

MINUTES OF THE MEETING
STATE ADMINISTRATION COMMITTEE
MONTANA STATE SENATE

March 4, 1981

The Senate State Administration Committee was called to order by Senator Pete Story, Chairman, on the above date in room 442 of the State Capitol Building at 10 a.m.

ROLL CALL: All were present except Sen. Kolstad.

CONSIDERATION OF HOUSE BILL 38:

AN ACT TO AMEND SECTION 2-4-307, MCA, RELATING TO OMISSIONS FROM THE ADMINISTRATIVE RULES OF MONTANA OR THE MONTANA ADMINISTRATIVE REGISTER

Rep. Chris Stobie, sponsor, read his testimony, which is enclosed and submitted amendments which he discussed.

PROPOSERS: Ken Rutledge, Montana Hospital Assn., and Larry Weinburg, from the Dept. of Revenue, both testified and both submitted amendments.

OPPOSERS: Bill Palmer, Division of Workers' Compensation, stated this bill may provide funding problems for materials requested; enclosed testimony.

Mike Young, Dept. of Administration, stated it may be too long and be confusing, but they are not extremely against it.

Questions from the committee: Sen. Towe asked Rep. Stobie his responses to the amendments submitted, and he replied they are not in disagreement. Sen. Towe pointed out they are inconsistent, and Rep. Stobie asked Dave Ness, legal council, to explain. It was the judgement of the administrative code committee that the language was needed for state agencies to adopt the rules at some half-way point. If the amendments by the hospital and Rep. Stobie are both adopted, the subsection 5 could be deleted and other subsections would have to be changed. However, Sen. Towe proposed amendments which would integrate the two.

There were other questions and answers from Sen. Towe and the testifiers regarding the bill, amendments, and other suggestions. There were questions about copyrighted items, with alternatives suggested.

Chairman Story put this bill in a subcommittee with Sen. Towe and himself; the hearing was closed.

March 4, 1981

CONSIDERATION OF HOUSE BILL 74:

AN ACT TO GENERALLY REVISE AND CLARIFY THE
LAWS RELATING TO ADMINISTRATIVE RULEMAKING:
TO REQUIRE THE REPORTING OF JUDICIAL CASES
TO THE ADMINISTRATIVE CODE COMMITTEE: AND
TO PROVIDE FOR ENFORCEMENT OF AGENCY DUTIES
BY THE COMMITTEE

Rep. Hal Harper, sponsor, said the bill clarifies the laws relating to legislative rulemaking and provides their enforcement by the administrative procedures act.

PROPOSERS: None.

OPPOSERS: Mona Jamison, legal council for Governor Schwinden says section 6 should be deleted because it is unlawful delegation and contemplates a committee acting for the legislature when not in session. She stated there are separation of power problems here and unconstitutionality. They urge the legislature to call annual sessions if there are problems. They do not want a committee to intervene and asked for it to be passed out of committee deleting section 6.

Don McIntyre, Conservation, testified that he is for the bill with the amendments and agrees that section 6 should be deleted.

John North, Department of State Lands, also pointed out section 6 and feels it is unconstitutional.

During the questioning period they discussed the deletion of section 6, the effect on other sections, and discussed line 23 on page 2.

Sen. Story announced that executive committee would meet Tuesday and persons who felt they needed to be there were welcome. The hearing was closed.

CONSIDERATION OF HOUSE BILLS 225 and 108:

225: AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VI, SECTION 10 OF THE MONTANA CONSTITUTION TO PROVIDE THAT THE SECRETARY OF STATE SHALL CONDUCT A POLL OF ALL LEGISLATORS WHEN THE LEGISLATURE IS NOT IN SESSION AND THE GOVERNOR VETOES A BILL

108 continues AND PROVIDING FOR AN EFFECTIVE DATE WHICH IS BASED ON THE DATE OF APPROVAL BY THE ELECTORATE OF MONTANA OF A CONSTITUTIONAL AMENDMENT REQUIRING A POLL BY THE SECRETARY OF STATE

March 4, 1981

Rep. Orville Ellison, sponsor, desired to open both bills simultaneously, stating that they affect each other. He explained the bills, and on page 2, line 9 of HB 225 he wanted to include it to say 2/3 majority.

There were no other proponents or opponents, so questions from the committee were asked. The House vote of 60 pros would require 40 from the Senate. Sen. Towe clarified with Rep. Ellison that every single veto would automatically call for a poll. Under the amendments not all would be submitted.

The hearing was closed.

CONSIDERATION OF HOUSE BILL 233:

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT OF THE MONTANA CONSTITUTION TO ADD A SECTION AUTHORIZING A PERMANENT LEGISLATIVE COMMITTEE WITH AUTHORITY OVER STATE FISCAL MATTERS TO APPROVE OR DISAPPROVE BUDGET AMENDMENTS TO SPEND FUNDS NOT APPROPRIATED AT THE SESSION PRECEDING THE PROPOSED BUDGET AMENDMENT; AND PROVIDING AN EFFECTIVE DATE

Rep. Jack Moore, sponsor, said this is a duplicate of a 1977 house bill to allow the legislative finance committee to have the approval of budget amendments, giving authority to modify, approve, or disapprove.

PROPONENTS: Rep. Francis Bardanouve testified and thinks the legislature should have some input.

OPPONENTS: Joy Bruck, LWV, read her testimony which was against the legislative committee to act on behalf of the legislature.

Questions: Sen. Towe asked the vote in the house--62--and if it was any different from the one in 1977--no. He also asked Rep. Moore if he would want authority over new funds after the legislature is over. He answered yes and that the appropriation committee could move funds from one place to another.


Sen. Towe asked Mrs. Bruck about her opposition, and she stated the governor is the person over the executive branch, and situations could be taken to him. If it is serious enough, the legislature could call itself into special session.

Rep. Bardanouve closed the hearing of his bill.

ACTION ON HOUSE BILL 108: Sen. Ryan moved it DO NOT PASS; motion carried with all ayes from those present. Sen. Story will carry the adverse report.

ACTION ON HOUSE BILL 233: Sen. Hammond moved it DO PASS; motion carried with Sen. Ryan voting no. This standing committee report will be held up until Sen. Towe can be there. He was excused earlier and had been told no action would be taken. Sen. Stan Stevens will carry on the floor.

ADJOURNMENT: 11:30.



PETE STORY, CHAIRMAN

ROLL CALL

STATE ADMINISTRATION COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 3-4

NAME	PRESENT	ABSENT	EXCUSED
Senator Pete Story, Chairman	✓		
Senator Allen Kolstad, V. C.		✓	
Senator William Hafferman	✓		
Senator H. W. Hammond	✓		
Senator Jan Johnson	✓		
Senator Patrick Ryan	✓		
Senator Thomas Towe	✓		

Each day attach to minutes.

Testimony of Representative Chris Stobie on HB 38

House Bill 38 has been introduced at the request of the Administrative Code Committee. Over the current biennium the Administrative Code Committee has reviewed between three and four thousand notices of rulemaking, either proposing to adopt rules or noticing the final adoption of a rule by an agency under the Montana Administrative Procedure Act.

In the course of its review of rules, the Committee found many instances in which agencies of state government have adopted the rules of other state agencies, the rules of federal agencies, or model rules by incorporating those rules in the Administrative Rules of Montana by a process called incorporation or adoption by reference. In most cases, this manner of adopting rules is specifically allowed by section 2-4-307 of the Montana Code Annotated.

What concerned the Committee was not only the many different forms used by agencies to accomplish the adoption by reference, but also the attempt by many state agencies to adopt federal agency rules "as amended", or in other words, to automatically adopt any and all subsequent amendments to the federal regulations or other rule referred to.

Because of complaints received by persons subject to rules incorporated by reference and because of the Administrative Code Committee's belief that the current law is unclear in requiring what notice must be given when the federal rule or other regulation itself is amended, the Committee has attempted to clarify the notice requirements of the law in HB 38. The changes recommended by the Administrative Code Committee will relieve the persons affected by administrative rules of at least some of an unfair burden of having to discover for themselves any changes in federal regulations adopted by state agencies.

I have also provided this Committee with a copy of proposed amendments to HB 38. These amendments would do several things. First, they would clarify the intent of subsection (3) on page 2. Secondly, they would clarify that the shortened notice procedure allowed by subsection (5) applies not to the original adoption of a federal rule but only to the adoption to the amendments to the federal rule. Finally, the amendments would clarify an incorrect citation to the administrative code, now referred to as the Administrative Rules of Montana.

3-4
Stalin

Proposed Amendments to HB 38

1. Page 2, line 7.

Following: "No"

Delete: "EXCEPT AS PROVIDED IN SUBSECTION(S), NO"

Insert: "No"

2. Page 2, line 10.

Following: "adopted."

Delete: "Each"

Insert: "Except as provided in subsection (5), each"

3. Page 2, line 25.

Following: "funding,"

Delete: the remainder of the line

4. Page 3, line 1.

Delete: the entire line

5. Page 3, line 2.

Delete: "standards,"

6. Page 3, line 3.

Following: "~~later~~"

Insert: "later"

7. Page 3, line 9.

Following: "administrative"

Delete: "code"

Insert: "rules of Montana"

HOUSE BILL NO. 38

MR. CHAIRMAN, I move to amend the third reading copy of House Bill No. 38 by deleting the following language on page 2, lines 23 through 25:

"(5) Whenever later amendments of federal regulations must be adopted to comply with federal law or to qualify for federal funding, or"

And further by capitalizing the first letter of the word "whenever" as it appears on page 2, line 25.

NAME: Larry Wenling DATE: 3/4/81

ADDRESS: D. O. R.

PHONE: 449-2852

REPRESENTING WHOM? D. O. R.

APPEARING ON WHICH PROPOSAL: _____

DO YOU: SUPPORT? _____ AMEND? X OPPOSE? _____

COMMENTS: _____

Suggest changes
for D. O. R.

DEPARTMENT OF REVENUE

Legal Division

MEMORANDUM

Date: 3/4/91

TO: Senate State Administration

FROM:

Larry Wainberg

Suggested Amendments

to HB 38

1. Page 2, line 7

Following: "obtained."

Strike: "A"

Insert: "Upon request of the
Secretary of state, a"

2. Page 2, line 17

Following: "section."

Insert: "The committee may not
require the publication
of copyrighted material."

NAME: Wm R Palmer DATE: 3/4/61

ADDRESS: 815 FRONT ST.

PHONE: 442-3182

REPRESENTING WHOM? Division of Workers Comp

APPEARING ON WHICH PROPOSAL: 4.375

DO YOU: SUPPORT? _____ AMEND? ☒ _____ OPPOSE? _____

COMMENTS: Must strike the 14-17 on page 2

giving administrative case committee authority to require
agency to publish rules

TESTIMONY HOUSE BILL 38
by Wm. R. Palmer
Division of Workers' Compensation

HOUSE BILL 38 requires a state agency to publish full or partial text of any pertinent material adopted by reference if requested by a 3/4's vote of the administrative code committee. This provision of the bill may provide funding problems to agencies not adequately funded to publish the materials requested. Rules originally adopted by reference would have to go to hearing when updates of those rules are provided by the original publisher. If an agency has closely planned its operating budget and it has committed its funds, a move by the administrative code committee to require publication may put the agency in a position of catch 22.

The committee may require it, but the agency or its appropriation had not planned for it. The agency cannot over spend its appropriation, and the governor has said, "No more supplemental appropriations."

It appears that the committee's authority in this bill may require agencies to commit expenditures for which appropriation may not have been made or considered.

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VISITORS' REGISTER

(Please leave prepared statement with Secretary)

SENATE

COMMITTEE

BILL

4B38

VISITORS'

REGISTER

DATE _____

3-4

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

STANDING COMMITTEE REPORT

MARCH 4

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19.....

MR. **PRESIDENT**

STATE ADMINISTRATION

We, your committee on

having had under consideration **HOUSE** Bill No. **108**

ELLISON

Respectfully report as follows: That **HOUSE** Bill No. **100**

BE NOT CONCURRED IN

~~XXXXXX~~
DO PASS

STANDING COMMITTEE REPORT

MARCH 10

19 81

MR. PRESIDENT

We, your committee on STATE ADMINISTRATION

having had under consideration HOUSE Bill No. 233
MOORE (STEVENS)

Respectfully report as follows: That HOUSE Bill No. 233

WE CONCURRED IN

~~XXXXXX~~
DO PASS