Governor's Office of Budget and Program Planning

Fiscal Note 2023 Biennium

Bill #	SB0323		**Title:**	Generally revise Montana Administrative Procedure Act
Primary Sponsor:	Friedel, Chris		**Status:**	As Introduced

☐Significant Local Gov Impact ☒Needs to be included in HB 2 ☒Technical Concerns

☐Included in the Executive Budget ☐Significant Long-Term Impacts ☐Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2022 Difference	FY 2023 Difference	FY 2024 Difference	FY 2025 Difference
Expenditures:				
General Fund	$74,733	$71,663	$72,737	$73,825
State Special Revenue	$751,832	$748,472	$759,633	$770,960
Federal Special Revenue	$98,695	$96,567	$97,974	$99,401
Revenue:				
General Fund	$0	$0	$0	$0
State Special Revenue	$150,000	$150,000	$152,250	$154,534
Federal Special Revenue	$0	$0	$0	$0
Net Impact-General Fund Balance:	($74,733)	($71,663)	($72,737)	($73,825)

Description of fiscal impact: SB 323 rescinds any rulemaking authority delegated by statute to an agency to adopt, amend, or repeal a rule, if the rulemaking has an economic impact of $1 million or more. It also requires agencies to develop an economic impact statement for the adoption, amendment, or repeal of any administrative rule. The state will incur a fiscal impact as described in the assumptions below.

FISCAL ANALYSIS

Assumptions – Agencies with No Fiscal Impact or Minimal Fiscal Impact

Department of Agriculture

1. The Department of Agriculture has very few rule proposals. If there were a rule proposal, it is estimated that three hours of staff time will be needed to prepare an economic impact statement at approximately $33 per hour ($99).

Department of Commerce

2. The Department of Commerce currently performs an impact economic statement prior to any proposed rule change. It is estimated that this process takes approximately eight hours at $49 per hour, or $392, for each review. While formalizing the process per the provisions of the bill may take additional staff time, it would not be expected to be significant.

Department of Corrections

3. SB 323 will potentially increase staff time in preparing Montana Administrative Rule (MAR) notices. It also has the potential to slow down the rulemaking process.
4. This process has the potential to slow down agency rulemaking in at least two ways. First, the agency must await the rule review committee to review the economic analysis, irrespective of whether it is filed with the committee or filed in the MAR. Depending on the frequency of committee meetings, this could result in months of delay, even for rules that have no economic impact. Second, the legislature can now request an independent economic impact statement. There is no timeline for independent reviews, and this could add additional time to the rulemaking process.

Department of Fish, Wildlife, and Parks

5. The Department of Fish, Wildlife and Parks will prepare an economic impact statement on the adoption, amendment, or repeal of a proposed rule by the Fish and Wildlife Commission or Parks and Recreation Board and submit it to the appropriate administrative rule review committee as required. Any costs for analysis on the proposed rule can be absorbed by the department.

Department of Military Affairs

6. The Department of Military Affairs rarely goes through the rule making process and does not anticipate a measurable fiscal impact.

Office of Public Instruction

7. The Office of Public Instruction (OPI) does little rulemaking and typically produces a statement of economic impact when it does, so the OPI can absorb the additional costs of this bill.

Assumptions – Agencies with Unknown Fiscal Impact

Department of Administration

8. SB 323 will increase the cost and administrative burden of rulemaking for agencies. The fiscal impact to the Department of Administration cannot be determined.

Department of Justice

9. The Department of Justice is unable to determine the potential impact of SB 323. The department is not regularly providing evaluations on economic indicators; at this time, any such activities are taking place within existing HB 2 resources. It is estimated that costs would range from $600 to $700 for drafting each rule.

Department of Natural Resources and Conservation

10. The Department of Natural Resources and Conservation is unable to determine the fiscal impact from this proposed legislation.

Department of Public Health and Human Services

11. The Department of Public Health and Human Services (DPHHS) anticipates a minimum of 40 Administrative Rules of Montana (ARM) changes per year of varying complexity. The department has not completed any economic impact statements and does not have the staff resources, or expertise, in analyzing and compiling the economic impacts required under 2-4-405, MCA.
12. Depending on the level of complexity of an administrative rule adoption, amendment, or repeal, DPHHS may need to employ additional FTE, or contract with economic experts to facilitate the completion of an economic impact statement. The cost of this is unknown but could be significant.
13. SB 323 prohibits adoption, amendment, or repeal of a rule if the economic impact is greater than $1 million in a year and must be accomplished pursuant to a legislative bill. This presents challenges with respect to rule changes required for conducting routine business and complying with federal rules and regulations. See technical notes for further description.

14. SB 323 repeals the requirement to complete a small business impact analysis; however the economic impact analysis still requires an impact on small business be described and quantified.

Assumptions – Agencies with Fiscal Impact

Department of Environmental Quality

15. The Department of Environmental Quality (DEQ) conducts an average of approximately six rulemakings per year (eight rulemakings in 2020; five rulemakings in 2019; five rulemakings in 2018; two rulemakings in 2017; and 11 rulemakings in 2016).
16. The department did not prepare economic impact statements for these rulemakings, because they were not requested by the administrative rule committee or at least 15 legislators.
17. SB 323 will require DEQ to prepare economic impact statements as a matter of course without a request by the administrative rule committee or at least 15 legislators for the six rulemakings per year.
18. Because of the substantial requirements for completing an economic impact statement for each of the six rulemakings, DEQ will need 2.00 FTE (Environmental Science Specialist) and 1.00 FTE (Lawyer) to complete the required analysis. Salaries and benefits are estimated to be $154,648 for the two environmental science specialists and $152,608 for the lawyer for fiscal years 2022 and 2023. This amount has been inflated by 1.5% for fiscal years 2024 and 2025.
19. Indirect costs associated with the 3.00 FTE are estimated at $73,742 for fiscal years 2022 and 2023. This amount has been inflated by 1.5% for fiscal years 2024 and 2025.
20. The majority of rulemakings conducted by DEQ would have an economic impact greater than the $1 million threshold, and the agency would be barred from conducting the rulemaking. Existing resources would be used to propose approval of these rules to the Legislature.
21. In cases where DEQ is seeking to incorporate federal regulations, and the impact may be equal to or greater than $1million, DEQ would not have the rulemaking authority to incorporate those regulations. Therefore, in order to maintain state primacy over these regulations, DEQ will submit proposed legislation to the state legislature for approval. The department assumes at least one of the estimated six rulemakings each year will involve incorporating federal regulations, by reference, in order to maintain primacy of these programs.
22. In situations of proposed rulemaking after the administrative rule review committee has adjourned for the interim, and prior to a regular session, the economic impact statement must be published in the register along with the proposed rule notice. Each agency currently pays a $60 per page filing fee for all pages the agency has published in the register.

Department of Livestock

23. The Department of Livestock will hire an economic consultant at the professional rate of $50 per hour.
24. It is estimated that it will take the consultant an average of 20 hours to research and publish each impact statement.
25. Livestock averages 20 rule changes per year with five of these (25%) related to general fund programs.
26. A 1.5% inflationary adjustment has been added to fiscal years 2024 and 2025.

Department of Labor and Industry

27. The Department of Labor and Industry will need an additional 1.00 FTE in order to hire a lawyer to prepare the economic impact statements associated with each of the department's rule proposals. The cost of this position, including salary and benefits, is expected to be $122,764 per year.
28. There would be indirect costs associated with this position of $10,742 per year.
29. The department will need to purchase office supplies, furniture, and a computer for this new employee, at an anticipated cost of $2,800 in fiscal year 2022.
30. The department would also need an additional 1.00 FTE economist to assist with the preparation of the department's economic impact statements, as well as to respond to additional anticipated inquiries from other state agencies. The cost of this position, including salary and benefits, is expected to be $104,016 per year.
31. There would be indirect costs associated with this position of $9,101 per year.
32. The department would need to purchase office supplies, furniture, and a computer for this new employee, at an anticipated cost of $2,800 in fiscal year 2022.

33. An inflationary factor of 1.5% has been added to salary and indirect cost expenses in fiscal years 2024 and 2025.
34. Additionally, the department anticipates that an economic impact statement will be approximately 2 to 3 pages in length. At $60 per page, the department estimates an additional $7,500 in annual costs associated with publication ($60 per page x 2.5 pages x 50 rule packages per year).
35. As these costs would be shared by the entire department, the department assumes the expense distribution across fund types would match the department's budget.

Department of Revenue

36. The Department of Revenue routinely promulgates rules that would exceed this threshold. Most, if not all, rules that deal with revenue, credits, deductions, liquor, or any pending responsibilities relating to I-190 will be impacted by this bill, and this bill effectively reduces the department's rulemaking authority in a timely manner.
37. The department would have to hire an 0.50 FTE economist to complete the additional economic impact statements (EIS) and assist legal services with the rule making. Salaries and benefits are estimated at $53,872 for fiscal years 2022 and 2023. This amount has been inflated by 1.5% for fiscal years 2024 and 2025.
38. One-time office equipment ($1,600), computer ($1,200), and phone jack ($158) expenses will be incurred in fiscal year 2022.
39. Costs for supplies, phone, network, rent, and training are estimated at $7,709 for fiscal years 2022 and 2023. These costs have been inflated by 1.5% for fiscal years 2024 and 2025.

Department of Transportation

40. The Montana Department of Transportation (MDT) does not have staff who are experts in analyzing the economic impact as described in 2-4-205(2), MCA. The department will need to contract with an economic expert to prepare the necessary economic impact statements.
41. Over the past two fiscal years, MDT has filed, on average, five Proposed Rule Notices with the Office of the Secretary of State.
42. The cost for contracting the economic impact analysis services would be $50,000 ($10,000 x five notices filed per fiscal year). A 1.5% inflationary factor has been added to this cost for fiscal years 2024 and 2025.
43. Of the five notices filed each fiscal year, MDT anticipates the following rule actions to be contained within the notices:
    a. six new rules,
    b. 11 amended rules,
    c. four repealed rules.
44. The cost per rule action, including simple update amendments and repeals, would be $2,380 ($50,000 divided by 21 rule-making functions).

Public Service Commission

45. The Public Service Commission (PSC) currently lacks expertise to evaluate the broader macroeconomic impacts of its proposed rulemaking, as it is not part of the traditional rate making process. Rulemaking related to public utilities may impact a large number of citizens and businesses across the state.
46. The commission will require additional resources, such as an ongoing flexible consulting budget of at least $150,000, so that it has the resources to contract with appropriate experts. This amount has been inflated by 1.5% for fiscal years 2024 and 2025.
47. It is assumed these costs would be funded through the PSC fee, which would be reduced if the commission did not use this contingency each year.

	FY 2022 Difference	FY 2023 Difference	FY 2024 Difference	FY 2025 Difference
Fiscal Impact: All Agencies				
FTE	5.50	5.50	5.50	5.50
Expenditures:				
Personal Services	$587,908	$587,908	$596,727	$605,678
Operating Expenses	$337,352	$328,794	$333,617	$338,508
TOTAL Expenditures	$925,260	$916,702	$930,344	$944,186
Funding of Expenditures:				
General Fund (01)	$74,733	$71,663	$72,737	$73,825
State Special Revenue (02)	$751,832	$748,472	$759,633	$770,960
Federal Special Revenue (03`	$98,695	$96,567	$97,974	$99,401
TOTAL Funding of Exp.	$925,260	$916,702	$930,344	$944,186
Revenues:				
General Fund (01)	$0	$0	$0	$0
State Special Revenue (02)	$150,000	$150,000	$152,250	$154,534
Federal Special Revenue (03`	$0	$0	$0	$0
TOTAL Revenues	$150,000	$150,000	$152,250	$154,534
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	($74,733)	($71,663)	($72,737)	($73,825)
State Special Revenue (02)	($601,832)	($598,472)	($607,383)	($616,426)
Federal Special Revenue (03`	($98,695)	($96,567)	($97,974)	($99,401)

	FY 2022 Difference	FY 2023 Difference	FY 2024 Difference	FY 2025 Difference
Fiscal Impact: Department of Environmental Quality				
FTE	3.00	3.00	3.00	3.00
Expenditures:				
Personal Services	$307,256	$307,256	$311,865	$316,543
Operating Expenses	$73,742	$73,742	$74,848	$75,970
TOTAL Expenditures	$380,998	$380,998	$386,713	$392,513
Funding of Expenditures:				
General Fund (01)	$0	$0	$0	$0
State Special Revenue (02)	$380,998	$380,998	$386,713	$392,513
TOTAL Funding of Exp.	$380,998	$380,998	$386,713	$392,513
Revenues:				
General Fund (01)	$0	$0	$0	$0
State Special Revenue (02)	$0	$0	$0	$0
TOTAL Revenues	$0	$0	$0	$0
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	$0	$0	$0	$0
State Special Revenue (02)	($380,998)	($380,998)	($386,713)	($392,513)

	FY 2022 Difference	FY 2023 Difference	FY 2024 Difference	FY 2025 Difference
Fiscal Impact: Department of Livestock				
FTE	0.00	0.00	0.00	0.00
Expenditures:				
Operating Expenses	$20,000	$20,000	$20,300	$20,605
TOTAL Expenditures	$20,000	$20,000	$20,300	$20,605
Funding of Expenditures:				
General Fund (01)	$5,000	$5,000	$5,075	$5,151
State Special Revenue (02)	$15,000	$15,000	$15,225	$15,454
TOTAL Funding of Exp.	$20,000	$20,000	$20,300	$20,605
Revenues:				
General Fund (01)	$0	$0	$0	$0
State Special Revenue (02)	$0	$0	$0	$0
TOTAL Revenues	$0	$0	$0	$0
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	($5,000)	($5,000)	($5,075)	($5,151)
State Special Revenue (02)	($15,000)	($15,000)	($15,225)	($15,454)

	FY 2022 Difference	FY 2023 Difference	FY 2024 Difference	FY 2025 Difference
Fiscal Impact: Department of Labor and Industry				
FTE	2.00	2.00	2.00	2.00
Expenditures:				
Personal Services	$226,780	$226,780	$230,182	$233,635
Operating Expenses	$32,943	$27,343	$27,644	$27,946
TOTAL Expenditures	$259,723	$254,123	$257,826	$261,581
Funding of Expenditures:				
General Fund (01)	$5,194	$5,082	$5,157	$5,232
State Special Revenue (02)	$155,834	$152,474	$154,695	$156,948
Federal Special Revenue (03)	$98,695	$96,567	$97,974	$99,401
TOTAL Funding of Exp.	$259,723	$254,123	$257,826	$261,581
Revenues:				
General Fund (01)	$0	$0	$0	$0
State Special Revenue (02)	$0	$0	$0	$0
Federal Special Revenue (03)	$0	$0	$0	$0
TOTAL Revenues	$0	$0	$0	$0
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	($5,194)	($5,082)	($5,157)	($5,232)
State Special Revenue (02)	($155,834)	($152,474)	($154,695)	($156,948)
Federal Special Revenue (03)	($98,695)	($96,567)	($97,974)	($99,401)

Fiscal Impact: Department of Revenue

	Difference	Difference	Difference	Difference
FTE	0.50	0.50	0.50	0.50
Expenditures:				
Personal Services	$53,872	$53,872	$54,680	$55,500
Operating Expenses	$10,667	$7,709	$7,825	$7,942
TOTAL Expenditures	$64,539	$61,581	$62,505	$63,442
Funding of Expenditures:				
General Fund (01)	$64,539	$61,581	$62,505	$63,442
TOTAL Funding of Exp.	$64,539	$61,581	$62,505	$63,442
Revenues:				
General Fund (01)	$0	$0	$0	$0
TOTAL Revenues	$0	$0	$0	$0
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	($64,539)	($61,581)	($62,505)	($63,442)

Fiscal Impact: Department of Transportation

	FY 2022 Difference	FY 2023 Difference	FY 2024 Difference	FY 2025 Difference
FTE	0.00	0.00	0.00	0.00
Expenditures:				
Operating Expenses	$50,000	$50,000	$50,750	$51,511
TOTAL Expenditures	$50,000	$50,000	$50,750	$51,511
Funding of Expenditures:				
General Fund (01)	$0	$0	$0	$0
State Special Revenue (02)	$50,000	$50,000	$50,750	$51,511
TOTAL Funding of Exp.	$50,000	$50,000	$50,750	$51,511
Revenues:				
General Fund (01)	$0	$0	$0	$0
State Special Revenue (02)	$0	$0	$0	$0
TOTAL Revenues	$0	$0	$0	$0
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	$0	$0	$0	$0
State Special Revenue (02)	($50,000)	($50,000)	($50,750)	($51,511)

	FY 2022 Difference	FY 2023 Difference	FY 2024 Difference	FY 2025 Difference
Fiscal Impact: Public Service Commission				
FTE	0.00	0.00	0.00	0.00
Expenditures:				
Operating Expenses	$150,000	$150,000	$152,250	$154,534
TOTAL Expenditures	$150,000	$150,000	$152,250	$154,534
Funding of Expenditures:				
General Fund (01)	$0	$0	$0	$0
State Special Revenue (02)	$150,000	$150,000	$152,250	$154,534
TOTAL Funding of Exp.	$150,000	$150,000	$152,250	$154,534
Revenues:				
General Fund (01)	$0	$0	$0	$0
State Special Revenue (02)	$150,000	$150,000	$152,250	$154,534
TOTAL Revenues	$150,000	$150,000	$152,250	$154,534
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	$0	$0	$0	$0
State Special Revenue (02)	$0	$0	$0	$0

Technical Notes:

Department of Administration

1. In New Section 1, line 15, it is unclear if the wording "in a year" is referencing a calendar year, fiscal year, or within a year of adoption.
2. Section 2 will require an EIS in all cases, which will increase the volume of materials interim committees are required to review.
3. The bill may require an EIS in some cases where the economic impact is beneficial and obvious, such as a fee reduction. In other cases, the benefits of an EIS may outweigh the administrative burden. It is unclear if an EIS would be required for a rule being amended pursuant to the biennial review requirement in 2-4-314, MCA.
4. Addressing Section 2(3)(b), publishing the EIS in the register may significantly increase costs to the taxpayers.
5. Section 2, page 3, line 2 references a contract for an independent EIS. It is unclear how this will be funded or procured. Assuming this will go through the normal procurement process, the rule in some cases may be adopted before the second EIS is delivered to the interim committee.
6. Section 2(4)(i)(B), page 3, line 2 is confusing as drafted, it states "the committee…may instruct the committee…."

Department of Corrections

7. It is unclear what is meant by $1 million or more. If applied in the aggregate to all affected businesses, it could be met relatively easily. If the Department of Corrections required contracting facilities to meet or comply with a state or federal requirement, by rule, it is possible the aggregate impact could total $1 million spread across all contractors. In such circumstances, the department would have to wait for the legislature to implement legislation.

Department of Environmental Quality

8. The Montana Administrative Procedure Act, 2-4-107, MCA, states that "nothing in this chapter shall be considered to limit or repeal requirements imposed by statute or otherwise recognized law. No subsequent legislation shall be considered to supersede or modify any provision of this chapter, whether by implication or otherwise, except to the extent that such legislation shall do so expressly." The proposed bill states that Section 1 of the bill (imposing a $1 million cap on agency rulemaking authority) should be codified in Title 2, Chapter 4, Part 1, and such provisions apply to Section 1. This creates a statutory conflict as it would result in section 107 stating that nothing in Chapter 4 can repeal other statutory authority, but the new section stating that all rulemaking authority over $1 million is rescinded.

Department of Labor and Industry

9. In Section 1, this bill rescinds rulemaking authority with an "estimated" economic impact of $1 million. This provision likely rescinds rulemaking authority in a variety of the Department of Labor and Industry's areas, from workers' compensation, to wage and hour, to occupational licensing. Some of this rulemaking is required on an annual or periodic basis.
10. The requirement to produce an economic impact statement on all rule making will delay rulemaking.

Department of Public Health and Human Services

11. It is not uncommon for the Addictive and Mental Disorders Division to promulgate administrative rules that exceed $1 million dollars per year to implement program initiatives. In the past year, these rules included the updates to Substance Use Disorder (SUD) Intensive Outpatient Program (IOP) and the Program for Assertive Community Treatment (PACT). For the services listed, a delay in implementing the administrative rules would have placed financial hardship on providers who were reporting financial instability under the current rules which may have resulted in Medicaid members losing necessary services. The SUD IOP rule was necessary in order to institute a bundled rate that allowed for individualized treatment planning that is consistent with The American Society of Addition Medicine (ASAM) criteria while ensuring that the provider received reimbursement for services rendered that supported solvency. Providers reported they were not able to sustain SUD IOP under the current billing structure, and as such, were suffering from financial instability.
12. The Health Resources Division anticipates that this bill could impact being able to amend rules that may be required by the Centers for Medicare & Medicaid Services (CMS) in regards to hospital supplemental payments. These type of changes could come up in regards to how the department calculates hospital supplemental payments or the upper payment limit related to supplemental payments. It is very likely that any changes would have an impact over $1 million. The inability to adopt or amend rules without legislative approval may put the department in a position of failing to meet federal regulations and could result in failing to get supplemental payments to the hospitals on a timely basis, which would be in violation of state rules and the state plan.
13. The Senior and Long-Term Care Division anticipates that this bill would make it more difficult to coordinate a rule change and could therefore affect the administration of division programs. This change could delay delivery of services and risk meeting federal deadlines or regulations. It is likely that this change would have an impact of over $1 million in the department's Nursing Home, Community First Choice, and Big Sky Waiver programs.
14. Federal programs periodically issue guidance which require the Department of Public Health and Human Services (DPHHS) to amend rules, policies, and processes. The proposal's new requirements could delay implementation of DPHHS rulemaking, creating situations in which the department would be unable to timely conform to federal authority requirements. This bill would make federal compliance, in an instance such as this, challenging, putting federal compliance and funding at risk. Additionally, a delay in rulemaking could cause DPHHS to be out of sync with state guidelines, legislative intent and/or Montana Code Annotated.
15. The Centers for Medicare & Medicaid Services occasionally requires the (DPHHS) to amend waivers, including the 0208 Developmental Disabilities Home and Community Based Waiver, the Big Sky Waiver, and the Severe and Disabling Mental Illness Waiver. The proposal could delay rulemaking and be

problematic in ensuring waiver, state plan, and administrative rule are consistent. This bill has the potential to complicate what can already be challenging timelines.

16. New Section 1 and Section 2 (5) of the bill requires rules with an impact in excess of $1 million per year to be pursuant to a legislative bill. It is unclear in the proposal how HB 2 funding is considered in relation to the proposed requirements, as rulemaking and all Medicaid expenditures will be made pursuant to HB 2 funding over the period of the fiscal note.
17. Administrative Rule changes are routinely adopted in the Quality Assurance Division (QAD) impacting the licensing of providers. An inability to adopt rules without legislative approval with an economic impact over $1 million (Section 2 (5)) could put QAD at risk of failure to meet to federal deadlines or regulations, and may result in loss or reduction in federal funding.
18. Administrative Rule changes are routinely adopted in the Medical Marijuana Programs (MMP). An inability to adopt rules without legislative approval with an economic impact over $1 million (Section 2 (5)) could put the MMP at risk of failure to respond to required changes to efficiently operate the program.
19. The bill's prohibition of adoption of rules with an impact over $1 million (Section 2 (5)), risks delay in the process and delivery of services to childcare providers and working families, as these services have potential economic impacts exceeding that limit. The bill also may result in failure to meet federally required updates in the Child Care Development Fund State Plan and adherence to federal deadlines and regulations. Examples of impacted areas include: (a) Provider Rate adjustments via Market Rate Survey (MRS); (b) Sliding Fee Scale adjustments; and (c) Best Beginnings policy changes.
20. In the Human and Community Services Division (HCSD), the inability to adopt rules without legislative approval with an impact over $1 million (Section 2 (5)) could, in the event of major federal policy changes, put HCSD at risk of failure to meet to federal deadlines or regulations, and may result in loss or reduction in federal funding.

Department of Revenue

21. SB 323 lacks specifics about what the legislature wants in an agency's environmental impact statement. Section 2-4-405 (2)(a) through (h), MCA, currently contains the scope of EIS criteria that may be requested by the Legislature, but the amendments stated in Section 2, p. 1, ll. 26 and 27, would require analysis of all criteria. However, not all criteria are applicable to most proposed rulemaking. Examples include: (1) an agency's procedural (i.e., non-substantive) rules; (2) proposed rules that may have economic impact only to the agency; or (3) proposed rules that may have broader economic impact but the origin of the impact comes from the underlying legislation, not the proposed rules implementing the legislation.
22. SB 323 creates two separate processes for the disclosure of economic impact to the legislature (Section 2, p. 2, ll. 20-24), but the bill is silent as to public disclosure of the EIS and whether a statement will be required for inclusion/disclosure in an agency's rules proposal notice.
23. SB 323 describes administrative rule review committee review of an EIS (Section 2, pg. 3, ll. 9-11), but the bill is unclear about the timing and processing of such requests. Further, if the committee requests changes after publication of the agency's proposal notice, those changes, absent statutory exception, require an agency under 2-4-305, MCA, to amend its proposal notice, extending the Montana Administrative Procedure Act (MAPA) process, which may significantly or adversely impact the adoption of the rules.
24. As worded, SB 323's amendments to 2-4-405, MCA, will require an economic impact statement (EIS) for any proposed agency rulemaking (See Section 2, p.1, ll. 20-21). SB 323 is also unclear in what threshold dollar amount constitutes "economic impact."

Department of Transportation

25. This bill does not distinguish routine amendments, such as federal rule reference updates or repeals. These would not cause any of the (2) listed effects, such as "anticipated effect on state revenue."
26. Section 2 does not coordinate with general Montana Administrative Procedure Act (MAPA) rule-making statutory timelines for filing notices with the Office of the Secretary of State, comment period, and final Adoption Notice.

27. The timing of the committee's review of the economic impact statements is not clear in relation to general rule-making timelines.

NO SPONSOR SIGNATURE 3/11 KA 3/10/21

Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*
NO SPONSOR SIGNATURE	3/11	KA	3/10/21