

1 HOUSE BILL NO. 47

2 INTRODUCED BY W. MCKAMEY

3 BY REQUEST OF THE STATE ADMINISTRATION AND VETERAN AFFAIRS INTERIM COMMITTEE

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5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING REQUIREMENTS FOR EMERGENCY RULES
6 UNDER THE MONTANA ADMINISTRATIVE PROCEDURE ACT; PROVIDING A DEFINITION FOR SPECIAL
7 NOTICE; REQUIRING CERTAIN NOTIFICATIONS; AND AMENDING SECTION 2-4-303, MCA."
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9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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11 **Section 1.** Section 2-4-303, MCA, is amended to read:

12 **"2-4-303. Emergency or temporary rules.** (1) (a) If an agency finds that an imminent peril to the
13 public health, safety, or welfare requires adoption of a rule upon fewer than 30 days' notice and states in writing
14 its reasons for that finding, it may proceed upon special notice filed with the committee, without prior notice or
15 hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The
16 rule may be effective for a period not longer than 120 days, after which a new emergency rule with the same or
17 substantially the same text may not be adopted, but the adoption of an identical rule under 2-4-302 is not
18 precluded. Because the exercise of emergency rulemaking power precludes the people's constitutional right to
19 prior notice and participation in the operations of their government, it constitutes the exercise of extraordinary
20 power requiring extraordinary safeguards against abuse. An emergency rule may be adopted only in
21 circumstances that truly and clearly constitute an existing imminent peril to the public health, safety, or welfare
22 that cannot be averted or remedied by any other administrative act. The sufficiency of the reasons for a finding
23 of imminent peril to the public health, safety, or welfare is subject to judicial review upon petition by any person.
24 The matter must be set for hearing at the earliest possible time and takes precedence over all other matters
25 except older matters of the same character. The sufficiency of the reasons justifying a finding of imminent peril
26 and the necessity for emergency rulemaking must be compelling and, as written in the rule adoption notice,
27 must stand on their own merits for purposes of judicial review. The dissemination of emergency rules required
28 by 2-4-306 must be strictly observed and liberally accomplished.

1 (b) An emergency rule may not be used to implement an administrative budget reduction.

2 (c) (i) For the purposes of this subsection (1), "special notice" means written notice to each member of
3 the committee and each member of the committee staff using expedient means, such as electronic mail. The
4 special notice must include:

5 (A) the agency's reasons for its findings of imminent peril to the public health, safety, or welfare;

6 (B) the text of the proposed emergency rule or an overview of the rule's substantive changes; and

7 (C) the estimated date of adoption.

8 (ii) Prior to adoption of an emergency rule, the agency shall make a good faith effort to provide special
9 notice to each committee member and each member of the committee staff. The adoption notice of the
10 emergency rule must state the date on which and the manner in which written contact was made or attempted
11 with each person required under this subsection (1). If the ~~emergency rule~~ ADOPTION NOTICE fails to state the
12 date on which and the manner in which written contact was made or attempted for each person required under
13 this subsection (1), the adoption of the emergency rule is ineffective for the purposes of this part.

14 (2) A statute enacted or amended to be effective prior to October 1 of the year of enactment or
15 amendment may be implemented by a temporary administrative rule, adopted before October 1 of that year,
16 upon any abbreviated notice or hearing that the agency finds practicable, but the rule may not be filed with the
17 secretary of state until at least 30 days have passed since publication of the notice of proposal to adopt the
18 rule. The temporary rule is effective until October 1 of the year of adoption. The adoption of an identical rule
19 under 2-4-302 is not precluded during the period that the temporary rule is effective."
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