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

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

(2) If comments received from the sponsor are not incorporated into the rules proposed, the agency shall set forth the reasons for not incorporating the comments as part of the proposal notice.

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

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

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

"**2-3-301. Agency to accept public comment electronically -- dissemination of electronic ~~mail~~ comments 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~~ electronically.

(2) As part of the agency action required by subsection (1), an agency shall disseminate by appropriate media ~~its electronic mail~~ the 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)~~. An agency may not charge a fee for providing documents by electronic mail in accordance with this subsection.

(4) An agency that receives electronic ~~mail~~ comments pursuant to subsection (1) shall retain the

electronic ~~mail~~ comments as either an electronic or a paper copy to the same extent that other comments are retained.

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

Section 3. Section 2-4-110, MCA, is amended to read:

"**2-4-110. Departmental review of rule notices.** (1) The head of each department of the executive branch shall appoint an existing attorney, paralegal, or other qualified person from that department to review each departmental rule proposal notice, adoption notice, or other notice relating to administrative rulemaking. Notice of the name of the person appointed under this subsection and of any successor must be given to the secretary of state BEFORE SUBMITTING APPROVAL OF A NOTICE TO THE SECRETARY OF STATE ~~and the appropriate administrative rule review committee within 10 days of the appointment~~.

(2) The person appointed under subsection (1) shall review each notice by any division, bureau, or other unit of the department, including units attached to the department for administrative purposes only under 2-15-121 unless otherwise excepted, for compliance with this chapter before the notice is filed with the secretary of state. The reviewer shall pay particular attention to 2-4-302 and 2-4-305. The review must include but is not limited to consideration of:

(a) the adequacy of the statement of reasonable necessity for the intended action and whether the intended action is reasonably necessary to effectuate the purpose of the code section or sections implemented;

(b) whether the proper statutory authority for the rule is cited;

(c) whether the citation of the code section or sections implemented is correct;

(d) whether the intended action is contrary to the code section or sections implemented or to other law; and

(e) for a rule that initially implements legislation, whether the intended action is contrary to any comments submitted to the department by the primary sponsor of the legislation for the purposes of ~~2-4-302~~ [section 1].

(3) The person appointed under subsection (1) shall ~~sign~~ APPROVE each notice for which this section requires a review. The act of ~~signing~~ APPROVING is an affirmation that the review required by this section

has been performed to the best of the reviewer's ability. The secretary of state may not accept for filing a notice that does not have the ~~signature~~ APPROVAL required by this section."

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

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

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

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

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

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

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

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

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

(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)(e). 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 primary sponsor was contacted, the filing of the proposal notice under subsection (2)(a) is ineffective for the purposes of this part and for the purposes of the law that the agency cites in the proposal notice as the authority for the proposed action.~~

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

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

~~(ii) the number of persons affected.~~

(c) the small business impact analysis as required by 2-4-111 or the economic impact statement as permitted by 2-4-405; and

(d) a statement of compliance with the primary sponsor contact provisions of [section 1].

(2) ~~(a)~~ The proposal notice must be filed with the secretary of state for publication in the register, as provided in 2-4-312. ~~When the agency files the proposal notice with the secretary of state to prepare it for publication in the register, the~~ The agency shall ~~concurrently~~ send an electronic copy of the published 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.~~ The agency shall also post the proposal notice on a state digital access system or other electronic communications system available to the public.

~~(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~~

(3) Each agency shall create and maintain a list of interested persons and the subjects about which each person is interested. Each agency shall:

(a) notify interested persons within 3 days of publication of a proposal notice 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~~.~~ ;

(b) allow interested persons to receive a hard copy via mail of proposal notices, if requested; and

~~(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 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, 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).~~

(c) provide reasonable notice of the list of interested persons and how to sign up to it.

~~(3)~~(4) 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)~~(5) (a) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons:

(i) at least 20 days' notice of a hearing; and

(ii) ~~and~~ at least 28 days from the day of the original notice to submit data, views, or arguments, orally or in writing~~.~~.

(b) 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. If the proposed rulemaking involves matters of significant interest to the public, the agency shall schedule an oral hearing.~~

~~(5)~~(6) An agency may continue a hearing date for cause. In the discretion of the agency, contested case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing in this section alters that requirement.

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

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

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

(b) inform the persons at the hearing of the ~~provisions of subsection (2)(b) and provide them an opportunity to place their names on the list.~~ interested persons list and how to sign up for it; and

(c) provide a brief presentation that summarizes the rule proposal and the reasons for the proposal.

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

~~(b) An agency has complied with the primary bill sponsor contact requirements of this section when the agency has attempted to reach the primary bill sponsor at the legislator's address, e-mail address, and telephone number on file with the secretary of state pursuant to subsection (8)(a). 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.~~

(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 6. 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~~ fairly summarize and respond to the substance of comments received by the means set forth in the notice, and the reasons for overruling the considerations urged against ~~its~~ the rule's 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 provide a statement explaining why the sponsor's comments were not incorporated into the adopted rule.~~

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

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

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

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

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

(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 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."

Section 7. Section 2-4-306, MCA, is amended to read:

"**2-4-306. Filing and format -- adoption and effective dates -- dissemination of emergency rules.** (1) Each agency shall file with the secretary of state a copy of each rule adopted by it or a reference to the rule as contained in the proposal notice. A rule is adopted on the date that the adoption notice is filed with the secretary of state and is effective on the date referred to in subsection (4), except that if the secretary of state requests corrections to the adoption notice, the rule is adopted on the date that the revised notice is filed with the secretary of state.

(2) Pursuant to 2-15-401, the secretary of state may prescribe rules to effectively administer this chapter, including rules regarding the printed or electronic format, style, and arrangement for notices and rules that are filed pursuant to this chapter, and may refuse to accept the filing of any notice or rule that is not in compliance with this chapter and the secretary of state's rules. The secretary of state shall keep and maintain a permanent register of all notices and rules filed, including superseded and repealed rules, that must be open to public inspection and shall provide copies of any notice or rule upon request of any person. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing copies.

(3) If the appropriate administrative rule review committee has conducted a poll of the legislature in accordance with 2-4-403, the results of the poll must be published with the rule if the rule is adopted by the agency.

(4) Each rule is effective after publication in the register, as provided in 2-4-312, except that:

(a) if a later date is required by statute or specified in the rule, the later date is the effective date;

(b) subject to applicable constitutional or statutory provisions:

(i) a temporary rule is effective immediately upon filing with the secretary of state or at a stated date following publication in the register; and

(ii) an emergency rule is effective at a stated date following publication in the register or immediately upon filing with the secretary of state if the agency finds that this effective date is necessary

because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons for the finding must be filed with the rule. The agency shall, in addition to the required publication in the register, take appropriate and extraordinary measures to make emergency rules known to each person who may be affected by them.

(c) if, following written administrative rule review committee notification to an agency under ~~2-4-305(9)~~ 2-4-406, the committee meets and under 2-4-406~~(1)~~(2) formally objects to all or some portion of a proposed rule before the proposed rule is adopted, the proposed rule or portion of the proposed rule objected to is not effective until the day after final adjournment of the regular session of the legislature that begins after the notice proposing the rule was published by the secretary of state, unless, following the committee's formal objection under 2-4-406~~(1)~~(2) and subject to 2-4-112:

(i) the committee withdraws its objection under 2-4-406 before the proposed rule is adopted; or

(ii) the rule or portion of a rule objected to is adopted with changes that in the opinion of a majority of the committee members, as communicated in writing to the committee presiding officer and staff, make it comply with the committee's objection and concerns.

(5) An agency may not enforce, implement, or otherwise treat as effective a rule proposed or adopted by the agency until the effective date of the rule as provided in this section. Nothing in this subsection prohibits an agency from enforcing an established policy or practice of the agency that existed prior to the proposal or adoption of the rule as long as the policy or practice is within the scope of the agency's lawful authority.

(6) 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 8. Section 2-4-406, MCA, is amended to read:

"**2-4-406. Committee objection to violation of authority for rule -- effect.** (1) Subject to 2-4-112, the appropriate administrative rule review committee may informally object to a notice of proposed rulemaking. If a majority of the members of the appropriate administrative rule review committee notify the committee presiding officer that they object to all or a portion of a notice of proposed rulemaking:

(a) the committee shall notify the agency in writing of the objection;

(b) the committee shall address the objections at the next committee meeting; and

(c) the objecting members shall be identified in the committee's records.

(d) The proposal notice to which the committee objects 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 renew the objection by majority vote.

(2) (a) Subject to 2-4-112, the appropriate administrative rule review committee may formally object to a proposed or adopted rule. ~~if~~ If the appropriate administrative rule review committee objects to all or some portion of a proposed or adopted rule because the committee, by majority vote, considers it not to have been proposed or adopted in substantial compliance with 2-4-302, 2-4-303, and 2-4-305, the committee shall send a written objection to the agency ~~that promulgated the rule.~~ :

(i) ~~The objection must contain~~ that contains a concise statement of the committee's reasons for its action~~.~~ ;

(ii) that sets forth the provisions of 2-4-302, 2-4-303, and 2-4-305 with which the proposal does not comply and the basis for belief of noncompliance; and

(iii) that must be included in the committee's records.

(b) 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:

(I) 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; OR

(II) AS PROVIDED IN 2-4-306(4)(C).

~~(2)~~(3) Within 14 days after the mailing of a committee formal objection to a rule, the agency promulgating the rule shall respond in writing to the committee. After receipt of the response, the committee may withdraw or modify its objection.

~~(3)~~(4) Subject to 2-4-112, if the committee fails to withdraw or substantially modify its formal objection to a rule, it may vote to send the objection to the secretary of state, who shall, upon receipt of the objection,

publish the objection in the register adjacent to any notice of adoption of the rule and in the ARM adjacent to the rule, provided an agency response must also be published if requested by the agency. Costs of publication of the objection and the agency response must be paid by the committee.

~~(4)~~(5) If ~~an~~ a formal objection to all or a portion of a rule has been published pursuant to subsection ~~(3)~~ (4), the agency bears the burden, in any action challenging the legality of the rule or portion of a rule objected to by the committee, of proving that the rule or portion of the rule objected to was adopted in substantial compliance with 2-4-302, 2-4-303, and 2-4-305. If a rule is invalidated by court judgment because the agency failed to meet its burden of proof imposed by this subsection and the court finds that the rule was adopted in arbitrary and capricious disregard for the purposes of the authorizing statute, the court may award costs and reasonable attorney fees against the agency."

Section 9. Section 37-1-122, MCA, is amended to read:

"**37-1-122. Active supervision -- rebuttable presumption -- reconsideration.** (1) (a) Before making a determination approving or disapproving a board action subject to active supervision as provided in 37-1-121(1)(d), the commissioner of labor and industry shall:

(i) notify the affected board and the economic affairs interim committee in writing of the particular action identified for commissioner review;

(ii) give the board a timeframe of at least 30 days in which to provide the commissioner with written comments and materials justifying the proposed action; and

(iii) meet with the board or its representatives regarding the board action.

(b) The commissioner may require that the board provide the commissioner with other relevant information, including but not limited to comments, documents, or other material submitted to the board regarding the board action.

(c) The commissioner may approve a board action subject to active supervision under 37-1-121(1)(d) without the notice and opportunity for board comment required under subsection (1)(a) if the commissioner has sufficient information to act.

(2) (a) There is a rebuttable presumption that if a board has not received a written notice as provided in 37-1-121(1)(d) regarding a board action within 30 days, that the board action is presumed to be

approved by the commissioner because the department has determined the board action will not unreasonably restrain or potentially unreasonably restrain competition in trade or commerce.

(b) At any time a board may request that the department or commissioner confirm in writing that a board action is not subject to active supervision under 37-1-121(1)(d) because the commissioner has determined that the board action will not unreasonably restrain or potentially unreasonably restrain competition in trade or commerce.

(3) If the commissioner determines that a board action is subject to active supervision procedures under 37-1-121(1)(d) and this section, the commissioner shall issue a written determination within 30 days after meeting with the board or its representatives as provided in subsection (1).

(4) (a) The board may request that the commissioner reconsider the determination. A request under this subsection (4) must be in writing, provide any additional supporting materials or arguments, and be 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 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. IF AN AGENCY FAILS TO COMPLY WITH THE REQUIREMENTS OF THIS SUBSECTION, THEN THE PROPOSAL NOTICE IS INEFFECTIVE. 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

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

(2) ~~If comments received from the sponsor are not incorporated into the rules proposed, the agency shall set forth the reasons for not incorporating the comments as part of the proposal notice.~~ IF THE PRIMARY SPONSOR SUBMITS COMMENTS PURSUANT TO SUBSECTION (1)(B) FOR AN AGENCY PROPOSAL AND THE AGENCY DISAGREES WITH THE PRIMARY SPONSOR, THE AGENCY SHALL PUBLISH THE PRIMARY SPONSOR'S UNREDACTED COMMENTS IN THE PROPOSAL NOTICE AND PROVIDE A STATEMENT EXPLAINING WHY THE SPONSOR'S COMMENTS WERE NOT INCORPORATED INTO THE PROPOSED RULE.

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

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

COORDINATION SECTION. **SECTION 12. COORDINATION INSTRUCTION.** IF BOTH HOUSE BILL NO. 126 AND [THIS ACT] ARE PASSED AND APPROVED AND IF BOTH CONTAIN A SECTION THAT AMENDS 2-4-305, THEN HOUSE BILL NO. 126 AND [SECTION 6 OF THIS ACT], AMENDING 2-4-305, ARE VOID AND 2-4-305 MUST BE AMENDED AS FOLLOWS:

"**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~~ fairly summarize and respond to the substance of comments received by the means set forth in the proposal notice and shall state the reasons for overruling the considerations urged against ~~its~~ the rule's 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 by the means set forth in the proposal notice, 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.

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

(3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and adopted

rule must include a citation to the specific section or sections in the Montana Code Annotated that the rule purports to implement. A substantive rule may not be proposed or adopted unless:

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

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

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

(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 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 -