

HOUSE BILL NO. 126

INTRODUCED BY D. BEDEY, J. FITZPATRICK

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO AGENCY ADMINISTRATIVE RULEMAKING; REVISING LAWS RELATED TO LEGISLATIVE OVERSIGHT OF ADMINISTRATIVE RULES BY PRIMARY SPONSORS; ENCOURAGING ACTIVE PUBLIC INVOLVEMENT DURING RULE HEARINGS; AMENDING SECTIONS 2-3-301, 2-4-302, AND 2-4-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 2-3-301, MCA, is amended to read:

"2-3-301. Agency to accept public comment electronically -- dissemination of electronic mail address and documents required -- fees prohibited. (1) An agency that accepts public comment pursuant to a statute, administrative rule, or policy, including an agency adopting rules pursuant to the Montana Administrative Procedure Act or an agency to which 2-3-111 applies, shall provide for the receipt of public comment by the agency by use of an electronic mail system.

(2) As part of the agency action required by subsection (1), an agency shall disseminate by appropriate media its electronic mail address to which public comment may be made, including dissemination in:

- (a) rulemaking notices published pursuant to the Montana Administrative Procedure Act;
 - (b) the telephone directory of state agencies published by the department of administration;
 - (c) any notice of agency existence, purpose, and operations published on the internet; or
 - (d) any combination of the methods of dissemination provided in subsections (2)(a) through (2)(c).
- (3) An agency shall, at the request of another agency or person and subject to 2-6-1003, disseminate the electronic documents to that agency or person by electronic mail in place of surface mail. Notification of the availability of an electronic notice of proposed rulemaking may be sent to an interested person as provided in 2-4-302(2)(a)(ii)(b)(ii). An agency may not charge a fee for providing documents by

1 electronic mail in accordance with this subsection.

2 (4) An agency that receives electronic mail pursuant to subsection (1) shall retain the electronic
3 mail as either an electronic or a paper copy to the same extent that other comments are retained.

4 (5) As used in this section, "agency" means a department, division, bureau, office, board,
5 commission, authority, or other agency of the executive branch of state government."
6

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

8 **"2-4-302. Notice, hearing, and submission of views.** (1) (a) Prior to the adoption, amendment, or
9 repeal of any rule, the agency shall give written notice of its proposed action. The proposal notice must include
10 a statement of either the terms or substance of the intended action or a description of the subjects and issues
11 involved, the reasonable necessity for the proposed action, and the time when, place where, and manner in
12 which interested persons may present their views on the proposed action. The reasonable necessity must be
13 written in plain, easily understood language.

14 (b) The agency shall state in the proposal notice the date on which and the manner in which
15 contact was made with the primary sponsor as required in subsection (2)(e). If the notification to the primary
16 sponsor was given by mail, the date stated in the proposal notice must be the date on which the notification
17 was mailed by the agency. If the agency fails to comply with the primary sponsor notification and sponsor
18 publication provisions of subsection (8)(b) or the proposal notice fails to state the date on which and the manner
19 in which the primary sponsor was contacted, the filing of the proposal notice under subsection (2)(a) is
20 ineffective for the purposes of this part and for the purposes of the law that the agency cites in the proposal
21 notice as the authority for the proposed action.

22 (c) If the agency proposes to adopt, increase, or decrease a monetary amount that a person shall
23 pay or will receive, such as a fee, cost, or benefit, the notice must include an estimate, if known, of:

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

25 (ii) the number of persons affected.

26 (2) (a) The proposal notice must be filed with the secretary of state for publication in the register,
27 as provided in 2-4-312. When the agency files the proposal notice with the secretary of state to prepare it for
28 publication in the register, the agency shall concurrently send an electronic copy of the proposal notice to the

appropriate administrative rule review committee. If the secretary of state requires formatting changes to the proposal notice before it may be published, the agency is not required to send another copy of the proposal notice to the committee. The requirement to concurrently send a copy of the proposal notice to the committee is fulfilled if the agency sends an electronic copy to each member of the staff of the appropriate rule review committee on the same day that the notice is filed with the secretary of state.

(b) (i) Except as provided in subsection (2)(b)(ii), within 3 days of publication, a copy of the published proposal notice must be sent to interested persons who have made timely requests to the agency to be informed of its rulemaking proceedings, and to the office of any professional, trade, or industrial society or organization or member of those entities who has filed a request with the appropriate administrative rule review committee when the request has been forwarded to the agency as provided in subsection (2)(c).

(ii) In lieu of sending a copy of the published proposal notice to an interested person who has requested the notice, the agency may, with the consent of that person, send that person an electronic notification that the proposal notice is available on the agency's website and an electronic link to the part of the agency's website or a description of the means of locating that part of the agency's website where the notice is available.

(iii) Each agency shall create and maintain a list of interested persons and the subject or subjects in which each person on the list is interested. A person who submits a written comment or attends a hearing in regard to proposed agency action under this part must be informed of the list by the agency. An agency complies with this subsection (2)(b)(iii) if it includes in the proposal notice an advisement explaining how persons may be placed on the list of interested persons and if it complies with subsection (7).

(c) The appropriate administrative rule review committee shall forward a list of all organizations or persons who have submitted a request to be informed of agency actions to the agencies that the committee oversees that publish rulemaking notices in the register. The list must be amended by the agency upon request of any person requesting to be added to or deleted from the list.

(d) The proposal notice required by subsection (1) must be published at least 30 days in advance of the agency's proposed action. The agency shall post the proposal notice on a state digital access system or other electronic communications system available to the public.

(e) (i) ~~When~~ Before 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 contact, as provided in

subsection (8), the legislator who was the primary sponsor of the legislation to:

(A) obtain the legislator's comments;

(B) inform the legislator of the known dates by which each step of the rulemaking process must be completed; and

(C) provide the legislator with information about the time periods during which the legislator may comment on the proposed rules for publishing pursuant to subsection (8)(b)(ii), including the opportunity to provide comment to the appropriate administrative rule review committee.

(ii) If the legislation affected more than one program, the primary sponsor must be contacted pursuant to this subsection (2)(e) each time that a rule is being proposed to initially implement the legislation for a program.

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

(3) If a statute provides for a method of publication different from that provided in subsection (2), the affected agency shall comply with the statute in addition to the requirements contained in this section. However, the notice period may not be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and at least 28 days from the day of the original notice to submit data, views, or arguments, orally or in writing. If an amended or supplemental notice is filed, additional time may be allowed for oral or written submissions. In the case of substantive rules, 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. The notice of proposed rulemaking must include an opportunity for an interested person to request that the agency provide a presentation of the rule proposal and allow the public to submit oral or written questions or comments if a hearing is held. Prior to final adoption of a rule, an agency shall respond to the questions or comments raised during the hearing. If the proposed rulemaking involves matters of

1 significant interest to the public, the agency shall schedule an oral hearing.

2 (5) An agency may continue a hearing date for cause. In the discretion of the agency, contested
3 case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise
4 required by statute, nothing in this section alters that requirement.

5 (6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the
6 agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a
7 new proposal for purposes of compliance with this chapter.

8 (7) ~~(a)~~ At the commencement of a hearing on the intended action, the person designated by the
9 agency to preside at the hearing shall:

10 ~~(a)(i)(a)~~ read aloud the "Notice of Function of Administrative Rule Review Committee" appearing in the
11 register; ~~and~~ and

12 ~~(b)(ii)(b)~~ inform the persons at the hearing of the provisions of subsection (2)(b) and provide them an
13 opportunity to place their names on the list; ~~and~~

14 ~~(iii) — encourage active public participation by verbally presenting the proposed action and requesting~~
15 ~~that the public present any oral or written testimony at the hearing.~~

16 ~~(b) — Before closing a hearing on the intended action, the agency shall provide a reasonable time for~~
17 ~~the public to ask the agency questions. The agency shall respond verbally to the questions raised by the public~~
18 ~~during the hearing.~~

19 (8) (a) For purposes of contacting primary sponsors under subsection (2)(e), a current or former
20 legislator who wishes to receive notice shall keep the current or former legislator's name, address, e-mail
21 address, and telephone number on file with the secretary of state. The secretary of state may also use
22 legislator contact information provided by the legislative services division for the purposes of the register. The
23 secretary of state shall update the contact information whenever the secretary of state receives corrected
24 information from the legislator or the legislative services division. An agency proposing rules shall consult the
25 register when providing sponsor contact.

26 (b) (i) An agency has complied with the primary bill sponsor contact requirements of this section
27 when the agency has attempted to reach the primary bill sponsor at the legislator's address, e-mail address,
28 and telephone number on file with the secretary of state pursuant to subsection (8)(a) at least 30-10 days in

advance of the publishing of the agency's proposal notice. If the agency is able to contact the primary sponsor by using less than all of these three methods of contact, the other methods need not be used.

(ii) If the primary sponsor submits comments pursuant to subsection (2)(e) for an agency proposal and the agency disagrees with the primary sponsor, the agency shall publish the primary sponsor's unredacted comment in the proposal notice and provide a statement explaining why the sponsor's comments were not incorporated into the proposed rule.

(iii) The primary sponsor may expressly waive the sponsor notification requirement in subsection (8)(b)(i) or the sponsor publication requirement in subsection (8)(b)(ii).

(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."

Section 3. Section 2-4-305, MCA, is amended to read:

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

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

(ii) If an adopted rule that initially implements legislation does not reflect the comments submitted by the primary sponsor, the agency shall publish the sponsor's unredacted comments in the adoption notice and provide a statement explaining why the sponsor's comments were not incorporated into the adopted rule. The sponsor may waive this requirement in writing.

(2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to