

1 HOUSE BILL NO. 607

2 INTRODUCED BY J. CARLSON, S. GUNDERSON, J. SCHILLINGER, C. KNUDSEN, S. GIST, T.

3 MCGILLVRAY, R. LYNCH, B. USHER, M. NOLAND, G. HERTZ, K. BOGNER

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO LEGISLATIVE OVERSIGHT OF
6 ADMINISTRATIVE RULES; PROHIBITING THE PROPOSAL OF RULES IN THE LAST QUARTER OF A
7 YEAR BEFORE A LEGISLATIVE SESSION; AMENDING SECTION 2-4-305, MCA; AND PROVIDING AN
8 APPLICABILITY DATE."

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

11
12 **Section 1.** Section 2-4-305, MCA, is amended to read:

13 **"2-4-305. Requisites for validity -- authority and statement of reasons.** (1) (a) The agency shall
14 fully consider written and oral submissions respecting the proposed rule, including comments submitted by the
15 primary sponsor of the legislation prior to the drafting of the substantive content and wording of a proposed rule
16 that initially implements legislation.

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

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

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

Amendment - 1st Reading-white - Requested by: Jennifer Carlson - (H) Legislative Administration

- 2023

68th Legislature 2023

Drafter: Jaret Coles, 406-444-4022

HB0607.001.001

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

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

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

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

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

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

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

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

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

Amendment - 1st Reading-white - Requested by: Jennifer Carlson - (H) Legislative Administration

- 2023

68th Legislature 2023

Drafter: Jaret Coles, 406-444-4022

HB0607.001.001

1 and in the written and oral data, views, comments, or testimony submitted by the public or the agency and
2 considered by the agency. A statement that merely explains what the rule provides is not a statement of the
3 reasonable necessity for the rule.

4 (7) A rule is not valid unless notice of it is given and it is adopted and proposed in substantial
5 compliance with 2-4-302, 2-4-303, or 2-4-306 and this section, unless notice of adoption of the rule is published
6 within 6 months of the publishing of notice of the proposed rule, and unless the ~~adoption and proposal~~ is in
7 compliance with the prohibitions of subsection (11). The measure of whether an agency has adopted or
8 proposed a rule in substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section is not whether the
9 agency has provided notice of the proposed rule, standing alone, but rather must be based on an analysis of
10 the agency's substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section. If an amended or
11 supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the
12 6-month limit must be determined with reference to the latest notice in all cases.

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

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

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

23 (9) Subject to 2-4-112, if a majority of the members of the appropriate administrative rule review
24 committee notify the committee presiding officer that those members object to all or a portion of a notice of
25 proposed rulemaking, the committee shall notify the agency in writing that the committee objects to all or a
26 portion of the proposal notice and will address the objections at the next committee meeting. Following notice
27 by the committee to the agency, all or a portion of the proposal notice that the committee objects to may not be

Amendment - 1st Reading-white - Requested by: Jennifer Carlson - (H) Legislative Administration

- 2023

68th Legislature 2023

Drafter: Jaret Coles, 406-444-4022

HB0607.001.001

1 adopted until publication of the last issue of the register that is published before expiration of the 6-month
2 period during which the adoption notice must be published, unless prior to that time, the committee meets and
3 does not make the same objection. A copy of the committee's notification to the agency must be included in the
4 committee's records.

5 (10) This section applies to the department of labor and industry adopting a rule relating to a
6 commercial drug formulary as provided in 39-71-704. This section does not apply to the automatic updating of
7 department of labor and industry rules relating to commercial drug formularies as provided in 39-71-704.

8 (11) (a) In the year preceding the year in which the legislature meets in regular session, an agency
9 may not ~~adopt or propose~~ a rule between October 1 through the end of the year.

10 (b) This subsection (11) does not apply to:

11 (i) an emergency rule adopted under 2-4-303; or

12 (ii) a rule ~~adopted or proposed~~ for implementation of a program or policy if the unavailability of
13 information, guidance, or notice precluded ~~adoption or proposal~~ of the rule before October 1. A rule may only be
14 exempted under this subsection (11)(b)(ii) if the notice required under 2-4-302(1)(a) provides a statement
15 explaining why the unavailability of information, guidance, or notice precluded ~~adoption or proposal~~ of the rule
16 before October 1."

17

18 NEW SECTION. Section 2. Applicability. [This act] applies to rule proposals published in the
19 register as required by 2-4-302 on or after [the effective date of this act].

20

- END -