

**Amendment - 1st Reading/2nd House-blue - Requested by: (S) Business, Labor and Economic Affairs**

- 2025

69th Legislature 2025

Drafter: Matthew Weaver,

HB0592.002.003

HOUSE BILL NO. 592

INTRODUCED BY C. SPRUNGER, S. KELLY, S. KLAKKEN, G. OVERSTREET, E. BYRNE, R. GREGG, L. BENNETT, C. SCHOMER, C. COCHRAN, M. THIEL, T. MILLETT, D. BEDEY, M. BERTOGLIO, E. BUTTREY, S. GIST, G. HUNTER, L. JONES, R. MARSHALL, N. NICOL, G. LAMMERS, M. YAKAWICH, S. FITZPATRICK, B. LER, G. OBLANDER, J. ETCHART, B. USHER, J. GILLETTE, B. BARKER, L. BREWSTER, N. DURAM, P. FIELDER, G. HERTZ, C. KEOGH, F. MANDEVILLE, B. MERCER, B. MITCHELL, K. SEEKINS-CROWE, Z. WIRTH, S. MANESS, S. ESSMANN, J. HINKLE, J. DARLING, V. MOORE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING STATE AGENCY RULEMAKING UNDER THE ADMINISTRATIVE PROCEDURE ACT; REQUIRING AN AGENCY TO CONTACT THE PRIMARY SPONSOR OF LEGISLATION RELATED TO A RULE PROPOSAL; REVISING AGENCY NOTICE AND HEARING REQUIREMENTS; REQUIRING AN AGENCY TO IMPLEMENT AN INTERESTED PERSONS LIST FOR RULE PROPOSALS; SPECIFYING RULE REVIEW COMMITTEE OBJECTION NOTIFICATION REQUIREMENTS; AND AMENDING SECTIONS 2-3-301, 2-4-110, 2-4-111, 2-4-302, 2-4-305, 2-4-306, 2-4-406, AND 37-1-122, MCA."

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

**NEW SECTION. Section 1. Sponsor contact for administrative rulemaking -- sponsor comments -- request for economic impact statement.** (1) When an agency begins to work on the substantive content of a proposal notice for a rule that initially implements legislation, the agency shall contact the legislator who was the primary sponsor of the legislation. The primary sponsor must be contacted at the sponsor's legislative e-mail address. An agency has complied with the primary sponsor contact requirements of this section upon sending the e-mail meeting the requirements of this subsection. The agency shall:

- (a) inform the sponsor of known and expected dates in the rulemaking process;
- (b) provide the sponsor a timeline to submit informal comments or to meet to discuss the rulemaking; and

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1 [section 1].

2 (3) The person appointed under subsection (1) shall ~~sign~~APPROVE each notice for which this  
3 section requires a review. The act of ~~signing~~APPROVING is an affirmation that the review required by this section  
4 has been performed to the best of the reviewer's ability. The secretary of state may not accept for filing a notice  
5 that does not have the ~~signature~~APPROVAL required by this section."

6

7 **Section 4.** Section 2-4-111, MCA, is amended to read:

8 **"2-4-111. Small business impact analysis -- assistance.** (1) ~~(a) Prior to the adoption of a proposed~~  
9 ~~rule, the agency that has proposed the rule shall determine if the rule will significantly and directly impact small~~  
10 ~~businesses. If the agency determines that the proposed rule will impact small businesses, the determination~~  
11 ~~must be published in the register when the proposed rule is published. If the agency determines that the~~  
12 ~~proposed rule may have a significant and direct impact on small businesses and if subsection (4) does not~~  
13 ~~apply, the agency shall prepare a~~ A proposal notice pursuant to 2-4-302 must include a small business impact  
14 analysis. The small business impact analysis that, at a minimum, must:

15 ~~(a)(i) identify by class or group the small businesses probably affected by the proposed rule; and~~

16 ~~(b)(ii) include a statement of the probable significant and direct effects of the proposed rule on the~~  
17 ~~small businesses identified in subsection (1)(a)(i); and~~

18 ~~(c) include a description of any alternative methods that may be reasonably implemented to~~  
19 ~~minimize or eliminate any potential adverse effects of adopting the proposed rule while still achieving the~~  
20 ~~purpose of the proposed rule.~~

21 ~~(2) The agency shall provide documentation for the estimates, statements, and descriptions~~  
22 ~~required under subsection (1).~~

23 ~~(3) The office of economic development, established in 2-15-218, shall advise and assist agencies~~  
24 ~~in complying with this section.~~

25 ~~(b) If the agency proposes to adopt, increase, or decrease a monetary amount that a person shall~~  
26 ~~pay or will receive, such as a fee, cost, or benefits, the analysis must include an estimate, if known, of:~~

27 ~~(i) the cumulative amount for all persons of the proposed increase, decrease, or new amount; and~~

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69th Legislature 2025

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(ii) the number of persons affected.

(4)(2) An agency is not required to prepare a separate small business impact analysis under this section if the agency pursuant to 2-4-405 is preparing or has prepared an economic impact statement regarding adoption, amendment, or repeal of a rule.

(3) The agency shall provide documentation for the estimates, statements, and descriptions required under subsection (1).

~~(5)(3)(4)~~ The final adoption, amendment, or repeal of a rule is not subject to challenge in any court as a result of the inaccuracy or inadequacy of a small business impact analysis required under this section."

**Section 5.** Section 2-4-302, MCA, is amended to read:

**"2-4-302. Notice, hearing, and submission of views.** (1) ~~(a)~~ Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its proposed action. The proposal notice must include:

(a) a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the reasonable necessity for the proposed action, written in plain, easily understood language;

(b) and the time when, place where, and manner in which interested persons may present their views on the proposed action. The reasonable necessity must be written in plain, easily understood language. If an oral hearing is not scheduled, the notice of proposed rulemaking must state that opportunity for oral hearing must be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the appropriate administrative rule review committee, or by an association having not less than 25 members who will be directly affected. If the proposed rulemaking involves matters of significant interest to the public, the agency shall schedule an oral hearing.

~~(b) — The agency shall state in the proposal notice the date on which and the manner in which contact was made with the primary sponsor as required in subsection (2)(c). If the notification to the primary sponsor was given by mail, the date stated in the proposal notice must be the date on which the notification was mailed by the agency. If the proposal notice fails to state the date on which and the manner in which the~~

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- 2025

69th Legislature 2025

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received by the commissioner within 10 days after issuance of the commissioner's written determination.

(b) The commissioner may meet with the board or representatives of the board as part of the reconsideration process.

(c) The commissioner shall issue a written reconsideration decision within 10 days of receiving the written request for a reconsideration or within 10 days after meeting with the board or its representatives regarding the redetermination.

(5) This section may not be construed to mean that the commissioner's determination under 37-1-121(1)(d) or the process described in this section is a contested case proceeding as defined in 2-4-102.

(6) (a) After the economic affairs interim committee is notified of the commissioner's decision to issue a written determination or redetermination, the committee shall notify the commissioner if the committee plans to provide an opportunity for public comment on the commissioner's action at the next committee meeting.

(b) The commissioner shall notify the economic affairs interim committee of a final determination under this section. The committee shall follow the procedures in Title 2, chapter 4, if the committee decides to conduct a review. A final determination of the commissioner may be suspended ~~as provided in 2-4-305(9) by the committee~~ whether the determination is for a rule or for another board action."

**NEW SECTION. Section 10. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 2, chapter 4, part 3, and the provisions of Title 2, chapter 4, part 3, apply to [section 1].

**COORDINATION SECTION. Section 11. Coordination instruction.** If both House Bill No. 126 and [this act] are passed and approved and if both contain a section that amends 2-4-302, then House Bill No. 126 is void and [section 1 of this act] must be amended as follows:

**"Section 1. Sponsor contact for administrative rulemaking -- sponsor comments -- request for economic impact statement.** (1) When an agency begins to work on the substantive content of a proposal notice for a rule that initially implements legislation, and not less than 10 days in advance of a proposal notice, the agency shall contact the legislator who was the primary sponsor of the legislation. The primary sponsor

**Amendment - 1st Reading/2nd House-blue - Requested by: (S) Business, Labor and Economic Affairs**

- 2025

69th Legislature 2025

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HB0592.002.003

1 must be contacted at the sponsor's legislative e-mail address. An agency has complied with the primary  
2 sponsor contact requirements of this section upon sending the e-mail meeting the requirements of this  
3 subsection. ~~If an agency fails to comply with the requirements of this subsection, then the proposal notice is~~  
4 ~~ineffective.~~ The agency shall:

5 (a) inform the sponsor of known and expected dates in the rulemaking process;

6 (b) provide the sponsor a timeline to submit informal comments or to meet to discuss the  
7 rulemaking; and

8 (c) invite the sponsor's explanation of the legislation's intent.

9 (2) ~~If comments received from the sponsor are not incorporated into the rules proposed, the~~  
10 ~~agency shall set forth the reasons for not incorporating the comments as part of the proposal notice. If the~~  
11 ~~primary sponsor submits comments pursuant to subsection (1)(b) for an agency proposal and the agency~~  
12 ~~disagrees with the primary sponsor, the agency shall publish the primary sponsor's unredacted comments in~~  
13 ~~the proposal notice and provide a statement explaining why the sponsor's comments were not incorporated into~~  
14 ~~the proposed rule.~~

15 (3) The sponsor may request an economic impact statement be prepared pursuant to 2-4-405. The  
16 request must set forth the requirements of 2-4-405(2)(a) and an explanation of whether and how the economic  
17 burden of the proposed rulemaking can be mitigated while implementing the sponsor's legislation. The request  
18 must be directed to the appropriate administrative rule review committee, and the provisions of 2-4-405 apply.

19 (4) The sponsor is an interested person as set forth in 2-4-302 for purposes of rulemaking that  
20 initially implements legislation."

21  
22 COORDINATION SECTION. **Section 12. Coordination instruction.** If both House Bill No. 126 and  
23 [this act] are passed and approved and if both contain a section that amends 2-4-305, then House Bill No. 126  
24 and [section 6 of this act], amending 2-4-305, are void and 2-4-305 must be amended as follows:

25 **"2-4-305. Requisites for validity -- authority and statement of reasons.** (1) (a) The agency shall  
26 fully consider written and oral submissions respecting the proposed rule, ~~including comments submitted by the~~  
27 ~~primary sponsor of the legislation prior to the drafting of the substantive content and wording of a proposed rule~~

**Amendment - 1st Reading/2nd House-blue - Requested by: (S) Business, Labor and Economic Affairs**

- 2025

69th Legislature 2025

Drafter: Matthew Weaver,

HB0592.002.003

1 ~~that initially implements legislation.~~

2 (b) (i) Upon adoption of a rule, an agency shall ~~issue a concise statement of the principal reasons~~  
3 ~~for and against its adoption, incorporating in the statement~~ fairly summarize and respond to the substance of  
4 comments received by the means set forth in the proposal notice and shall state the reasons for overruling the  
5 considerations urged against ~~its~~ the rule's adoption. If substantial differences exist between the rule as  
6 proposed and as adopted and the differences have not been described or set forth in the adopted rule as that  
7 rule is published in the register, the differences must be described in the statement of reasons for and against  
8 agency action. When written or oral submissions have not been received, an agency may omit the statement of  
9 reasons.

10 (ii) If an adopted rule that initially implements legislation does not reflect the comments submitted  
11 by the primary sponsor by the means set forth in the proposal notice, the agency shall publish the sponsor's  
12 unredacted comments in the adoption notice and provide a statement explaining why the sponsor's comments  
13 were not incorporated into the adopted rule.

14 (2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to  
15 statutory language in order to convey the meaning of a rule interpreting the language, the reference must  
16 clearly indicate the portion of the language that is statutory and the portion that is an amplification of the  
17 language.

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

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

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

26 (4) Each rule that is proposed and adopted by an agency and that implements a policy of a  
27 governing board or commission must include a citation to and description of the policy implemented. Each

**Amendment - 1st Reading/2nd House-blue - Requested by: (S) Business, Labor and Economic Affairs**

- 2025

69th Legislature 2025

Drafter: Matthew Weaver,

HB0592.002.003

agency rule implementing a policy and the policy itself must be based on legal authority and otherwise comply with the requisites for validity of rules established by this chapter.

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

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

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

(b) reasonably necessary to effectuate the purpose of the statute. A statute mandating that the agency adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable necessity for a rule. The agency shall also address the reasonableness component of the reasonable necessity requirement by, as indicated in 2-4-302(1) and subsection (1) of this section, stating the principal reasons and the rationale for its intended action and for the particular approach that it takes in complying with the mandate to adopt rules. Subject to the provisions of subsection (8), reasonable necessity must be clearly and thoroughly demonstrated for each adoption, amendment, or repeal of a rule in the agency's notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the agency and considered by the agency. A statement that merely explains what the rule provides is not a statement of the reasonable necessity for the rule.

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

**Amendment - 1st Reading/2nd House-blue - Requested by: (S) Business, Labor and Economic Affairs**

- 2025

69th Legislature 2025

Drafter: Matthew Weaver,

HB0592.002.003

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

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

(c) If an agency uses an amended proposal notice to amend a ~~statement of reasonable necessity~~ proposal for reasons other than for corrections in citations of authority, in citations of sections being implemented, or of a clerical nature, the agency shall allow additional time for oral or written comments from the same interested persons who were notified of the original proposal notice, including from a primary sponsor, if primary sponsor notification was required under ~~2-4-302~~ [section 1], and from any other person who offered comments or appeared at a hearing already held on the proposed rule.

~~(9) Subject to 2-4-112, if a majority of the members of the appropriate administrative rule review committee notify the committee presiding officer that those members object to all or a portion of a notice of proposed rulemaking, the committee shall notify the agency in writing that the committee objects to all or a portion of the proposal notice and will address the objections at the next committee meeting. Following notice by the committee to the agency, all or a portion of the proposal notice that the committee objects to may not be adopted until publication of the last issue of the register that is published before expiration of the 6-month period during which the adoption notice must be published, unless prior to that time, the committee meets and does not make the same objection. A copy of the committee's notification to the agency must be included in the committee's records.~~

~~(10)~~(9) This section applies to the department of labor and industry adopting a rule relating to a commercial drug formulary as provided in 39-71-704. This section does not apply to the automatic updating of department of labor and industry rules relating to commercial drug formularies as provided in 39-71-704.

~~(11)~~(10)(a) In the year preceding the year in which the legislature meets in regular session, an agency may not adopt a rule between October 1 through the end of the year.

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

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

(ii) subject to subsection ~~(11)(c)(i)~~ (10)(c)(i), a rule adopted for implementation of a program or



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69th Legislature 2025

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policy if the unavailability of information, guidance, or notice precluded adoption of the rule before October 1; or

(iii) subject to subsection ~~(11)(c)(ii)~~ (10)(c)(ii), a rule adopted by providing the proposal notice and statement of reasoning with an opportunity to object to the appropriate administrative rule review committee.

(c) (i) A rule may only be exempted under subsection ~~(11)(b)(ii)~~ (10)(b)(ii) if the notice required under 2-4-302(1)~~(a)~~ provides a statement explaining why the unavailability of information, guidance, or notice precluded adoption of the rule before October 1.

(ii) A rule may be exempted under subsection ~~(11)(b)(iii)~~ (10)(b)(iii) only if the agency provides a copy of the proposal notice and an explanation of the reason why the rule must be adopted before the end of the year by electronic mail to each member of the committee and the committee staff. If the committee does not object to the proposal within 10 business days after the electronic mail of the proposal and explanation has been sent to the committee, the agency may proceed with adoption of the proposed rule. If, during the 10-day review period, a majority of the members notify the committee presiding officer that those members object to the proposed rulemaking, the presiding officer shall notify the agency by electronic mail that the committee objects. Following notice of the objection, a rule may not be adopted before the end of the year."

NEW SECTION. **Section 13. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 14. Applicability.** [This act] applies to rule proposals published on or after [the effective date of this act].

- END -