

MINUTES OF THE MEETING OF THE HOUSE STATE ADMINISTRATION COMMITTEE
January 6, 1983

CHAIRMAN JOE BRAND called the meeting to order at 9 a.m. in Room 129 of the Capitol. All members were present.

HOUSE BILL 37

Chairman Joe Brand opened the hearing on House Bill 37 by calling on Rep. JIM SCHULTZ, its sponsor. Rep. Schultz said the bill was introduced at the request of the Administrative Code Committee and would amend the Montana Administrative Procedure Act so that notice would be included to certain identifiable societies when rule-making bodies were making rules and regulations. Rep. Schultz suggested that perhaps some agencies were not doing "a good job" of notifying interested groups who are effected by administrative rules.

CHIP ERDMANN, Testifying on behalf of the Montana School Boards Assoc., indicated the association's support for the measure. He said it would ensure that better informed decisions are made, and the measure would allow for full input by school boards into the rule-making process. He said a problem arises when rules are promulgated by unexpected agencies.

MARGARET DAVIS, representing the Montana League of Women Voters, stated her organization's support of the measure. She endorsed Rep. Schultz's remarks. She said the measure would give citizens a chance to testify during the rule-making process. She also asked that the bill be amended to include public interest groups as among the groups to be notified.

THERE BEING NO OPPONENTS TO HOUSE BILL 37 BEING HEARD, CHAIRMAN BRAND CALLED FOR QUESTIONS FROM COMMITTEE MEMBERS AFTER REP. SCHULTZ DECLINED TO MAKE A CLOSING STATEMENT.

REP. BILL HAND asked if the measure would need a fiscal note. He suggested the question be addressed in executive session.

REP. FRANCIS BARDANOUE said there would be additional costs in sending out such notices. Rep. Schultz said he was uncertain about any additional costs. He said there would be different mailing lists for different subject areas of rule-making. He said he doubted if costs would be substantial for any one department.

REP. KATHLEEN McBRIDE asked if the sponsor had any objection to adding state-wide groups to the requirements of the bill. Rep. Schultz said he did not.

Responding to a question by Chairman Brand, a spokesman for the Secretary of State's office said that the Administrative register costs interested groups \$175 a year.

Chairman Brand asked Margaret Davis about her group's wishes. Davis said that her group wished to have the bill expanded to include notice to special interest groups; she said these groups should have the same consideration given as other societies.

REP. PAUL PISTORIA asked if the League of Women Voters would be for the bill if that provision were added. Davis said that would be a much better bill.

Chairman Brand asked if failure to comply with the bill, should it be enacted into law, would expose agencies to liability. Legislative Council Attorney, DAVID NISS said he believed not.

REP. GLENN MUELLER asked if there was any responsibility on the parts of organizations to keep current with the rule-making process. Rep. Schultz said there is some responsibility on the parts of individual groups.

THERE BEING NO FURTHER QUESTIONS FROM COMMITTEE MEMBERS,
CHAIRMAN BRAND CLOSED THE HEARING ON HOUSE BILL 37.

In a brief discussion with committee members, Chairman Brand noted that there would be no segregation of smokers and non-smokers in the committee room. Rep. Paul Pistoria, who smokes a pipe; noted that he would welcome any suggestions that he refrain from smoking, but otherwise, would assume it was permissible with others for him to smoke.

HOUSE BILL 35

Chairman Brand opened the hearing on House Bill 35 by calling on its sponsor, REP. FRITZ DAILY, who said the bill would prohibit an agency or board from using previous rule-making power granted in bills to make new rules. He said that under terms of the bill an agency would have to secure new authority from the Legislature to make new rules. He called on Legislative Council Attorney, DAVID NISS, to explain further.

Niss said that at present, rule-making authority is granted by the Montana Administrative Procedure Act. He said the act, commonly called "MAPA," furnishes a "road map" for rule-making. He called it a "procedural" bill but not a grant of rule-making authority.

Niss said the Legislature must grant substantive rule-making authority to agencies. He said that MAPA provides a procedure once the authority has been granted to make rules in an area. He said that rule-making authority is now granted to agencies on an agency basis or a program basis. He said the bill would require new authority.

RODGER TIPPY, a Helena attorney, said he was appearing on behalf of himself. Tippy, who practices much administrative law, said the bill would ensure that any measure signed into law would contain a grant of power to provide for rule-making, and there would be no dispute at later times.

THERE BEING NO OTHER PROPOSERS HEARD AND NO OPPONENTS TO HOUSE BILL 35 BEING HEARD, CHAIRMAN BRAND CALLED FOR CLOSING REMARKS BY THE SPONSOR.

Rep. Daily spoke of an example of abuse in the rule-making process, in his closing statement.

QUESTIONS FROM COMMITTEE

Rep. Mueller restated the premise that rule-making could not be done without statutory authority being set out. Rep. Daily confirmed that premise. Legislative Council Attorney Niss confirmed that rule-making authority must be in a bill.

Rep. McBride asked if existing rule-making power would continue for state agencies. Niss said the bill would effect the new duties imposed after the effective date of House Bill 35. He said House Bill 35 would not erase existing rule-making authority for agencies.

Rep. Daily noted that the Montana Code Annotated containing the rules and regulations are sixteen inches wide on the bookshelf, and the MAPA books are 46 inches wide on the shelf.

Rep. McBride asked if future rule-making grants would diminish the present rule-making authority. Niss said it would not.

Rep. Mueller asked who puts rule-making authority in the bill. Niss said the Legislative Council or the drafter of the bill can insert rule-making authority into a bill with a final judge of whether rule-making authority would be granted by the Legislature.

REP. MCCORMICK asked if the bill must include boards. Niss said it did not.

Rep. Pistoria said that last year agencies raised membership fees on insurance agents, and this bill could stop abuse such as that.

REP. HELEN O'CONNELL spoke of abuse of the rule-making process after the Legislature goes home from its sessions.

Chairman Brand asked why the bill contained a December 31, 1983 effective date. Rep. Daily called on Niss to answer that question. Niss said the bill would become effective before the next session and after this session. He said that if the effective date were "at the end of the 48th session," there would be a probable conflict with bills passed this session that were approved in ignorance of this bill.

Chairman Brand asked if this session would have no bearing on this bill. Rep. Daily confirmed that. Chairman asked the Legislative Council Staff to monitor this session's bills so that legislators could be aware of any items relevant to this bill.

THERE BEING NO FURTHER QUESTIONS FROM COMMITTEE MEMBERS, CHAIRMAN BRAND CLOSED THE HEARING ON HOUSE BILL 35.

EXECUTIVE SESSION

CHAIRMAN BRAND MOVED THE COMMITTEE INTO EXECUTIVE SESSION AND CALLED FOR A MOTION ON HOUSE BILL 37.

REP. BARDANOUE MOVED, DO PASS, REP. MUELLER SECONDED.

REP. McBRIDE MOVED a substitute motion to hold the bill in committee so the Legislative Council Researcher could come up with amendments to broaden the bill's scope. REP. FRANCIS KOEHNKE SECONDED.

Rep. Pistoria asked about added cost for the bill. Rep. O'Connell said that perhaps other groups should subscribe to this service, but that could get very costly. Chairman Brand said that some groups cannot afford \$175 a year to subscribe to the Montana Administrative Register. REP. SMITH asked if the Montana Administrative Register costs \$175 a copy. Rep. Hand said that price was for a subscription for a period of many months. He also said it was easy to get in Helena.

Rep. McBride said "we're dealing not with the total membership of groups, but with head offices of interested groups."

The question was called and the substitute motion PASSED by unanimous voice vote.

Chairman Joe Brand appointed a subcommittee to study the measure, particularly the question of what groups are to be notified under terms of the bill, and also to get a fiscal note for the measure.

HOUSE BILL 35

REP. JERRY DRISCOLL MOVED House Bill 35 DO PASS, REP. WALTER SALES SECONDED.

The question was called and the motion CARRIED by unanimous voice vote.

REP. O'CONNELL MOVED ADJOURNMENT, REP. HAMMOND SECONDED. THE MOTION CARRIED BY UNANIMOUS VOICE VOTE AND CHAIRMAN BRAND DECLARED THE MEETING ADJOURNED.

Rep. McBride noted that she would come up with appropriate language for amendment for House Bill 37.



REPRESENTATIVE JOE BRAND, Chairman

STANDING COMMITTEE REPORT

January 6, 19 83

MR. **SPEAKER**

We, your committee on **STATE ADMINISTRATION**

having had under consideration **HOUSE** Bill No. **35**

"AN ACT TO REQUIRE A GRANT OF RULEMAKING AUTHORITY WITH EACH STATUTE ENACTED OR AMENDED IF IT IS TO BE IMPLEMENTED BY AN ADMINISTRATIVE RULE; AMENDING SECTIONS 2-4-305 and 5-4-402, MCA; AND PROVIDING AN APPLICABILITY CLAUSE."

Respectfully report as follows: That **HOUSE** Bill No. **35**

DO PASS