

Senate Rules Committee
February 7, 1985

Senator Van Valkenburg called the meeting to order with all members being present. He stated that the purpose of the meeting was for the Senate Rules Committee to hear House Bill 9 and House Joint Resolution 3. He then gave the floor to Representative Ralph Eudaily, the sponsor of the measures.

Representative Eudaily stated that House Joint Resolution 3 and House Bill 9 go together, and deferred to Bob Pyfer, of the Legislative Council, for explanation of the two measures.

Bob Pyfer stated that House Bill 9 was not intended to make substantive changes in the law, rather it was to "put into words" the most reasonable interpretation of the present law.

Mr. Pyfer continued his explanation of the two measures by outlining the "Daily Amendment" which puts people on notice that when the legislature amends or adds to existing law, agencies have the existing rulemaking authority to, and indeed must, make their rules consistent with that law.

Further, the Daily Amendment relates only to existing authority, but page 2, line 14 of House Bill 9 relates to "delegation of authority." (SEE ATTACHED A) Page 1, lines 17-18 relate to delegation of authority. (SEE ATTACHED B)

Senator Crippen questioned how new rulemaking authority would be handled. He suggested that there is a "gray line" as to what constitutes existing rulemaking authority and what constitutes new rulemaking authority.

Mr. Pyfer agreed but stated "the line must be drawn somewhere."

Senator Crippen said that Mr. Pyfer, as a bill drafter, is actually the one who puts the language in the bills so there shouldn't be a problem. Additionally, Senator Crippen mentioned that he would not like to have Rules Committee meetings necessitated each time the determination of "existing" or "new" authority must be made.

Mr. Pyfer clarified the fact that the new measures do not supersede the Daily Amendment, rather they clarify two different, albeit related, measures; those being existing versus new rulemaking authority.

Senator Norman asked how one determines the difference between new or existing rulemaking authority.

Mr. Pyfer stated that when the Legislature uses words such as "shall adopt rules" or "may adopt rules" this indicates that new rulemaking authority is being delineated.

Senator Stephens stated that the entire subject seemed unclear and appears to be creating a paper on the "intent on statement of intent."

Mr. Pyfer stated that the extension of authority has the effect of giving notice to the Legislature that rulemaking is involved in the bill.

Mr. Pyfer explained House Bill 9 as follows:

This bill is not intended to make any substantive change in the existing law. It is merely intended to remove an inconsistency that was created by a 1983 bill and to clarify what is the most reasonable interpretation of the law as it stands right now.

The Legislative History Act was enacted in 1977 to require a statement of intent whenever new express rulemaking authority is granted to an agency by the Legislature. If you will look at line 5 on page 2 of the bill, at the end of the line the word "additional" appears. This is part of the original act and it clearly indicates that the purpose is to require a statement for an "additional" or "new" delegation of authority.

In 1983, subsection (3) on lines 10-15 of page 2, was inserted. We call this the "Daily Amendment". The Daily Amendment was not intended to affect requirements for statements of intent. It was intended to recognize and make people aware that an agency may already have existing rule-making authority that may be used to carry out the intent of the Legislature when the Legislature amends or adds to existing law. For example, say a bill were to amend the law to change an occupational license fee from \$5 to \$10 and the board's rules on the subject say \$5. Under the board's existing authority it may, and of course it must, amend its rules to say \$10. So rulemaking was involved, but before the Daily Amendment, no mention of rulemaking would appear in the bill. Of course, more substantial amendments or additions to existing law may be passed by the Legislature which would require more substantial amendments or additions to existing rules. The Daily Amendment was enacted to insure that every bill that might involve amendments or additions to existing rules contain a notice provision telling legislators that rulemaking is involved. This notice takes the form of an extension of existing authority.

The inconsistency arises in that on line 14 of page 2, the Daily Amendment uses the term "delegation of authority". This creates an implication that a statement of intent might be required for a bill that merely extends existing authority which is contrary to the purpose of the Legislative History Act to require a statement of intent for additional authority as indicated on page 2, line 5. House Bill 9 merely removes this inconsistency by clarifying on page 1, lines 17 and 18, that a statement of intent is not required for a mere extension of existing authority.

Therefore, this bill does not change but merely clarifies the original intent of both the Legislative History Act and the Daily Amendment by removing an inconsistency between them. That is, it puts into words the only reasonable interpretation of both acts, read together, and given their original intent, spirit, and background purposes. It will not reduce the number of statements of intent or change the way the Legislature operates. It does not preclude a statement of intent on any bill on request of any legislator, committee, or other person. It does not affect the intent of the Daily Amendment requiring extensions of existing authority, and indeed you are seeing many extensions of authority in bills this session.

I have had a few questions on why House Bill 9 strikes the word "even" from the Daily Amendment on page 2, line 11. This is merely to remove a superfluous, nonsensical, and confusing word. The Daily Amendment was obviously intended to address only existing rulemaking authority. This is obvious because it wouldn't talk about "extending" authority on line 14 of page 2 if the authority didn't already exist. With respect to bills creating entirely new law for which there is no existing authority, the Montana Administrative Procedure Act clearly requires in section 2-4-102 (11)(a) that the bill must contain an express delegation of rulemaking authority saying "the department shall (or may) adopt rules" in order for the rules to be valid and enforceable. Under the Legislative History Act, such a bill would also require a statement of intent because it creates new authority. Therefore, the situation of entirely new law and new rulemaking authority is covered by MAPA and the Legislative History Act, and the word "even" in the Daily Amendment is nonsensical and confusing.

MOTION:

Senator Christiaens made a motion to recommend Do Pass on House Joint Resolution 3.

The question was called. Motion carried unanimously.

MOTION:

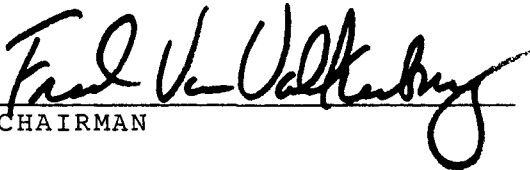
Senator Christiaens made a motion to recommend Do Pass on House Bill 9.

The question was called. Motion carried unanimously.

MOTION:

There being no further business, Senator Christiaens made a motion to adjourn.

The question was called. Motion carried unanimously.


CHAIRMAN

1 HOUSE BILL NO. 9

2 INTRODUCED BY EUDAILY

3 BY REQUEST OF THE LEGISLATIVE COUNCIL

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT
6 STATEMENTS OF INTENT NEED NOT ACCOMPANY DELEGATIONS OF
7 AUTHORITY EXTENDING PREVIOUSLY ENACTED RULEMAKING AUTHORITY
8 TO NEWLY ENACTED OR AMENDED AGENCY DUTIES; AMENDING SECTIONS
9 5-4-402 AND 5-4-404, MCA; AND PROVIDING AN IMMEDIATE
10 EFFECTIVE DATE AND AN APPLICABILITY DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 5-4-404, MCA, is amended to read:
14 "5-4-404. Statement of intent. The legislature by its
15 joint rules shall provide a procedure by which a statement
16 of legislative intent shall be included with each bill
17 containing a delegation of authority, other than the
18 delegation of authority referred to in 5-4-402(3), and may
19 be included with all bills. A statement of intent shall be
20 placed before each component of the legislature which
21 sequentially considers the subject bill and may be amended
22 in the same manner as the bill."

23 Section 2. Section 5-4-402, MCA, is amended to read:

24 "5-4-402. Purpose. (1) The legislature finds that it
25 must accept the ultimate responsibility for the increase in

tionary authority of state executive branch
2 agencies, as evidenced by proliferating rules, forms,
3 orders, and licensing proceedings before state agencies.

4 (2) The purpose of this Legislative History Act is to
5 assure that statutes henceforth enacted to grant additional
6 discretionary authority to state agencies are accompanied by
7 a clear indication of the legislature's intent as to how
8 such discretion is to be exercised and the legislature's
9 purpose for delegating the authority.

10 (3) A statute enacted or amended may not be
11 implemented by an administrative rule, even in an area in
12 which a state agency has existing rulemaking authority,
13 unless the statute enacted or amended is accompanied by a
14 delegation of authority extending such authority to the
15 statute as enacted or amended."

16 NEW SECTION. Section 3. Effective date
17 applicability. This act is effective on passage and approval
18 and applies retroactively, within the meaning of 1-2-109,
19 and prospectively to any bill introduced or enacted on or
20 after January 7, 1985.

--End--

HOUSE JOINT RESOLUTION NO. 3

INTRODUCED BY EUDAILY

BY REQUEST OF THE LEGISLATIVE COUNCIL

1 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
2 REPRESENTATIVES OF THE STATE OF MONTANA TO AMEND JOINT RULE
3 11-3, RELATING TO STATEMENTS OF INTENT, TO MAKE THE JOINT
4 RULES COMPATIBLE WITH STATUTORY AMENDMENTS MADE BY HOUSE
5 BILL NO. 9, WHICH PROVIDES THAT A STATEMENT OF INTENT NEED
6 NOT ACCOMPANY A DELEGATION OF AUTHORITY EXTENDING PREVIOUSLY
7 ENACTED RULEMAKING AUTHORITY TO NEWLY ENACTED OR AMENDED
8 AGENCY DUTIES.

9 WHEREAS, the Legislative History Act now requires that
10 a statement of intent accompany certain delegations of
11 authority to administrative agencies, including delegations
12 of rulemaking authority; and

13 WHEREAS, section 5-4-402, MCA, of that Act was amended
14 in 1983 to provide that a statute enacted or amended may not
15 be implemented by an administrative rule, even in an area in
16 which a state agency has existing rulemaking authority,
17 unless the statute enacted or amended is accompanied by a
18 delegation of authority extending such authority to the
19 statute as enacted or amended; and

20 WHEREAS, this amendment, in addition to its intended

1 purpose of providing notice that a bill involves rulemaking,
2 creates a strong implication that a statement of intent must
3 accompany every bill that merely extends an existing
4 delegation of rulemaking authority; and

5 WHEREAS, House Bill No. 9 has been introduced to
6 provide that a statement of intent is not required for a
7 bill containing an extension of an existing delegation of
8 rulemaking authority; and

9 WHEREAS, the Joint Rules should be made compatible with
10 the statutory changes proposed in House Bill No. 9.

11 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
12 OF REPRESENTATIVES OF THE STATE OF MONTANA:

13 (1) That Joint Rule 11-3 be amended to read:

14 "11-3. Statement of intent to accompany bill -- when
15 -- how. A statement shall accompany a bill as follows:

16 (1) Statements of intent are required for bills
17 delegating new rulemaking or licensing authority. The
18 statement shall be entered on ALTER, printed on paper of the
19 same color and in the same manner as the bill, and shall be
20 attached to the bill. The statement shall be printed on
21 paper of the same color as the bill and attached to the bill
22 on all subsequent printings of the bill.

23 (2) The standing committee of the house in which the
24 bill originates is responsible for authoring a statement of

HOUSE BILL NO. 9

This bill is not intended to make any substantive change in the existing law. It is merely intended to remove an inconsistency that was created by a 1983 bill and to clarify what is the most reasonable interpretation of the law as it stands right now.

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In 1983, subsection (3) on lines 10-15 of page 2, was inserted. We call this the "Daily amendment". The "Daily amendment" was not intended to affect requirements for statements of intent. It was intended to recognize and make people aware that an agency may already have existing rulemaking authority that may be used to carry out the intent of the Legislature when the Legislature amends or adds to existing law. For example, say ^{a bill} ~~we~~ were to ^{amend} ~~change~~ an occupational license fee from \$5 to \$10 and the board's rules on the subject say \$5. Under the board's existing authority it may, and of course it must, amend its rules to say \$10. So rulemaking was involved, but before the Daily amendment, no mention of rulemaking would appear in the bill. Of course, more substantial amendments or additions to existing law may be passed by the Legislature which would require more substantial amendments or additions to existing rules. The Daily amendment was enacted to insure that every bill that might involve amendments or additions to existing rules contain a notice provision telling legislators that rulemaking is involved. This notice takes the form of an extension of existing authority.

The inconsistency arises in that on line 14 of page 2 the Daily amendment uses the term "delegation of authority", and on line 17 of page 1 the Legislative History Act requires a statement of intent for a quote "delegation of authority". This creates an implication that a statement of intent might be required for a bill that merely extends existing authority, which is contrary to the purpose of the Legislative History Act to require a statement of intent for additional authority as indicated on page 2, line 5. HB 9 merely removes this inconsistency by clarifying on page 1, lines 17 and 18, that a statement of intent is not required for a mere extension of existing authority.

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I have had a few questions on why HB 9 strikes the word "even" from the Daily amendment on page 2, line 11. This is merely to remove a superfluous, nonsensical, and confusing word. The Daily amendment was obviously intended to address only existing rulemaking authority. This is obvious because it wouldn't talk about ~~quote~~ "extending" authority on line 14 of page 2 if the authority didn't already exist. With respect to bills creating entirely new law for which there is no existing authority, the Montana Administrative Procedure Act clearly requires in section 2-4-102(11)(a) that the bill must contain an express delegation of rulemaking ^{authority} saying "the department shall (or may) adopt rules"

in order for the rules to be valid and enforceable. Under the Legislative History Act, such a bill would also require a statement of intent because it creates new authority. Therefore, the situation of entirely new law and new rulemaking authority is covered by MAPA and the Legislative History Act, and the word "even" in the Daily amendment is nonsensical and confusing.

PYFER2/ee/HB 9

Part 1

General Provisions

2-4-101. Short title. This chapter shall be known and may be cited as the "Montana Administrative Procedure Act".

History: En. Sec. 1, Ch. 2, Ex. L. 1971; amd. Sec. 1, Ch. 285, L. 1977; R.C.M. 1947, 82-4201.

2-4-102. Definitions. For purposes of this chapter, the following definitions apply:

(1) "Administrative code committee" or "committee" means the committee provided for in Title 5, chapter 14.

(2) "Agency" means any agency, as defined in 2-3-102, of the state government, except that the provisions of this chapter do not apply to the following:

(a) the state board of pardons, except that the board shall be subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules shall be published in the administrative rules of Montana and Montana administrative register;

(b) the supervision and administration of any penal institution with regard to the institutional supervision, custody, control, care, or treatment of youths or prisoners;

(c) the board of regents and the Montana university system;

(d) the financing, construction, and maintenance of public works.

(3) "ARM" means the administrative rules of Montana.

(4) "Contested case" means any proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

(5) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

(6) "Licensing" includes any agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(7) "Party" means any person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but nothing herein shall be construed to prevent an agency from admitting any person as a party for limited purposes.

(8) "Person" means any individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

(9) "Register" means the Montana administrative register.

(10) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(c) rules relating to the use of public works, facilities, streets, and highways when the substance of such rules is indicated to the public by means of signs or signals;

(d) seasonal rules adopted annually relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of such rules and rules adopted annually relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of such rules is indicated to the public by means of signs or signals;

(e) rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

(f) uniform rules adopted pursuant to interstate compact, except that such rules shall be filed in accordance with 2-4-306 and shall be published in the administrative rules of Montana.

(11) "Substantive rules" are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. Such interpretation lacks the force of law.

History: (1), (3), (9) En. by Code Commissioner, 1979; (2), (4) thru (8), (10), (11) En. Sec. 2, Ch. 2, Ex. L. 1971; amd. Sec. 2, Ch. 285, L. 1977; Sec. 82-4202, R.C.M. 1947; R.C.M. 1947, 82-4202; amd. Sec. 4, Ch. 184, L. 1979; amd. Sec. 2, Ch. 243, L. 1979.

Cross-References

Fish, wildlife, and park rules, 87-1-202.
87-1-303.

2-4-103. Rules and statements to be made available to public.

(1) Each agency shall:

(a) make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions;

(b) upon request of any person, provide a copy of any rule.

(2) Unless otherwise provided by statute, an agency may require the payment of the cost of providing such copies.

(3) No agency rule is valid or effective against any person or party whose rights have been substantially prejudiced by an agency's failure to comply with the public inspection requirement herein.

History: En. Sec. 3, Ch. 2, Ex. L. 1971; amd. Sec. 1, Ch. 240, L. 1974; amd. Sec. 3, Ch. 285, L. 1977; R.C.M. 1947, 82-4203(1)(c), (1)(d), (2); amd. Sec. 3, Ch. 243, L. 1979.

Cross-References

Right of public to examine documents of public bodies, Art. II, sec. 9, Mont. Const.; 2-3-103.

Advance notice of proposed rules — mailing to requesting parties, 2-4-302.

2-4-104. Subpoenas and enforcement — compelling testimony.

(1) An agency conducting any proceeding subject to this chapter shall have the power to require the furnishing of such information, the attendance of such witnesses, and the production of such books, records, papers, documents, and other objects as may be necessary and proper for the purposes of the proceeding. In furtherance of this power, an agency upon its own