

HOUSE BILL NO. 128

INTRODUCED BY E. HILL

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE BOARD OF PARDONS AND PAROLE TO COMPLY WITH THE MONTANA ADMINISTRATIVE PROCEDURE ACT; PROVIDING THAT THE BOARD OF PARDONS AND PAROLE IS EXEMPT FROM THE CONTESTED CASE AND JUDICIAL REVIEW OF CONTESTED CASES PORTIONS OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AND AMENDING SECTION 2-4-102, MCA."

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

Section 1. Section 2-4-102, MCA, is amended to read:

"2-4-102. (Temporary) Definitions. For purposes of this chapter, the following definitions apply:

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

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

(i) the state board of pardons and parole is exempt from the contested case and judicial review of contested cases provisions contained in this chapter, except that. However, the board is subject to the remainder of the provisions of this chapter. requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the ARM and the register;

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

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

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

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

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



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

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

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

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

9 (6) "License" includes the whole or part of an agency permit, certificate, approval, registration, charter,
10 or other form of permission required by law but does not include a license required solely for revenue purposes.

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

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

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

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

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

22 (b) The term does not include:

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

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

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

30 (iv) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when there is

1 a statutory requirement for the publication of the rules and rules adopted annually or biennially relating to the
 2 seasonal recreational use of lands and waters owned or controlled by the state when the substance of the rules
 3 is indicated to the public by means of signs or signals; or

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

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

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

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

12 (14) "Substantive rules" are either:

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

16 (b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under
 17 express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law.
 18 (Terminates July 1, 2015--sec. 6, Ch. 318, L. 2013.)

19 **2-4-102. (Effective July 2, 2015) Definitions.** For purposes of this chapter, the following definitions
 20 apply:

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

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

25 (i) the state board of pardons and parole is exempt from the contested case and judicial review of
 26 contested cases provisions contained in this chapter, except that. However, the board is subject to the remainder
 27 of the provisions of this chapter. requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be
 28 published in the ARM and the register;

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

- 1 (iii) the board of regents and the Montana university system;
- 2 (iv) the financing, construction, and maintenance of public works;
- 3 (v) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C. 252
- 4 and 69-3-837.
- 5 (b) The term does not include a school district, a unit of local government, or any other political
- 6 subdivision of the state.
- 7 (3) "ARM" means the Administrative Rules of Montana.
- 8 (4) "Contested case" means a proceeding before an agency in which a determination of legal rights,
- 9 duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes
- 10 but is not restricted to ratemaking, price fixing, and licensing.
- 11 (5) (a) "Interested person" means a person who has expressed to the agency an interest concerning
- 12 agency actions under this chapter and has requested to be placed on the agency's list of interested persons as
- 13 to matters of which the person desires to be given notice.
- 14 (b) The term does not extend to contested cases.
- 15 (6) "License" includes the whole or part of an agency permit, certificate, approval, registration, charter,
- 16 or other form of permission required by law but does not include a license required solely for revenue purposes.
- 17 (7) "Licensing" includes an agency process respecting the grant, denial, renewal, revocation,
- 18 suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.
- 19 (8) "Party" means a person named or admitted as a party or properly seeking and entitled as of right to
- 20 be admitted as a party, but this chapter may not be construed to prevent an agency from admitting any person
- 21 as a party for limited purposes.
- 22 (9) "Person" means an individual, partnership, corporation, association, governmental subdivision,
- 23 agency, or public organization of any character.
- 24 (10) "Register" means the Montana Administrative Register.
- 25 (11) (a) "Rule" means each agency regulation, standard, or statement of general applicability that
- 26 implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice
- 27 requirements of an agency. The term includes the amendment or repeal of a prior rule.
- 28 (b) The term does not include:
- 29 (i) statements concerning only the internal management of an agency or state government and not
- 30 affecting private rights or procedures available to the public, including rules implementing the state personnel

1 classification plan, the state wage and salary plan, or the statewide accounting, budgeting, and human resource
2 system;

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

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

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

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

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

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

16 (13) "Substantive rules" are either:

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

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

22 - END -