

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51ST LEGISLATURE - REGULAR SESSION

COMMITTEE ON RULES

Call to Order: By Chairman Harper, on February 14, 1989 at 3:00 PM.

ROLL CALL

Members Present: Rep. Hal Harper, Rep. John Vincent, Rep. Kelly Addy, Rep. Dave Brown, Rep. Joe Quilici, Rep. Tom Hannah, Rep. John Mercer.

Members Absent: Rep. Jerry Driscoll, Rep. Dennis Iverson, Rep. Jack Ramirez.

Staff Present: Greg Petesch - Legislative Council

ORDER OF BUSINESS:

I. HB 610

AN ACT TO DELETE THE REQUIREMENT THAT CERTAIN BILLS PASSED BY THE LEGISLATURE MUST CONTAIN AN EXTENSION OF EXISTING RULEMAKING AUTHORITY BEFORE THE SECTIONS OF THE BILL MAY BE IMPLEMENTED BY RULE

Re. John Cobb, bill sponsor, spoke to the Committee to explain the following points:

1. Some agencies are making rules without technically having rulemaking authority because legislation did not have an "extension" included in the bill due to an error in drafting. There may be as many as 100 laws technically in violation because of this error.

2. This bill would do away with the "extension" requirement and provide for automatic rule making.

3. If you do not want them making rules, the bill would have to specifically say so.

4. The bill is retroactive to October 1, 1983.

Staff member Greg Petesch explained the present "extension" requirement creates a big problem for Legislative Council staff, requires a large amount of staff time in researching each time a bill amends the codes because amendments don't have the "extension". At least 30 codes have a technical problem.

Rep. Hannah's question if there is another way to handle this problem was answered in the negative. Rep. Harper asked how does the statement of intent fit in with the bill, we still have it? Mr. Petesch said yes, and with this bill if you grant new

rulemaking authority there will be a statement of intent for a new area of authority.

In answer to Rep. Harper's question on how this will affect the Legislative Council, Mr. Petesch said it will make their work much easier to review administrative rules for the Code Committee. Currently, three areas are affected:


1. Specific Statute
 2. Specific statute being implemented
 3. Session law to extension or extensions of rulemaking authority.
- This bill would remove the third requirement.

Chairman Harper closed the hearing.

MOTION: by Rep. Addy: I move the bill do pass. Motion carried, Rep. Hannah voting no.

The Chairman announced the assignment of HB 681 to the Rules Committee, and scheduled the committee hearing of same on February 16, 1989 upon adjournment of the House.

Adjournment at 4:15 PM.



Hal Harper, Chairman

HOUSE RULES COMMITTEE

ROLL CALL

DATE: 2-14-89

ROOM: 420

TIME: 3:00 P.m.

	PRESENT	ABSENT	EXCUSED	
HARPER, Hal (D), Chairman	✓			
VINCENT, John (D), Vice Chair	✓			
ADDY, Kelly (D)	✓			
BROWN, Dave (D)	✓			
DRISCOLL, Jerry, (D)		✓		
QUILICI, Joe (D)	✓			
HANNAH, Tom (R)	✓			
IVERSON, Dennis (R)		✓		
MERCER, John (R)	✓			
RAMIREZ, Jack (R)		✓		

STANDING COMMITTEE REPORT

February 14, 1989

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Mr. Speaker: We, the committee on Rules report that HOUSE
BILL 610 (first reading copy -- white) do pass.

Signed: _____
Hal Harper, Chairman

To: John

From: Ellen

*Testimony presented
by Rep. Cobb. hearing of
H.B. 610 -*

SUMMARY OF MONTANA ADMINISTRATIVE REGISTER

Issue No. 15

August 1987

Register
Page No.

Proposed Rules

Department of Administration

1229-1231

2 — Use of State's Telecommunications Systems and Facilities. MAR No. 2-2-167. Amends ARM 2.13.101 and 2.13.102 and Adopts 5 New Rules. The department will hold a public hearing on September 9, 1987, at 12:00 p.m. in Room 136 of the Mitchell Building, Helena, Montana, to consider the amendment of 2 rules and the adoption of 5 new rules relating to the use of the state's telecommunications systems and facilities. The rules will regulate use of the state phone system for essential personal business by state employees and officials. The rules provide that all records of use of the telecommunications systems created, maintained, and managed by the department are public documents and subject to review by the public, unless protected by statute. Authority for the rules is 2-17-302, MCA, and the rules implement 2-17-302, MCA.

pointed

Comments: Staff contacted Mr. Tony Herbert, Chief of the Telecommunications Bureau, and ~~printed~~ out that the statement of reasonable necessity contained in the notice was insufficient. Mr. Herbert agreed to include a more detailed statement in the notice of adoption.

Department of Agriculture

1232-1237

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x.t. →*
Alfalfa Leaf-cutting Bees. MAR Notice No.. 4-14-26. Proposes to Adopt 11 New Rules and Repeal ARM 4.12.1201 and 4.12.1203 through 4.12.1209. The department has scheduled a hearing for 10 a.m. on September 8, 1987, in Room 225 of the Agriculture/Livestock Building in Helena to consider a proposal to adopt 11 new rules and repeal 8 rules relating to

the alfalfa leaf-cutting bee program. The proposal implements Title 80, Ch. 6, part 11, MCA, as amended by Ch. 310, L. 1987, and relates primarily to control of parasites and pathogens. Authority is 80-6-1103 and 80-6-1108, MCA. Rules are mandated by 80-6-1103 and should result in making the program financially sound, which it has not been in the past.

Comments: The vast majority of the rules are technically invalid, because they implement MCA sections amended or enacted by a 1987 law that needed, but does not have, an extension of rulemaking authority. That law adds grants of rulemaking authority to adopt specific types of rules but these rules proposed here are adopted pursuant to authority already existing when Ch. 310 was introduced and enacted.

State Auditor

1238-1250

Health Maintenance Organizations. MAR No. 6-15. Proposes To Adopt 10 New Rules. The Commissioner has scheduled a hearing for September 15, 1987, at 9:00 a.m. in Room 160 of the Mitchell Building in Helena, Montana, to consider the adoption of 10 rules pertaining to health maintenance organizations. The rules are intended to implement, flesh out, and clarify the Montana Health Maintenance Organization Act (SB 353, L. 1987). Authority for the rules is 33-31-103, MCA, and the rules implement Title 33, Ch. 31, MCA.

Department of Commerce

Board of Morticians

1251-1252

Board Meetings, Fees, Mortuary Licenses. MAR 8-30-17. Proposes to Amend 8.30.401, and 8.30.407, ARM, and Adopt 1 New Rule. On September 14, 1987, the Board of Morticians proposes to amend the above-stated rules to synchronize the annual meeting date with the statutory license examination date and raise the late renewal penalty fees to make them commensurate with the costs of processing late renewals. The board also proposes to adopt one new rule to provide that the original mortuary license number may be retained by the facility upon transfer or sale of a mortuary so that the license number relates to the particular facility. Authority for the rules is 37-1-134, 37-19-201, 37-10-202, and 37-19-403, MCA. The rules implement 37-19-134,

for the rules is 37-1-134 and 37-60-202, MCA. They are stated to implement 37-60-101, 37-60-202, 37-60-302, 37-60-304 through 37-60-310, 37-60-312, 37-60-321, and 37-60-322, MCA.

Board of Realty Regulation

634-635 Continuing Education. MAR 8-58-28. Proposes to Amend ARM 8.58.415A. On June 29, 1987, the Board of Realty Regulation proposes to amend ARM 8.58.415A to provide an effective beginning date for the continuing education requirement. Authority for the rule is 37-51-202 through 37-51-204, MCA. The rule implements those sections.

Montana Economic Development Board

(Noauth. ext.)

636-640 Eligibility; Bonds and Notes of Board; Loan Loss Reserve Account; Application and Financing Fees; Taxable Revenue Bond Programs; Terms, Interest Rates, Fees and Charges; Application Procedures--Certified and Qualified. MAR No. 8-97-23. Proposes to Amend ARM 8.97.402, 8.97.411, 8.97.414, 8.97.509, 8.97.512, 8.97.709, 8.97.803, and 8.97.804. On June 29, 1987, the Economic Development Board proposes to amend ARM 8.97.402 to clarify the board's intent that the Board be allowed to purchase the federally guaranteed portions of loans. The board proposes to amend ARM 8.97.411 to allow the board to invest its funds in its own obligations issued pursuant to the Municipal Finance Consolidation Act, as well as the Economic Development Bond Act as allowed currently under the rule. The board proposes to amend ARM 8.97.414 to increase the interest deposit on coal tax loans, as charged by SB 140, 1987. The board proposes to amend ARM 8.97.509 and 8.97.709 to add the "state-wide audit fee" enacted by SB 230, 1987, to the costs of a bond issue to be passed on to the users of the program. The board proposes to amend ARM 8.97.512 to remove the public hearing requirements for projects financed with taxable bonds; such hearing requirement was repealed by SB 263, 1987. The board proposes to amend ARM 8.97.803 and 8.97.804 dealing with the application procedure for becoming a 'Certified Montana Capital Company' to provide a method to remove inactive companies from the list of "certified" companies and allow the reallocation of unused tax credits to active companies. The rules are authorized by 17-6-324, MCA, and SB 263, 1987, (Ch. 190) and implement 17-5-1504, 17-5-1506, 17-5-1521, 17-5-1537, 17-5-1611, 17-5-1643, 17-6-303, through 17-6-305, 17-6-308, 17-6-314, 17-6-315, 90-8-202, and 90-8-204, MCA.

Comments: Staff contacted Mr. Bob Pancich, administrator of the board, and Mr. Denny Moreen, Assistant Attorney General, who assisted the board with its rules, and pointed out the following problems: the board does not have authority to adopt the amendments to ARM 8.97.414, 8.97.509, and 8.97.709, because neither SB 140 nor SB 230 contains on extension of rulemaking authority; the proposed amendment to ARM 8.97.414 should be reworded to form a complete sentence; the citation of authority for ARM 8.97.803 and 8.97.804 is incorrect and should be changed to 90-8-105, MCA; and there is not a sufficient statement of reasonable necessity for the ARM 8.97.903 and 8.97.904 amendments. Rules implementing 17-5-part 15, MCA, should cite 17-5-1504 and/or 17-5-1521, MCA, as authority and rules implementing 17-5-part 16, MCA, should cite 17-5-1605, MCA, as authority. Mr. Pancich and Mr. Moreen agreed to work with the staff on the questions of authority and Mr. Pancich agreed to correct the other problems in the notice of adoption.

Department of Health and Environmental Sciences

641-659

Procedures for Review of Certificate of Need for Health Care Facilities. MAR Notice No. 16-2-321. Amends 13 Rules Relating to Criteria and Procedures for Reviewing Certificates of Need for Health Care Facilities. On June 22, 1987, at 1:30 p.m., the department will hold a hearing in Room C209 of the Cogswell Building, Helena, Montana, on a proposal to amend rules and procedures relating to the issuance of certificates of need for health care facilities. The amendments are proposed to clarify existing language, and to reflect the statutory changes for certificates of need made by the 1987 Legislature. Authority is 2-4-201, 50-5-103, 50-5-302, 50-5-304, and 50-5-306, MCA, and Ch. 26, sec. 3 and Ch. 477, sec. 11, L. 1987. Sections 50-5-201, 50-5-301, 50-5-302, 50-5-304, and 50-5-305, and Title 50, Ch. 5, part 3, MCA, and Ch. 477, sec. 8, L. 1987, are implemented.

Comments: The department cited 50-5-305, MCA, as its rulemaking authority to amend ARM 16.32.118, concerning the duration of certificates. Section 50-5-305, MCA, does not provide express rulemaking authority, but rather states that the department may grant a certificate of need extension upon a demonstration of good cause "as defined by department rule". Since the department cited 50-5-103, MCA, an express rulemaking authority grant, and Ch. 477, sec. 11, L. 1987, an extension of rulemaking authority granted by the 1987 Legislature, the reference to

administrator of the program determines to be reasonable, if the credits are not otherwise reserved or allocated.

Staff of the
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Comments: ACC ~~staff~~ contacted Mr. Bob Pancich of the board and indicated that the proposed new rule seems to conflict with the provisions of 90-8-202(3), MCA, that the credits will be allocated to qualified capital companies on a first-come-first-served basis. ~~Mr.~~ Pancich felt there was no conflict because the credits will be allocated based on "completed applications" as required by the statute.

Department of Family Services

502
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Foster Care Review Committees. Page 1879. MAR Notice No. 11-7. Proposes Amendment of ARM 11.7.501. The department proposes to amend a rule to change terminology, change from four to five the minimum number of committee members, and change the qualifications of the committee members. The amendments are necessary to conform the rule to the implemented statute as that statute was amended in 1987. Authority and the implemented section are 41-3-1115, MCA.

Comments: Staff of the ACC informed Leslie Taylor of the department that since the 1987 statute that amended the implemented section did not contain an extension of rulemaking authority, the rule here proposed to be amended can in no way be amended, not even to conform it to the implemented statute, with which it will conflict absent the amendment.

Department of Health and Environmental Sciences.

Hazardous Waste Management. Page 1881. MAR Notice No. 16-2-330. Amends ARM 16.44.102, 16.44.104, 16.44.109, 16.44.118, 16.44.202, 16.44.322, 16.44.351, 16.44.504, 16.44.508, 16.44.610, 16.44.802 through 16.44.810, 16.44.812 through 16.44.814, and 16.44.822, and Proposes Adoption of 14 New Rules. On November 30, 1987, at 9 a.m., the department will hold a hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider its proposal to amend 23 rules and adopt 14 new rules pertaining to closure and post-closure requirements, access to public records, and transfer facilities and commercial transfer facilities holding hazardous wastes for 10 days or less. The amendments and adoption of new rules are proposed in order to make the state program consistent with federal regulatory changes and with state legislative changes in the hazardous waste regulatory program. Authority is 75-10-405, MCA, and extensions of rulemaking authority granted by section 3, Ch. 109, L. 1985; section 7, Ch. 633, L. 1985; section 3, Ch. 336, L. 1987; and section 3, Ch. 562, L. 1987. Sections 75-10-405 and 75-10-406, MCA, are implemented.

46.12.702, and 46.12.703. The department has scheduled a public hearing at 1:30 p.m. on November 18, 1987, in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, to consider amendments changing the definition of "Maximum Allowable Cost", changing the payment method, allowing drugs to be provided by licensed practitioners other than doctors if they are authorized by law to prescribe drugs and recognized by the Medicaid program, and clarifying the rules. The rationale is to ensure that federal reimbursement limits are not exceeded and provide a more accurate and less complicated payment procedure. Authority is 53-6-113, MCA, as extended by Ch. 77, sec. 2, Laws 1985, and Ch. 329, sec. 4, Laws 1987. Sections 53-6-101, 53-6-113, 53-6-131, and 53-6-141, MCA, are implemented.

Adopted Rules

Department of Administration

Contracting for Supplies and Services. Page 1961. The department has amended rules dealing with contracting for supplies and services as noticed at page 1151 of the 1987 MAR, Issue No. 14. At the suggestion of ACC staff, the department corrected two errors in repeating statutory language, attempted to clarify its example of how to apply the Montana goods preference, and removed the blind vendor's preference from these rules. The department failed to provide a statement of reasonable necessity and rationale and to cite the grant of rule-making authority enacted by the two 1987 implemented bills.

Department of Agriculture

Issue 20
Alfalfa Leaf-Cutting Bees. Page 1965. The department has adopted 11 new rules and repealed 8 rules as proposed in Issue 15 of the 1987 MAR at page 1232. This action implements Title 8, Ch. 6, part 11, as amended by Ch. 310, Laws 1987. ~~Ch. 310~~ *Chapter* needed, but did not have, an extension of rulemaking authority. It added specific rulemaking authority grants relating primarily to predators, nest destroyers, and quarantines, but the vast majority of the rules here adopted do not relate to those subjects and are adopted under rulemaking authority that existed when Ch. 310 became law. The department was informed of this and of the consequent invalidity of the rules by ACC staff at the proposal notice stage. The department has, by adopting the new rules and repeal, consciously and deliberately ignored the legislative mandate of 5-4-402(3), MCA, and the rules are invalid.

Department of Commerce

Application For Satellite Terminal Authorization. Page 1968. The department has amended the rule pertaining to satellite terminal authorization, as noticed at page 1527, 1987 MAR Issue