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INTRODUCED BY Gasfield <sup>SB</sup> BILL NO. 197  
*Simon Foster Britton*

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE MONTANA ADMINISTRATIVE PROCEDURE ACT; PROVIDING MORE SPECIFIC STANDARDS FOR DETERMINING WHEN AUTHORITY EXISTS TO ADOPT A RULE AND FOR STATING THE REASONABLE NECESSITY FOR RULES; AND AMENDING SECTIONS 2-4-302 AND 2-4-305, MCA."

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

**Section 1.** Section 2-4-302, MCA, is amended to read:

**"2-4-302. Notice, hearing, and submission of views.** (1) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its intended action. The notice ~~shall~~ must include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the rationale for the intended action, and the time when, place where, and manner in which interested persons may present their views ~~thereon~~ on the intended action.

(2) (a) The notice ~~shall~~ must be filed with the secretary of state for publication in the register, as provided in 2-4-312, and mailed within 3 days of publication to persons who have made timely requests to the agency for notice of its rulemaking proceedings and to the office of any professional, trade, or industrial society or organization or member ~~thereof~~ of the entity that has filed a request with the administrative code committee when ~~such~~ the request has been forwarded to the agency as provided in subsection (2)(b).

(b) The administrative code committee shall forward a list of all organizations or persons who have submitted a request to be informed of agency actions to all agencies publishing rulemaking notices in the ~~Montana Administrative Register~~ register. The list must be amended by the agency upon request of any person requesting to be added to or deleted from the list.

(c) The notice ~~shall~~ must be published and mailed at least 30 days in advance of the agency's intended action.

(3) If any statute provides for a different method of publication, the affected agency shall comply with the statute in addition to the requirements contained ~~herein~~ in this section. However, ~~in no case may~~



1 the notice period may not be less than 30 days or more than 6 months.

2 (4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested  
3 persons at least 20 days' notice of a hearing and at least 28 days from the day of the original notice to  
4 submit data, views, or arguments, orally or in writing. If an amended or supplemental notice is filed,  
5 additional time may be allowed for oral or written submissions. In the case of substantive rules, the notice  
6 of proposed rulemaking must state that opportunity for oral hearing ~~shall~~ must be granted if requested by  
7 either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by  
8 a governmental subdivision or agency, by the administrative code committee, or by an association having  
9 not less than 25 members who will be directly affected.

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

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

16 (7) At the commencement of ~~any~~ a hearing on the intended action, the person designated by the  
17 agency to preside at the hearing shall read aloud the "Notice of Function of Administrative Code  
18 Committee" appearing in the register."  
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20 **Section 2.** Section 2-4-305, MCA, is amended to read:

21 **"2-4-305. Requisites for validity -- authority and statement of reasons.** (1) The agency shall  
22 consider fully written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency  
23 shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the  
24 statement the reasons for overruling the considerations urged against its adoption. If substantial differences  
25 exist between the rule as proposed and as adopted and the differences have not been described or set forth  
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27 must be described in the statement of reasons for and against agency action. When written or oral  
28 submissions have not been received, an agency may omit the statement of reasons.

29 (2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to  
30 statutory language in order to convey the meaning of a rule interpreting the language, the reference must

1 clearly indicate the portion of the language that is statutory and the portion that is an amplification of the  
2 language.

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

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8 matter of the rule as a subject upon which the agency shall or may adopt rules; or

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

11 (4) Each rule that is proposed and adopted by an agency and that implements a policy of a  
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13 agency rule implementing a policy and the policy itself must be based on legal authority and otherwise  
14 comply with the requisites for validity of rules established by this chapter.

15 (5) To be effective, each substantive rule adopted must be within the scope of authority conferred  
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17 (6) Whenever by the express or implied terms of any statute a state agency has authority to adopt  
18 rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, an  
19 adoption, amendment, or repeal of a rule adopted is not valid or effective unless it is:

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22 agency adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable  
23 necessity for a rule. The agency shall also address the reasonableness component of the reasonable  
24 necessity requirement by, as indicated in 2-4-302(1) and subsection (1) of this section, stating the principal  
25 reasons and the rationale for its intended action and for the particular approach that it takes in complying  
26 with the mandate to adopt rules. Subject to the provisions of subsection (8), reasonable necessity must  
27 be clearly and thoroughly demonstrated for each adoption, amendment, or repeal of a rule in the agency's  
28 notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted  
29 by the public or the agency and considered by the agency.

30 (7) A rule is not valid unless it is adopted in substantial compliance with 2-4-302 or 2-4-303 and

1 this section and unless notice of adoption of the rule is published within 6 months of the publishing of  
2 notice of the proposed rule. If an amended or supplemental notice of either proposed or final rulemaking,  
3 or both, is published concerning the same rule, the 6-month limit must be determined with reference to the  
4 latest notice in all cases.

5 (B) An agency may use an amended proposal notice or the adoption notice to correct deficiencies  
6 in statements of reasonable necessity, in citations of authority for rules, and in citations of sections  
7 implemented by rules."

8 -END-

1 INTRODUCED BY Gasfield <sup>SB</sup> BILL NO. 197  
2 Simon Foster Butter W. B.  
3 Ops House

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17 (2) (a) The notice ~~shall~~ must be filed with the secretary of state for publication in the register, as  
18 provided in 2-4-312, and mailed within 3 days of publication to persons who have made timely requests  
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23 (b) The administrative code committee shall forward a list of all organizations or persons who have  
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25 ~~Montana Administrative Register~~ register. The list must be amended by the agency upon request of any  
26 person requesting to be added to or deleted from the list.

27 (c) The notice ~~shall~~ must be published and mailed at least 30 days in advance of the agency's  
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29 (3) If any statute provides for a different method of publication, the affected agency shall comply  
30 with the statute in addition to the requirements contained ~~herein~~ in this section. However, ~~in no case~~ may

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11 case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise  
12 required by statute, nothing ~~herein~~ in this section alters that requirement.

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

16 (7) At the commencement of ~~any~~ a hearing on the intended action, the person designated by the  
17 agency to preside at the hearing shall read aloud the "Notice of Function of Administrative Code  
18 Committee" appearing in the register."  
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20 **Section 2.** Section 2-4-305, MCA, is amended to read:

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27 must be described in the statement of reasons for and against agency action. When written or oral  
28 submissions have not been received, an agency may omit the statement of reasons.

29 (2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to  
30 statutory language in order to convey the meaning of a rule interpreting the language, the reference must

1 clearly indicate the portion of the language that is statutory and the portion that is an amplification of the  
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3 (3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking  
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10 specifically included in a statute to which the grant of rulemaking authority extends.

11 (4) Each rule that is proposed and adopted by an agency and that implements a policy of a  
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13 agency rule implementing a policy and the policy itself must be based on legal authority and otherwise  
14 comply with the requisites for validity of rules established by this chapter.

15 (5) To be effective, each substantive rule adopted must be within the scope of authority conferred  
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17 (6) Whenever by the express or implied terms of any statute a state agency has authority to adopt  
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30 (7) A rule is not valid unless it is adopted in substantial compliance with 2-4-302 or 2-4-303 and

1 this section and unless notice of adoption of the rule is published within 6 months of the publishing of  
2 notice of the proposed rule. If an amended or supplemental notice of either proposed or final rulemaking,  
3 or both, is published concerning the same rule, the 6-month limit must be determined with reference to the  
4 latest notice in all cases.

5 (8) An agency may use an amended proposal notice or the adoption notice to correct deficiencies  
6 in statements of reasonable necessity, in citations of authority for rules, and in citations of sections  
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*Gasfield* <sup>SB</sup> BILL NO. 197  
*Simon Foster Britton*  
*Ops House*

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17 (2) (a) The notice ~~shall~~ must be filed with the secretary of state for publication in the register, as  
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 15 considered a new proposal for purposes of compliance with this chapter.

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1 this section and unless notice of adoption of the rule is published within 6 months of the publishing of  
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24 necessity requirement by, as indicated in 2-4-302(1) and subsection (1) of this section, stating the principal  
25 reasons and the rationale for its intended action and for the particular approach that it takes in complying  
26 with the mandate to adopt rules. Subject to the provisions of subsection (8), reasonable necessity must  
27 be clearly and thoroughly demonstrated for each adoption, amendment, or repeal of a rule in the agency's  
28 notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted  
29 by the public or the agency and considered by the agency.

30 (7) A rule is not valid unless it is adopted in substantial compliance with 2-4-302 or 2-4-303 and

1 this section and unless notice of adoption of the rule is published within 6 months of the publishing of  
2 notice of the proposed rule. If an amended or supplemental notice of either proposed or final rulemaking,  
3 or both, is published concerning the same rule, the 6-month limit must be determined with reference to the  
4 latest notice in all cases.

5 (8) An agency may use an amended proposal notice or the adoption notice to correct deficiencies  
6 in statements of reasonable necessity, in citations of authority for rules, and in citations of sections  
7 implemented by rules."

8 -END-



## SENATE BILL NO. 197

INTRODUCED BY GROSFIELD, SIMON, FOSTER, BARTLETT, BAER, OHS, SQUIRES

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE MONTANA ADMINISTRATIVE PROCEDURE ACT; PROVIDING MORE SPECIFIC STANDARDS FOR DETERMINING WHEN AUTHORITY EXISTS TO ADOPT A RULE AND FOR STATING THE REASONABLE NECESSITY FOR RULES; AND AMENDING SECTIONS 2-4-302 AND 2-4-305, MCA."

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

**Section 1.** Section 2-4-302, MCA, is amended to read:

**"2-4-302. Notice, hearing, and submission of views.** (1) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its intended action. The notice ~~shall~~ must include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the rationale for the intended action, and the time when, place where, and manner in which interested persons may present their views ~~thereon~~ on the intended action.

(2) (a) The notice ~~shall~~ must be filed with the secretary of state for publication in the register, as provided in 2-4-312, and mailed within 3 days of publication to persons who have made timely requests to the agency for notice of its rulemaking proceedings and to the office of any professional, trade, or industrial society or organization or member ~~thereof~~ of the entity that has filed a request with the administrative code committee when ~~such~~ the request has been forwarded to the agency as provided in subsection (2)(b).

(b) The administrative code committee shall forward a list of all organizations or persons who have submitted a request to be informed of agency actions to all agencies publishing rulemaking notices in the ~~Montana Administrative Register~~ register. The list must be amended by the agency upon request of any person requesting to be added to or deleted from the list.

(c) The notice ~~shall~~ must be published and mailed at least 30 days in advance of the agency's intended action.

(3) If any statute provides for a different method of publication, the affected agency shall comply with the statute in addition to the requirements contained ~~herein~~ in this section. However, ~~in no case may~~

1 the notice period may not be less than 30 days or more than 6 months.

2 (4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested  
3 persons at least 20 days' notice of a hearing and at least 28 days from the day of the original notice to  
4 submit data, views, or arguments, orally or in writing. If an amended or supplemental notice is filed,  
5 additional time may be allowed for oral or written submissions. In the case of substantive rules, the notice  
6 of proposed rulemaking must state that opportunity for oral hearing ~~shall~~ must be granted if requested by  
7 either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by  
8 a governmental subdivision or agency, by the administrative code committee, or by an association having  
9 not less than 25 members who will be directly affected.

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

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

16 (7) At the commencement of ~~any~~ a hearing on the intended action, the person designated by the  
17 agency to preside at the hearing shall read aloud the "Notice of Function of Administrative Code  
18 Committee" appearing in the register."  
19

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

21 **"2-4-305. Requisites for validity -- authority and statement of reasons.** (1) The agency shall  
22 consider fully written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency  
23 shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the  
24 statement the reasons for overruling the considerations urged against its adoption. If substantial differences  
25 exist between the rule as proposed and as adopted and the differences have not been described or set forth  
26 in the adopted rule as that rule is printed in the ~~Montana Administrative Register~~ register, the differences  
27 must be described in the statement of reasons for and against agency action. When written or oral  
28 submissions have not been received, an agency may omit the statement of reasons.

29 (2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to  
30 statutory language in order to convey the meaning of a rule interpreting the language, the reference must

1 clearly indicate the portion of the language that is statutory and the portion that is an amplification of the  
2 language.

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

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

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

11 (4) Each rule that is proposed and adopted by an agency and that implements a policy of a  
12 governing board or commission must include a citation to and description of the policy implemented. Each  
13 agency rule implementing a policy and the policy itself must be based on legal authority and otherwise  
14 comply with the requisites for validity of rules established by this chapter.

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

17 (6) Whenever by the express or implied terms of any statute a state agency has authority to adopt  
18 rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, an  
19 adoption, amendment, or repeal of a rule adopted is not valid or effective unless it is:

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

21 (b) reasonably necessary to effectuate the purpose of the statute. A statute mandating that the  
22 agency adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable  
23 necessity for a rule. The agency shall also address the reasonableness component of the reasonable  
24 necessity requirement by, as indicated in 2-4-302(1) and subsection (1) of this section, stating the principal  
25 reasons and the rationale for its intended action and for the particular approach that it takes in complying  
26 with the mandate to adopt rules. Subject to the provisions of subsection (8), reasonable necessity must  
27 be clearly and thoroughly demonstrated for each adoption, amendment, or repeal of a rule in the agency's  
28 notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted  
29 by the public or the agency and considered by the agency.

30 (7) A rule is not valid unless it is adopted in substantial compliance with 2-4-302 or 2-4-303 and

1 this section and unless notice of adoption of the rule is published within 6 months of the publishing of  
2 notice of the proposed rule. If an amended or supplemental notice of either proposed or final rulemaking,  
3 or both, is published concerning the same rule, the 6-month limit must be determined with reference to the  
4 latest notice in all cases.

5 (8) An agency may use an amended proposal notice or the adoption notice to correct deficiencies  
6 in statements of reasonable necessity, in citations of authority for rules, and in citations of sections  
7 implemented by rules."

8 -END-