

1 HOUSE BILL NO. 22

2 INTRODUCED BY SQUIRES

3 BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING STATE AGENCIES THAT ARE SUBJECT TO THE
6 MONTANA ADMINISTRATIVE PROCEDURE ACT TO USE AN AMENDED PROPOSAL NOTICE OR THE
7 ADOPTION NOTICE TO CORRECT DEFICIENCIES IN STATEMENTS OF REASONABLE NECESSITY, IN
8 CITATIONS OF AUTHORITY FOR RULES, AND IN CITATIONS OF SECTIONS IMPLEMENTED BY RULES;
9 AND AMENDING SECTION 2-4-305, MCA."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 **Section 1.** Section 2-4-305, MCA, is amended to read:

14 **"2-4-305. Requisites for validity -- authority and statement of reasons.** (1) The agency shall
15 consider fully written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency
16 shall issue a concise statement of the principal reasons for and against its adoption, incorporating ~~therein~~
17 ~~its~~ in the statement the reasons for overruling the considerations urged against its adoption. If substantial
18 differences exist between the rule as proposed and as adopted and the differences have not been described
19 or set forth in the adopted rule as that rule is printed in the Montana Administrative Register, the differences
20 must be described in the statement of reasons for and against agency action. When ~~no~~ written or oral
21 submissions have not been received, an agency may omit the statement of reasons.

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

26 (3) Each proposed and adopted rule ~~shall~~ must include a citation to the specific grant of rulemaking
27 authority pursuant to which ~~it~~ the rule or any part ~~thereof~~ of the rule is adopted. In addition, each proposed
28 and adopted rule ~~shall~~ must include a citation to the specific section or sections in the Montana Code
29 Annotated ~~which that~~ the rule purports to implement.

30 (4) Each rule that is proposed and adopted by an agency ~~implementing and that implements~~ a

1 policy of a governing board or commission must include a citation to and description of the policy
2 implemented. Each agency rule implementing a policy, ~~as used in the definition set forth in 2-4-102(10),~~
3 and the policy itself must be based on legal authority and otherwise comply with the requisites for validity
4 of rules established by this chapter.

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

7 (6) Whenever by the express or implied terms of any statute a state agency has authority to adopt
8 rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, ~~no~~ a rule
9 adopted is not valid or effective unless it is:

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

11 (b) reasonably necessary to effectuate the purpose of the statute. ~~Such~~ Subject to the provisions
12 of subsection (8), reasonable necessity must be demonstrated in the agency's notice of proposed
13 rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the
14 agency and considered by the agency.

15 (7) ~~No~~ A rule is not valid unless it is adopted in substantial compliance with 2-4-302 or 2-4-303
16 and this section and unless notice of adoption ~~thereof~~ of the rule is published within 6 months of the
17 publishing of notice of the proposed rule. If an amended or supplemental notice of either proposed or final
18 rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with
19 reference to the latest notice in all cases.

20 (8) An agency may use an amended proposal notice or the adoption notice to correct deficiencies
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APPROVED BY COMMITTEE
ON STATE ADMINISTRATION

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