written notice of its proposed action. The proposal notice must include
 15 a statement of either the terms or substance of the intended action or a description of the subjects and issues
 16 involved, the reasonable necessity for the proposed action, and the time when, place where, and manner in which
 17 interested persons may present their views on the proposed action. The reasonable necessity must be written
 18 in plain, easily understood language.

19 (b) If legislation requires the adoption, amendment, or repeal of a rule, the agency shall initiate
 20 rulemaking and give written notice of its proposed action not more than 120 days following the effective date of
 21 the legislation. This subsection does not apply to emergency or temporary rulemaking under 2-4-303 or when
 22 a date for rulemaking is specified by statute.

23 ~~(b)~~(c) The agency shall state in the proposal notice the date on which and the manner in which contact
 24 was made with the primary sponsor as required in subsection (2)(d). If the notification to the primary sponsor was
 25 given by mail, the date stated in the proposal notice must be the date on which the notification was mailed by the
 26 agency. If the proposal notice fails to state the date on which and the manner in which the primary sponsor was
 27 contacted, the filing of the proposal notice under subsection (2)(a)(i) is ineffective for the purposes of this part and
 28 for the purposes of the law that the agency cites in the proposal notice as the authority for the proposed action.

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

- 1 (i) the cumulative amount for all persons of the proposed increase, decrease, or new amount; and
2 (ii) the number of persons affected.
- 3 (2) (a) (i) The proposal notice must be filed with the secretary of state for publication in the register, as
4 provided in 2-4-312. Except as provided in subsection (2)(a)(ii), within 3 days of publication, a copy of the
5 published proposal notice must be sent to interested persons who have made timely requests to the agency to
6 be informed of its rulemaking proceedings, and to the office of any professional, trade, or industrial society or
7 organization or member of those entities who has filed a request with the appropriate administrative rule review
8 committee when the request has been forwarded to the agency as provided in subsection (2)(b).
- 9 (ii) In lieu of sending a copy of the published proposal notice to an interested person who has requested
10 the notice, the agency may, with the consent of that person, send that person an electronic notification that the
11 proposal notice is available on the agency's website and an electronic link to the part of the agency's website or
12 a description of the means of locating that part of the agency's website where the notice is available.
- 13 (iii) Each agency shall create and maintain a list of interested persons and the subject or subjects in
14 which each person on the list is interested. A person who submits a written comment or attends a hearing in
15 regard to proposed agency action under this part must be informed of the list by the agency. An agency complies
16 with this subsection if it includes in the proposal notice an advisement explaining how persons may be placed
17 on the list of interested persons and if it complies with subsection (7).
- 18 (b) The appropriate administrative rule review committee shall forward a list of all organizations or
19 persons who have submitted a request to be informed of agency actions to the agencies that the committee
20 oversees that publish rulemaking notices in the register. The list must be amended by the agency upon request
21 of any person requesting to be added to or deleted from the list.
- 22 (c) The proposal notice required by subsection (1) must be published at least 30 days in advance of the
23 agency's proposed action. The agency shall post the proposal notice on a state electronic access system or other
24 electronic communications system available to the public.
- 25 (d) (i) When an agency begins to work on the substantive content and the wording of a proposal notice
26 for a rule that initially implements legislation, the agency shall contact, as provided in subsection (8), the legislator
27 who was the primary sponsor of the legislation to:
- 28 (A) obtain the legislator's comments;
29 (B) inform the legislator of the known dates by which each step of the rulemaking process must be
30 completed; and

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

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

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

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

12 (4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons
13 at least 20 days' notice of a hearing and at least 28 days from the day of the original notice to submit data, views,
14 or arguments, orally or in writing. If an amended or supplemental notice is filed, additional time may be allowed
15 for oral or written submissions. In the case of substantive rules, the notice of proposed rulemaking must state that
16 opportunity for oral hearing must be granted if requested by either 10% or 25, whichever is less, of the persons
17 who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the appropriate
18 administrative rule review committee, or by an association having not less than 25 members who will be directly
19 affected. If the proposed rulemaking involves matters of significant interest to the public, the agency shall
20 schedule an oral hearing.

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

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

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

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

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

3 (8) (a) For purposes of contacting primary sponsors under subsection (2)(d), a current or former legislator
4 who wishes to receive notice shall keep the current or former legislator's name, address, e-mail address, and
5 telephone number on file with the secretary of state. The secretary of state may also use legislator contact
6 information provided by the legislative services division for the purposes of the register. The secretary of state
7 shall update the contact information whenever the secretary of state receives corrected information from the
8 legislator or the legislative services division. An agency proposing rules shall consult the register when providing
9 sponsor contact.

10 (b) An agency has complied with the primary bill sponsor contact requirements of this section when the
11 agency has attempted to reach the primary bill sponsor at the legislator's address, e-mail address, and telephone
12 number on file with the secretary of state pursuant to subsection (8)(a). If the agency is able to contact the
13 primary sponsor by using less than all of these three methods of contact, the other methods need not be used."
14

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

16 **"2-4-305. Requisites for validity -- authority and statement of reasons.** (1) (a) The agency shall fully
17 consider written and oral submissions respecting the proposed rule, including comments submitted by the primary
18 sponsor of the legislation prior to the drafting of the substantive content and wording of a proposed rule that
19 initially implements legislation.

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

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

29 (2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory
30 language in order to convey the meaning of a rule interpreting the language, the reference must clearly indicate

1 the portion of the language that is statutory and the portion that is an amplification of the language.

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

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

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

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

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

16 (6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules
17 to implement, interpret, make specific, or otherwise carry out the provisions of the statute, an adoption,
18 amendment, or repeal of a rule is not valid or effective unless it is:

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

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

30 (7) (a) A rule is not valid unless:

1 (i) notice of it is given; ~~and~~
2 (ii) it is adopted in substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section; ~~and unless~~
3 (iii) notice of adoption of the rule is published within 6 months of the publishing of notice of the proposed
4 rule.

5 (b) The measure of whether an agency has adopted a rule in substantial compliance with 2-4-302,
6 2-4-303, or 2-4-306 and this section is not whether the agency has provided notice of the proposed rule, standing
7 alone, but rather must be based on an analysis of the agency's substantial compliance with 2-4-302, 2-4-303, or
8 2-4-306 and this section. If an amended or supplemental notice of either proposed or final rulemaking, or both,
9 is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice
10 in all cases.

11 (c) If a statute adopted prior to [the effective date of this act] requires an agency to adopt, amend, or
12 repeal a rule and an agency has not yet completed rulemaking, the agency shall complete rulemaking by July
13 1, 2014.

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

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

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

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

1 committee's records."

2

3 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

4 - END -