

1 House JOINT RESOLUTION NO. 77
2 INTRODUCED BY Grand Mular

3
4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
5 REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE PUBLIC
6 SERVICE COMMISSION TO PUBLISH CERTAIN RAILROAD RULES IN THE
7 MONTANA ADMINISTRATIVE CODE.

8
9 WHEREAS, the members and staff of the Public Service
10 Commission persistently exhibit a lack of comprehension of
11 the Montana Administrative Procedure Act unrivaled by any
12 other state agency of similar importance; and

13 WHEREAS, that act required most state agencies,
14 including the commission, to file their existing rules and
15 regulations with the Secretary of State by December 31,
16 1972, if such rules were to continue in force and effect;
17 and

18 WHEREAS, the Commission failed to file, on that date or
19 subsequent thereto, certain rules and regulations regarding
20 railroads previously adopted and amended on several
21 occasions, specifically rules adopted by Order No. 2597
22 relating to minimum track clearance for construction of new
23 trackage or reconstruction of existing trackage and rules
24 adopted by Order No. 2817 relating to the provision of
25 sanitation and adequate shelter for the health of railroad

1 employees; and

2 WHEREAS, notwithstanding the lack of publication of
3 these rules in the Montana Administrative Code and its
4 failure to comply with the provisions of Section 82-4205,
5 R.C.M. 1947, the Commission has continued to act as if these
6 rules were in effect; and

7 WHEREAS, with exceptions noted below, these rules are
8 in the public interest and express the intent of the
9 Legislature in delegating rulemaking authority to the
10 Commission in Sections 72-119 and 72-150, R.C.M. 1947,
11 wherefore the rules should be properly adopted and published
12 so they are legally enforceable; and

13 WHEREAS, the Legislature finds that sections 10 and 11
14 of the rules adopted by Order No. 2817 in Docket No. 4846
15 provide inadequate sanctions and therefore are not within
16 the rulemaking authority delegated under 72-150, R.C.M.
17 1947; and

18 WHEREAS, the Legislature itself should enact adequate
19 sanctions for violations.

20
21 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
22 OF REPRESENTATIVES OF THE STATE OF MONTANA:

23 That the Public Service Commission is directed to
24 immediately institute appropriate proceedings under the
25 Montana Administrative Procedure Act, to publish the rules

HJR 77

1 it had adopted by its Order No. 2597, Docket No. 4382, and
2 the rules, other than Rules 10 and 11, adopted by its Order
3 No. 2817, Docket No. 4846, amended by Order No. 4024, Docket
4 No. 5711, and further amended by Order No. 4305, Docket No.
5 6383; and the Commission is further directed to complete
6 these proceedings within 5 months of the effective date of
7 this resolution.

8 BE IT FURTHER RESOLVED, that the Secretary of State
9 send a copy of this resolution to the County Attorney for
10 Lewis and Clark County with a request that the County
11 Attorney determine, after 5 months following the effective
12 date of this resolution, whether any officer of the Public
13 Service Commission has violated Section 94-7-401, R.C.M.
14 1947, with respect to the duties imposed upon him by this
15 resolution.

-End-

Business and Industry

Objection Raised to
Adverse Committee Report

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SECOND READING

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