

**Unofficial Draft Copy**

As of: August 10, 2016 (11:04am)

LC0000

\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the Legislative Council

A Bill for an Act entitled: "An Act revising legislative polling procedures concerning administrative rules; clarifying publishing requirements for poll results; specifying polling vote requirements and the effects of unreturned ballots; prescribing polling procedures; amending sections 2-4-306, 2-4-403, and 2-4-404, MCA; and providing an immediate effective date."

Be it enacted by the Legislature of the State of Montana:

**Section 1.** 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 The secretary of state shall keep and maintain a permanent register of all notices and rules filed, including superseded and repealed rules, that must be open to public inspection and shall provide copies of any notice or rule upon request of any person.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~~ in:

(a) the register; and

(b) with the rule in the ARM.

(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), the committee meets and under 2-4-406(1) 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 objection under 2-4-406(1):

(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."

{ Internal References to 2-4-306:  
2-4-102x      2-4-303x      2-4-305x      2-4-305x  
2-4-305x      2-5-103x }

**Section 2.** Section 2-4-403, MCA, is amended to read:

**"2-4-403. Legislative intent -- poll.** (1) If the legislature is not in session, the committee may ~~poll all members of the legislature by mail~~ object to a rule within 90 days after the rule's adoption for the purpose of polling the legislature to determine whether a ~~proposed~~ the rule is consistent with or contrary to the intent of the legislature.

(2) If 20 or more legislators object to a ~~proposed~~ rule within 90 days after the rule's adoption for the purposes of determining whether the rule is consistent with or contrary to the intent of the legislature, the committee shall poll the members of the legislature.

(3) The poll must include an opportunity for the agency to present a written justification for the proposed rule to the members of the legislature."

{ Internal References to 2-4-403:  
2-4-306x      2-4-404x }

**Section 3.** Section 2-4-404, MCA, is amended to read:

**"2-4-404. Evidentiary value of legislative poll.** (1) If

the appropriate administrative rule review committee has conducted a poll of the legislature substantively in accordance with 2-4-403 and [section 4], the results of the poll must be admissible in any court proceeding involving ~~the validity of the proposed rule or the validity of the adopted rule if the rule was adopted by the agency.~~ If the poll determines that a majority of the members of ~~both houses find~~ each house finds that the ~~proposed rule or~~ adopted rule is contrary to the intent of the legislature, the ~~proposed rule or~~ adopted rule must be conclusively presumed to be contrary to the legislative intent in any court proceeding involving its validity.

(2) Unreturned ballots may not be counted as votes for consistency with or contrariness to the intent of the legislature. However, a majority for the purposes of subsection (1) requires an absolute majority of the membership of each house, regardless of the total number of returned ballots."

{Internal References to 2-4-404: None.}

**NEW SECTION. Section 4. Procedure for polling legislators.**

(1) After lodging an objection under 2-4-403(1) or receiving 20 or more legislators' objections under 2-4-403(2), the appropriate administrative rule review committee shall poll all members of the legislature by regular or electronic mail.

- (2) The committee shall send to all legislators:
- (a) the text of the adopted rule;
  - (b) the statute or bill implemented by the rule;
  - (c) the agency's written response to the objection if

provided to the committee within 5 days of the committee's written notification to the agency of an objection under 2-4-403(1) or of the committee's receipt of 20 or more legislators' objections under 2-4-403(2);

(d) the date, time, and method by which legislators must return the ballot, which may not be less than 14 days after the date of the mailing of the ballots; and

(e) a ballot that contains substantially the following language:

Is Rule (insert rule number) consistent with or contrary to the intent of the legislature?

Consistent with the intent of the legislature.

Contrary to the intent of the legislature.

(3) Ballots received after the deadline for the closure of the poll as set by the committee may not be counted.

**NEW SECTION. Section 5. {standard} Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 2, chapter 4, part 4, and the provisions of Title 2, chapter 4, part 4, apply to [section 4].

**NEW SECTION. Section 6. {standard} Effective date.** [This act] is effective on passage and approval.

- END -