

Nuts and Bolts of a Formal Objection Under 2-4-406, MCA

Steps in the Objection Process

1. Committee makes an “informal” objection under 2-4-305(9), MCA
2. Committee makes a “formal” objection under 2-4-406(1), MCA
3. Agency responds under 2-4-406(2), MCA
4. Committee may withdraw, modify, vote to send the objection to the secretary of state, or do nothing under 2-4-406(3), MCA

Step 1: Informal Objection under 2-4-305(9), MCA

Committee Action:

- Committee votes to object to all or a portion of a proposed administrative rule
- Committee sends letter to agency that it objects and will discuss the rule at the next meeting of the Committee
- Informal objection expires if Committee meets and does not vote to renew objection

Effect:

- Informal objection prevents agency from adopting a proposed rule until the objection expires or the end of the 6-month period during which an adoption notice must be published under 2-4-305(9), MCA

Step 2: Formal Objection under 2-4-406(1), MCA

Committee Action:

- Committee may lodge a formal objection by majority vote if it believes the rule was not proposed or adopted in substantial compliance with 2-4-302, 2-4-303, or 2-4-305
- Committee sends written objection to the agency which must include a “concise statement of the committee’s reasons for its action”

Effect:

- If lodged after an informal objection and before adoption of the rule, a formal objection prevents the rule from going into effect until the day after sine die of the next regular session of the legislature under 2-4-306(3)(c), MCA

Step 3: Agency responds under 2-4-406(2), MCA

- Within 14 days after the mailing of the formal objection, the agency is required to provide a response to the committee

Step 4: Committee
withdraws,
modifies, sends
objection to SOS,
or does nothing
under 2-4-406(3),
MCA

- After receipt of the agency response, the committee may:
 - Withdraw its objection;
 - Modify its objection;
 - Vote to send the objection to the secretary of state for publication in the ARM; or
 - Do nothing
- Effect of publishing objection:
 - The burden of proof is shifted to the agency in any subsequent court case challenging the legality of the rule;
 - The court may award attorney fees against the agency if the agency loses
- NOTE: The committee must pay for the costs of publication

Step 5: Rescinding a formal objection

- 2 ways for committee to rescind a formal objection:
 - Before adoption of the rule:
 - By a majority vote at a committee meeting after receiving the response from the agency, 2-4-406(2), MCA;
 - After adoption of the rule:
 - By a majority of the committee informing the presiding officer that the agency adopted the rule with changes that make it comply with the committee's objections and concerns, 2-4-305(4)(c)(ii), MCA.

What's in
2-4-302,
2-4-303,
and
2-4-305,
MCA?

2-4-302 includes requirements for notice, hearing, and submission of views

2-4-303 provides requirements from emergency adoption of rules

2-4-305 provides requirements for validity and for the agency to provide authority and statement of reasons

Section 2-4-302, MCA

- Provides procedural requirements for the adoption of rules, such as:
 - Written notice of the proposed rule published in Montana Administrative Register (MAR) and provided to appropriate interim committee
 - Contact with primary sponsor of any rule that initially implements legislation
 - Hearing is required if requested by certain number of interested parties or if the proposed rulemaking involves matters of significant interest to the public

Section 2-4-305, MCA

- Provides requisites for validity of rule, such as:
 - Specific citation to specific grant of rulemaking authority and cite to statute the rule implements, 2-4-305(3), MCA
 - Cited authority must clearly and specifically authorize the agency to make rules on the subject matter of the proposed rule
 - Rule “**must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law**”, 2-4-305(4), MCA
 - Rule must be “**consistent and not in conflict with statute**” and “**reasonably necessary to effectuate the purpose of the statute**”, 2-4-305(6), MCA

Next Steps for MAR No. 37- 1044 (Childcare)

- At this meeting:
 - Review and discuss response and economic impact statement from Department
 - Take no further action or vote to withdraw, modify, or publish the formal objection
 - Consider if the committee should request a committee bill to amend Title 52, Ch. 2, Part 7

Next Steps for 37-1004 (Foster Care)

- Renew informal objection or allow it to expire
- Submit written recommendations to the Department for the adoption, amendment, or rejection of the rule
- Consider requesting a committee bill to amend Title 52, Ch. 2, Part 6, and/or instruct the Department to repeal or amend specific rules
- If the Committee elects to pursue a formal objection:
 - At this meeting:
 - Renew its informal objection
 - Provide instruction to staff on substance of formal objection or direct staff to work with a committee member on draft of formal objection for the Committee's consideration at the next meeting
 - At July Meeting:
 - Finalize and vote on the formal objection