

1 SENATE BILL NO. 134

2 INTRODUCED BY A. OLSON, BERRY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REGARDING RULEMAKING BY THE DEPARTMENT OF FISH,
5 WILDLIFE, AND PARKS; REQUIRING THAT THE DEPARTMENT PREPARE ECONOMIC IMPACT
6 STATEMENTS ON SEASONAL RULES WHEN REQUESTED TO DO SO AS PROVIDED BY LAW; AND
7 AMENDING SECTIONS 2-4-102 AND 2-4-405, 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 2-4-102, MCA, is amended to read:12 **"2-4-102. Definitions.** For purposes of this chapter, the following definitions apply:13 (1) "Administrative rule review committee" or "committee" means the appropriate committee assigned
14 subject matter jurisdiction in Title 5, chapter 5, part 2.15 (2) (a) "Agency" means an agency, as defined in 2-3-102, of state government, except that the provisions
16 of this chapter do not apply to the following:17 (i) the state board of pardons and parole, except that the board is subject to the requirements of 2-4-103,
18 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the ARM and the register;19 (ii) the supervision and administration of a penal institution with regard to the institutional supervision,
20 custody, control, care, or treatment of youth or prisoners;

21 (iii) the board of regents and the Montana university system;

22 (iv) the financing, construction, and maintenance of public works;

23 (v) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C. 252
24 and 69-3-837.25 (b) The term does not include a school district, a unit of local government, or any other political
26 subdivision of the state.

27 (3) "ARM" means the Administrative Rules of Montana.

28 (4) "Contested case" means a proceeding before an agency in which a determination of legal rights,
29 duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes
30 but is not restricted to ratemaking, price fixing, and licensing.

1 (5) (a) "Interested person" means a person who has expressed to the agency an interest concerning
2 agency actions under this chapter and has requested to be placed on the agency's list of interested persons as
3 to matters of which the person desires to be given notice.

4 (b) The term does not extend to contested cases.

5 (6) "License" includes the whole or part of an agency permit, certificate, approval, registration, charter,
6 or other form of permission required by law but does not include a license required solely for revenue purposes.

7 (7) "Licensing" includes an agency process respecting the grant, denial, renewal, revocation,
8 suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

9 (8) "Party" means a person named or admitted as a party or properly seeking and entitled as of right to
10 be admitted as a party, but this chapter may not be construed to prevent an agency from admitting any person
11 as a party for limited purposes.

12 (9) "Person" means an individual, partnership, corporation, association, governmental subdivision,
13 agency, or public organization of any character.

14 (10) "Register" means the Montana Administrative Register.

15 (11) (a) "Rule" means each agency regulation, standard, or statement of general applicability that
16 implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice
17 requirements of an agency. The term includes the amendment or repeal of a prior rule.

18 (b) ~~The~~ Except as provided in 2-4-405, the term does not include:

19 (i) statements concerning only the internal management of an agency or state government and not
20 affecting private rights or procedures available to the public, including rules implementing the state personnel
21 classification plan, the state wage and salary plan, or the statewide accounting, budgeting, and human resource
22 system;

23 (ii) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

24 (iii) rules relating to the use of public works, facilities, streets, and highways when the substance of the
25 rules is indicated to the public by means of signs or signals;

26 (iv) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when there is
27 a statutory requirement for the publication of the rules and rules adopted annually or biennially relating to the
28 seasonal recreational use of lands and waters owned or controlled by the state when the substance of the rules
29 is indicated to the public by means of signs or signals; or

30 (v) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in

1 accordance with 2-4-306 and must be published in the ARM.

2 (12) (a) "Significant interest to the public" means agency actions under this chapter regarding matters
3 that the agency knows to be of widespread citizen interest. These matters include issues involving a substantial
4 fiscal impact to or controversy involving a particular class or group of individuals.

5 (b) The term does not extend to contested cases.

6 (13) "Substantive rules" are either:

7 (a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated
8 authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid;
9 or

10 (b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under
11 express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law."

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13 **Section 2.** Section 2-4-405, MCA, is amended to read:

14 **"2-4-405. Economic impact statement.** (1) Upon written request of the appropriate administrative rule
15 review committee based upon the affirmative request of a majority of the members of the committee at an open
16 meeting, an agency, including the department of fish, wildlife, and parks as provided in subsection (8), shall
17 prepare a statement of the economic impact of the adoption, amendment, or repeal of a rule as proposed. The
18 agency, including the department of fish, wildlife, and parks as provided in subsection (8), shall also prepare a
19 statement upon receipt by the agency or the committee of a written request for a statement made by at least 15
20 legislators. If the request is received by the committee, the committee shall give the agency a copy of the request,
21 and if the request is received by the agency, the agency shall give the committee a copy of the request. As an
22 alternative, the committee may, by contract, prepare the estimate.

23 (2) Except to the extent that the request expressly waives any one or more of the following, the
24 requested statement must include and the statement prepared by the committee may include:

25 (a) a description of the classes of persons who will be affected by the proposed rule, including classes
26 that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

27 (b) a description of the probable economic impact of the proposed rule upon affected classes of persons,
28 including but not limited to providers of services under contracts with the state and affected small businesses,
29 and quantifying, to the extent practicable, that impact;

30 (c) the probable costs to the agency and to any other agency of the implementation and enforcement

1 of the proposed rule and any anticipated effect on state revenue;

2 (d) an analysis comparing the costs and benefits of the proposed rule to the costs and benefits of
3 inaction;

4 (e) an analysis that determines whether there are less costly or less intrusive methods for achieving the
5 purpose of the proposed rule;

6 (f) an analysis of any alternative methods for achieving the purpose of the proposed rule that were
7 seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;

8 (g) a determination as to whether the proposed rule represents an efficient allocation of public and
9 private resources; and

10 (h) a quantification or description of the data upon which subsections (2)(a) through (2)(g) are based and
11 an explanation of how the data was gathered.

12 (3) A request to an agency for a statement or a decision to contract for the preparation of a statement
13 must be made prior to the final agency action on the rule. The statement must be filed with the appropriate
14 administrative rule review committee within 3 months of the request or decision. A request or decision for an
15 economic impact statement may be withdrawn at any time.

16 (4) Upon receipt of an impact statement, the committee shall determine the sufficiency of the statement.
17 If the committee determines that the statement is insufficient, the committee may return it to the agency or other
18 person who prepared the statement and request that corrections or amendments be made. If the committee
19 determines that the statement is sufficient, a notice, including a summary of the statement and indicating where
20 a copy of the statement may be obtained, must be filed with the secretary of state for publication in the register
21 by the agency preparing the statement or by the committee, if the statement is prepared under contract by the
22 committee, and must be mailed to persons who have registered advance notice of the agency's rulemaking
23 proceedings.

24 (5) This section does not apply to rulemaking pursuant to 2-4-303.

25 (6) The final adoption, amendment, or repeal of a rule is not subject to challenge in any court as a result
26 of the inaccuracy or inadequacy of a statement required under this section.

27 (7) An environmental impact statement prepared pursuant to 75-1-201 that includes an analysis of the
28 factors listed in this section satisfies the provisions of this section.

29 (8) This section applies to seasonal rules adopted by the department of fish, wildlife, and parks that are
30 otherwise exempt from the requirements of this chapter by virtue of 2-4-102(11)(b)(iv). A request for an economic

1 impact statement pursuant to this section must be made of the department of fish, wildlife, and parks 90 DAYS
2 before the final adoption of the seasonal rule to which the request applies. The department of fish, wildlife, and
3 parks shall work with the committee or legislators that have requested or intend to request the impact statement
4 to identify as nearly as practicable the rule for which the statement has been or is to be requested."

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