

LC 150: SPONSOR NOTIFICATION — ADMINISTRATIVE RULES

Aug. 21, 2008

At its June 2008 meeting, the Children, Families, Health, and Human Services Interim Committee authorized the drafting of a bill to clarify the process for the primary sponsor of legislation to be involved in the rulemaking process for rules that put the legislation into effect.

Existing Law

The Montana Administrative Procedure Act governs the rulemaking process. Section 2-4-302, MCA, sets out the notice, hearing, and public comment requirements for the process, including the following requirements for notification of a legislator:

(d) (i) When an agency begins to work on the substantive content and the wording of a proposal notice for a rule that initially implements legislation, the agency shall notify the legislator who was the primary sponsor of the legislation. If the legislation affected more than one program, notice must be given to the primary sponsor pursuant to this subsection (2)(d) each time that a rule is being proposed to initially implement the legislation for a program.

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

Key Provisions of LC 150

LC 150 proposes several amendments to 2-4-302 that are designed to ensure that the agency not only notifies the sponsor, but also:

- obtains the sponsor's comments on his or her purpose in introducing the bill and discusses with the sponsor the ways in which that purpose could be reflected in the rule;
- informs the legislator of the known dates for completing each step of the process; and
- provides the legislator with information about the points in the process at which they may submit public comment — including the opportunity to provide comment to the appropriate interim committee when it reviews the rule.

These changes would be amended into the existing language cited above and are contained in Section 2 of the bill draft. Other significant changes proposed in LC 150 would:

- require the person responsible for reviewing each agency's rule notices to consider, among other things, whether the intended rule is contrary to any comments submitted to the department by the primary sponsor of the legislation. [*Section 1*]
- require the agency to:
 - ▶ fully consider any comments submitted by the primary sponsor before the drafting of the substantive content of the rule occurred, and
 - ▶ if the adopted rule does not reflect the sponsor's comments, provide a written statement explaining why the statements were not incorporated. [*Section 3*]
- include in the statements required to be published in the Montana Administrative Register the statement of why a sponsor's comments were not incorporated, if applicable. [*Section 4*]