

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on March 22, 1989, at
7:30 a.m.

ROLL CALL

Members Present: All members were present.

Members Excused: None.

Members Absent: None.

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

Announcements/Discussion: None.

HEARING ON SENATE BILL 433

Presentation and Opening Statement by Sponsor:

Rep. Williams stated SB 433 is to get child support from husbands that are out-of-state. The federal government has some laws that cover this, but they don't seem to cover it quick enough to where the parent can get the needed funding to take care of their children.

Testifying Proponents and Who They Represent:

Brenda Nordlund, Montana Womens Lobby

Proponent Testimony:

Brenda Nordlund stated they support SB 433, this is another vehicle to help improve child support enforcement in the state of Montana. It is not intended to supplant the Eureka statutes that are uniform statutes throughout the United States, it was drafted in a fashion to be as Constitutional as possible. She urged the committees support of this measure of yet another step to improve the situation in child support enforcement.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Gould asked Sen. Williams what is significant ties in the title? Sen. Williams stated that is when they are in and out of the state for various reasons then they can force them to pay the child support.

Closing by Sponsor: Sen. Williams closed SB 433.

DISPOSITION OF SENATE BILL 433

Motion: Rep. Gould moved SB 433 BE CONCURRED IN, motion seconded by Rep. Brooke.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: The recommendation SB 433 BE CONCURRED IN CARRIED unanimously.

HEARING ON SB 397

Presentation and Opening Statement by Sponsor:

Sen. Meyer stated that SB 397 would give the Governor the power to be able to look at executive rules that department heads are making. This will allow for him to see what his department heads are doing (See EXHIBIT 1).

Testifying Proponents and Who They Represent:

Jim Mocklear, Executive Director, Montana Coal Council
Don Ingles, Montana Chamber of Commerce
Ben Havdahl, Montana Motorcarry Association
Gene Phillips, Pacific Power & Light Company
John Lahr, Montana Power Company
John Delano
Dennis Burr, Montana Taxpayers Association
Gary Langley, Executive Director, Montana Mining Corporation
Carol Mosher, Montana Cattle Women

Proponent Testimony:

Jim Mocklear stated as representative of the most highly regulated industry in the State of Montana he encouraged the committee to allow the Governor to take this burden upon itself.

Don Ingles stated they would like to support SB 397 and SB 396

and would like to see them given a try. If it doesn't work in two years they can reimburse their actions.

Ben Havdahl stated they would like to support SB 397 and SB 396.

Gene Phillips stated he thinks that the rules that are adopted do not necessarily reflect what was intended by the legislature in authorizing the adoption of rules.

John Lahr stated he supports SB 397. Make administrative rules subject to the same scrutiny as the constitution, the law and elected officials of Montana.

John Delano stated that as a former legislator he thinks there is need for SB 397 and SB 396 to comply with the intent of the legislature.

Dennis Burr stated that they also support the passage of SB 397 and SB 396.

Gary Langley stated they support both SB 396 and SB 397. As he has pointed out previously, the problem has not always been in the statutes that are passed by the legislature but particularly in tax and environmental policy, it is the administrative regulations and rules that have been promulgated. In some cases they are consistent with statutes and in other cases they seem to be contrary to statutes.

Carol Mosher stated that they support the concept of SB 397.

Testifying Opponents and Who They Represent:

Jim Jensen, Executive Director, Montana Environmental Information Center

Eric Feaver, Montana Education Association

Kim Wilson, Montana Chapter of the Sierra Club

Claudette Morton, Executive Secretary, Board of Public Education

Stan Bradshaw, Montana Council Trout Unlimited

C.B. Pearson, Executive Director, Common Cause of Montana

Chris Deveny, Montana League of Women Voters

Brant Quick, Northern Plains Resource Council

Virginia Jellison, Montana Low Income Coalition

Don Judge, Montana State AFL-CIO

Opponent Testimony:

Jim Jensen stated SB 397 simply reaffirms the authority the Governor already has. He said it is ridiculous to pass this bill.

Eric Feaver stated they are in opposition to SB 397. We do not understand why this bill is before the committee. The Governor already has the authority to control his department heads. If in fact he does not feel he has that authority

then we have an interesting individual occupying the Governor's Office. Department heads are not free agents and if they are SB 397 will not change that situation. There is concern regarding SB 397 on page 2, subsection 2, the Governor's authority is rather enormously written to include not only the rules that are proposed, but those rules that already exist.

Kim Wilson stated that the important thing to point out to the committee is the Administrative Procedure Act, as it currently exists, provides for an orderly, careful and thorough promulgation of rules. The current system allows the public input and allows the input of experts in the field to promulgate the best rules possible. This bill goes beyond the current authority that the Governor has.

Claudette Morton stated they oppose SB 397.

Stan Bradshaw stated that this is duplication in streamline government. He opposed SB 397.

C.B. Pearson stated that they do not believe SB 397 is good government. He urges the committee to vote against the bill.

Chris Deveny stated that LWVM oppose SB 397 (See EXHIBIT 2).

Brant Quick stated that they oppose SB 397 because it is unnecessary and redundant.

Virginia Jellison stated that they oppose SB 397 and are concerned about the administrative rule process.

Don Judge stated that there is a process where it allows the public to have access to the rules. SB 397 would not necessarily change the process by which public input is put into those rules, but it would say there is a new catch right at the end.

Questions From Committee Members: Rep. Hannah asked Sen. Meyer if he would tell him how the public is notified that in fact an administrative rule is going to put in place or changed? Sen. Meyer stated that there is notification that is put in to the newspaper and if they see it is usually put it in small print.

Rep. Hannah asked Sen. Meyer if it is always put in the newspaper, every newspaper statewide? Sen. Meyer stated that he knows it has to be printed in a newspaper, but he doesn't know how many.

Rep. Addy asked Sen. Meyer if the Governor were to order on page 2, line 12, to demand a repeal or adopt new rules, would they have to go through the same notice procedure again? Sen. Meyer stated that they will then file a rule notice of

intent action with the Secretary of State.

Rep. Addy asked that the language that the Governor's Office shall consider these things is a lot like what the administrative code does for the legislature? Sen. Meyer said that yes, it is similar.

Rep. Addy asked that if the Administrative Code Committee were to object they would be able to make recommendations and the agency could either accept or reject those recommendations? Sen. Meyer stated that if the administrative code committee made some recommendations the Governor would take that into consideration.

Rep. Addy stated that the Governor is not legally bound to do so.

Rep. Addy asked Sen. Meyer when it comes down to an agreement between the Administrative Code Committee and the Governor on what the rule should be, the Governor would win? Sen. Meyer said that he would think that is correct.

Rep. Addy asked then what we are doing with this procedure is determining whether Administrative rules are in accordance with legislative intent and not the Governor's intent? Sen. Meyer said that is correct.

Closing by Sponsor: Sen. Meyer stated that there has been some misconception on SB 397. They want to have very open meetings and will allow for the Governor to look at the rules and regulations that the department heads come up with.

HEARING ON SENATE BILL 396

Presentation and Opening Statement by Sponsor: Sen. Meyer stated SB 396 will allow the Governor to establish a commission that will take a look at the rules and regulations that are already in place. Some of these rules and regulations have been in existence since the administrative procedures act has been implemented. It is time we make some changes (See EXHIBIT 3).

Testifying Proponents and Who They Represent:

Gary Langley, Executive Director, Montana Mining Association
Jerry Jack, Executive Vice President, Montana Stockgrowers Association

Gene Phillips, Pacific Power and Light Company
Carol Mosher, Montana Cattle Women
Alec Hansen, Montana League of Cities and Towns
Sen. Tveit, District 11

Roger Tippy
Ben Havdahl, Montana Motorcarry Association

Proponent Testimony:

Gary Langley stated they support SB 396 for the reasons previously stated.

Jerry Jack stated that they also support SB 396. Page 2, lines 13 through 16 are crucial where there is some coordination in review to make sure there aren't any conflicting rules.

Gene Phillips stated they support SB 396 and suggest that it would be beneficial to have a review of the existing rules.

Carol Mosher stated they support SB 396.

Alec Hansen stated they support SB 396. They believe that someone that does not appear on the ballot should not have the authority to implement policies in affect change laws that are passed by the legislature. The review by the Governor is a good idea.

Sen. Tveit stated that it is time that the Governor appoints his directors, but it is also important that he overlooks and see how the rules are written through the administrative procedures act. It gives the authority to the agencies to write these rules and sometimes they go further than the intent of the law.

Roger Tippy offered amendments to SB 396 (SEE EXHIBITS 4 and 5).

Ben Havdahl stated they support SB 396.

Testifying Opponents and Who They Represent:

Eric Feaver, Montana Education Association
Claudette Morton, Executive Secretary, Montana Board of Public Education

Stan Bradshaw, Montana Council Trout Unlimited

Don Judge, Montana State AFL-CIO

Kim Wilson, Montana Chapter of Sierra Club

Chris Deveny, Montana League of Women Voters

C.B. Pearson, Executive Director, Common Cause of Montana

Virginia Jellison, Lobbyist Low Income Coalition

Brant Quick, Northern Plains Resource Council

Opponent Testimony:

Eric Feaver stated that they oppose SB 396. Governor's are either in charge of their executive agencies, or they are not. If people think that they will correct that situation of agencies doing something the Governor's don't want with these bills is beyond our comprehension.

Claudette Morton stated they oppose SB 396.

Stan Bradshaw stated they also oppose SB 396 and agrees with the previous testimony.

Don Judge stated that he agree with Eric Feaver's testimony. This removes the process one further step away from the citizens involvement. He opposes SB 396.

Kim Wilson stated that they have the same concerns as SB 397. Existing rules which have gone through an orderly and practical process that has included public input and the opinions of experts in each field are potentially going to be subverted by the language in this bill which allows a Governor to essentially do what he wishes in the form of rule making.

Chris Deveny stated they oppose SB 396 (SEE EXHIBIT 6).

C.B. Pearson stated they also oppose SB 396.

Virginia Jellison stated that the citizens provide valuable input into the process and they can also advise the administrative branch on the affect a proposed rule will have on the people being served.

Brant Quick stated they oppose SB 396.

Questions From Committee Members: Rep. Brown asked Sen. Meyer in the existing administrative procedures act, there is a biennial review of agencies where each agency is required to review its rules biennially to determine if any rules should be adopted or existing rules should be modified or repealed and that is suppose to be recommended back to the legislature. That is already on the statute, how is this going to change any more than what is already there and what the Governor can do? Sen. Meyer stated that he doesn't think this rule has ever been used.

Closing by Sponsor: Sen. Meyer stated that this is the first step in looking at the administrative rules and trying to clean them up. All the fears that were mentioned, there will be public input in this with a five member board to come back to the Governor and say we do need changes.

HEARING ON SENATE BILL 452

Presentation and Opening Statement by Sponsor: Sen. Gage opened the hearing on SB 452.

Testifying Proponents and Who They Represent:

Gordon Morris, Montana Association of Counties

Don Crabbe, Board of Crime Control

Mike Schaffer, Sheriff of Yellowstone County/Montana Sheriffs and Peace Officers Association

Alec Hansen, Montana League of Cities and Counties

John Connor, Department of Justice

Wally Jewell, Montana Magistrates Association

Proponent Testimony:

Gordon Morris stated that they support SB 452. He recommends that the committee pass SB 452 and then work with the counties in the coming interim to find a mechanism to fund county jails.

Don Crabbe stated they support SB 452.

Mike Schaffer stated they also support SB 452.

Alec Hansen stated they support SB 452. The most important feature of this bill is the authority that it includes to provide regional jail facilities.

John Connor stated they support SB 452.

Wally Jewell stated they also support SB 452.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

None.

Closing by Sponsor: Sen. Gage closed on SB 452.

DISPOSITION OF SB 452

Motion: Rep. Daily moved SB 452 BE CONCURRED IN, seconded by Rep. Eudaily.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: Motion for SB 452 BE CONCURRED IN CARRIED unanimously.

HEARING ON SENATE BILL 442

Presentation and Opening Statement by Sponsor:

Rep. Daily opened the hearing on SB 442 on behalf of Sen. Lynch.

Testifying Proponents and Who They Represent:

Judith Gedrose, Helena MDHES
Don Espelin, MD, Helena DHES

Proponent Testimony:

Judith Gedrose stated that she supports SB 442 (EXHIBIT 7).

Don Espelin, MD stated this is an important piece of legislation
so they can handle Tuberculosis patients easier.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Knapp asked Ms. Gedrose
how big of a problem is communicable tuberculosis? Ms.
Gedrose stated that there are 38 cases of communicable in
the State of Montana last year.

Closing by Sponsor: Rep. Daily closed the hearing on SB 442 on
behalf of Sen. Lynch.

DISPOSITION OF SB 442

Motion: Rep. Daily moved SB 442 BE CONCURRED IN, motion seconded
by Rep. Aafedt.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: The motion SB 442 BE CONCURRED IN
CARRIED unanimously.

HEARING ON HOUSE JOINT RESOLUTION 36

Presentation and Opening Statement by Sponsor:

Rep. Brown opened the hearing on HJR 36.

Testifying Proponents and Who They Represent:

None.

Proponent Testimony:

None.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: No questions were asked.

Closing by Sponsor: Rep. Brown closed the hearing on HJR 36.

DISPOSITION OF HOUSE JOINT RESOLUTION 36

Motion: Rep. Gould moved HJR 36 DO PASS, motion seconded by Rep. Strizich.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: The DO PASS recommendation CARRIED with a unanimous vote.

DISPOSITION OF SENATE BILL 54

Motion: Rep. Gould moved SB 54 BE CONCURRED IN, motion seconded by Rep. Daily.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Gould moved proposed amendments (EXHIBIT 8), motion seconded by Rep. Darko.

A vote was taken on the proposed amendments offered by Rep. Gould and CARRIED with all in favor.

Recommendation and Vote: Rep. Gould moved SB 54 BE CONCURRED IN AS AMENDED, motion was seconded by Rep. Darko.

Rep. Brown stated they can already file on the accounts, this is only slowing the procedure and making it easier to do.

Rep. Boharski stated in the statutes it says they may file the notices, but they aren't required to tell you before they go in and put a lien on your checking account or your property.

Rep. Knapp asked how this fits in with garnishment? John MacMaster stated that it fits in more with a civil proceeding that is used in civil cases where there is dispute between two private parties. For example you can garnish peoples wages for child support.

Rep. Gould asked if Rep. Hannah's motion prevails, can the

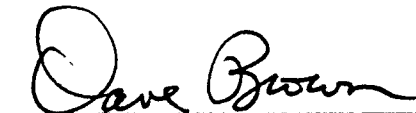
department of revenue inaugurate amnesty program without us passing a statute? John MacMaster stated that his guess is that you probably wouldn't be able to do it, however, if you talk to the department people they would say they do have the amnesty program because they don't have the people they need to collect back taxes that are due.

Rep. Hannah made a substitute motion to TABLE SB 54. Rep. Boharski seconded the motion. A vote was taken on the motion and CARRIED with Rep.'s Gould, Brown, Rice, and Strizich voting in opposition.

SB 54 recommended TABLED.

ADJOURNMENT

Adjournment At: 9:25 a.m.

A handwritten signature in cursive script that reads "Dave Brown".

REP. DAVE BROWN, Chairman

DB/je

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DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date March 22, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

12-17
10-1-89
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STANDING COMMITTEE REPORT

March 22, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
SENATE BILL 433 (third reading copy -- blue) be concurred in .

Signed: 
Dave Brown, Chairman

[REP. GOULD WILL CARRY THIS BILL ON THE HOUSE FLOOR]

STANDING COMMITTEE REPORT

March 22, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
SENATE BILL 452 (third reading copy -- blue) be concurred in .

Signed: 
Dave Brown, Chairman

[REP. WILL CARRY THIS BILL ON THE HOUSE FLOOR]

STANDING COMMITTEE REPORT

March 22, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
SENATE BILL 442 (third reading copy -- blue) be concurred in .

Signed: 
Dave Brown, Chairman

[REP. DAILY WILL CARRY THIS BILL ON THE HOUSE FLOOR]

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STANDING COMMITTEE REPORT

March 22, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that HOUSE
JOINT RESOLUTION 36 (first reading copy -- white) do pass .

Signed: _____
Dave Brown, Chairman

TESTIMONY IN SUPPORT OF SENATE BILL 397

INTRODUCTION

I stand in favor of Senate Bill 397. The bill allows the Governor of this state to review, amend, alter and modify proposed administrative rules under the executive branch of government. This legislation is an important milestone in returning accountability and direction to the morass of administrative rules and regulations that have stifled the promotion of business, industry and economic development in our state.

Day after day I have heard legislators, both Democrat and Republican identify one of the most important obstacles to further economic growth being burdensome, duplicative and confusing administrative rules and regulations from countless bureaus, commissions and boards in state and federal government. You and I have heard the sayings that the bureaucracy has no control and no accountability.

The legislature has attempted time and time again to find a way to make the administrative rule process more accountable, more public and provide a means for the people of Montana to know what is going on. THESE RULES ARE LAW. THESE LAWS ARE BEING PASSED AND IMPLEMENTED BY FACELESS INDIVIDUALS WHO DO NOT HAVE TO RESPOND TO THE PEOPLE OF THIS STATE. These rules create a burden on economic growth and development. Time and time again it has fallen short of the goal of further accountability.

This bill is fulfilling a promise Governor Stephens made to the people of Montana, and the people have given him a mandate -- that the chief executive will work toward streamlining, reviewing and making more public the rules and regulations that govern the people, businesses, farms, ranches, local governments of this state.

Ex. #1
SB 397
3-22-87

There are example after example of administrative rules that conflict and are duplicative. There are burdensome rules in health care that increase the cost of health care without sound public policy. There are administrative rules that require pesticide registration for farmers and at the same time the farmer to re-register with duplicative registration with the Department of Health and the Department of Agriculture. We are passing legislation daily that extends rule making authority to nameless technicrats with little or no control as to the effect this will have on the overall economy of our state. There are numerous rules that delay the start of businesses, that require compliance of one rule with the Department of Commerce, and another with the Department of Labor, and still another with the Department of Administration.

Who is to answer? Who is providing coordination and direction? The fourth branch of government, the bureaucracy, has taken considerable hold on our state. Our economy is suffering and it is time for a CHANGE. It is time to identify more accountability. It is time to return this accountability to the legislature and the Executive so as to restore the balance of government that our people of this state expect and deserve.

POWER OF CHIEF EXECUTIVE

The power of the governor is found in Articles III and VI of the Montana Constitution. The Governor is the sole executive by the words of the Constitution. This legislature declared a public policy in section 2-15-101, MCA, regarding the executive as follows:

"It is the public policy of this state and the purpose of this chapter to create a structure of the executive branch of state government which is responsive to the needs of the people of this

state and sufficiently flexible to meet changing conditions; to strengthen the executive capacity to administer effectively and efficiently at all levels; to encourage greater public participation in state government; to effect the grouping of state agencies into a reasonable number of departments primarily according to function; to provide the implementation of programs and policies is clearly fixed and ascertainable; and to eliminate overlapping and duplication of effort within the executive branch of state government."

This is a legislative declaration of public policy. It is law. It is precisely what Senate Bill 397 is attempting to provide; a process whereby the Governor will eliminate overlapping and duplication of regulations, to assess the financial impact on government and private business by proposed rules and to be responsive to the people of Montana.

WHAT THE BILL DOES NOT DO

The bill does not alter the Montana Administrative Procedures Act. There is still the requirement to go through the Montana Administrative Procedures Act. It, however, provides the vital link so that the Governor's Office can coordinate and oversee the multiple administrative rules that multiply like rice in boiling water.

The Montana Administrative Procedure's Act does not provide the mechanism to look at the bigger picture. It does not provide that added assurance that boards and commission rules are not considered in light of the fiscal impact on state government and the fiscal impact on the people of Montana. These rule makers are not elected. They are not

Ex. #1
JB 397
3-22-81

accountable. No one in this room today can state with assurance that the multiple rules are necessary, efficient and not duplicative and burdensome on our people.

The bill does not do away with the Legislative Administrative Council Committee. In fact it provides further focus for the committee's review when the Governor points toward troubling rules and regulations. When the legislature is not in session for two years, the interim committee can only begin to grasp and oversee the magnitude of the administrative rule process.

The testimony heard in this committee will speak about the explosion of rules that hamper our state. This legislature meeting every two years cannot begin to get a handle on this rampant rule making problem.

CHIEF EXECUTIVE HAS BEEN DELEGATED POLICY MAKING AUTHORITY

Our constitution and this legislature has further declared that policy making authority resides in the executive. This is nothing new. There is clear legislative history in codifying what the Governor intends to do here.

Section 2-15-103, MCA, states in part:

"In accordance with Article VI, Section 4, of the Montana Constitution, the governor is the chief executive officer of this state, the governor shall formulate and administer the policies of the executive branch of state government. In the execution of these policies, the governor has full powers of supervision, approval, direction, and appointment over all departments and their units, other

than the office of the lieutenant governor, secretary of state, attorney general, auditor and superintendent of public instruction, except as otherwise provided by law. Whenever a conflict arises as to the administration of the policies of the executive branch of government,...the governor shall resolve the conflict and the decision of the governor is final."

This bill codifies the powers of the governor to fulfill the requirements of law. It is a gigantic step towards allowing the elected head of this state to supervise, approve and direct the executive branch of government. It is expected of his office.

The bill clearly excludes any review by the Governor of the other elected officials of this state. This is previously contemplated by the constitution and state law. The bill excludes review of the rules proposed by the auditor, secretary of state, superintendent of public instruction, attorney general and the public service commission. Those elected people are responsible for the own rules because they are directly responsible to the people by a general election.

FISCAL IMPACT

There is no fiscal impact on the review of these rules. The Governor proposes to conduct the review with existing staff. He will become more involved in policy decision making, attempt to avoid duplication, provide coordination and a means for the state's news media and press to report on proposed rules and the controversy such rules may generate by the involvement of the Governor. This heightened awareness is another means

Ex. #1
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to restrain and return accountability over regulations that govern the people of this state.

The Governor wants to make certain that the administrative agencies comply with the Montana Administrative Procedures Act. This bill would require that the agencies, boards and commissions:

1. Comply with notice requirements;
2. Comply with the intent of the legislation;
3. Comply with authority granted by the legislature so as not to usurp the powers of the legislature;
4. Make certain that the rules are grammatically correct and understandable in simple English;
5. And review the financial impact of the rules on the taxpayers, industry, local government being regulated and assess its effect on promoting economic development.



LEAGUE OF WOMEN VOTERS OF MONTANA
Joy Bruck, President
1601 Illinois, Helena, Mt. 59601, 443-3772

SB 397: An act relating to review of proposed administrative rules; requiring review by the Office of the Governor;....

The League of Women Voters of Montana opposes SB 397. We have followed the Administrative Code Committee since its establishment and have found that the committee does a good job of reviewing the rules, making sure that they are within the bounds of legislative intent and are not in conflict. This is where we see review taking place.

We see the public hearings as another review step, allowing the public to have input into the rule making process, and question whether the Governor's review infringes on the open process that we have now.

The Governor, as head of the Executive Branch, has appointed the Department Heads, and it seems to us that their review plus the input of the Administrative Code Committee and the public should keep the rules within legislative intent

We believe that this is an unnecessary piece of legislation, and we ask that you oppose it.

Joy Bruck, 1601 Illinois, Helena, Mt. 59601, 443-3772

TESTIMONY IN SUPPORT OF SENATE BILL 396

I stand in support of Senate Bill 396, an act to allow the governor to establish a commission to review existing administrative rules and make recommendations to the governor who may in turn order that rule changes be made.

Presently in Montana there is no comprehensive rule review of the Montana Administrative Rules. These rules are collected in approximately twenty volumes. There are numerous instances of rules that no longer apply, rules that have been superceded by legislation either on the federal or state level. Because of no comprehensive method to clean our worthless, duplicative outdated rules many industries, businesses and local governments in Montana are frustrated and confused as to the application of the rules.

The commission will be no more than three members. These individuals would be selected to represent, business, industry, labor, local government and other interest. It would meet for six meetings and report to the governor as to the extent of the rule review and the methods by which the agency, boards or commissions should proceed in addressing this problem.

Here again, the Montana legislature meets every two years. This body does not have the time to provide that comprehensive review. Even though the legislature has the ability to overturn a rule by legislation it has seldom, if ever, done so. So we continue to allow the bureaucracy to ever expand regulations that burden Montana people.

Ex. #3

3-22-89

SB 396

This bill does not affect the workings of the Legislative Code Committee. The Code Committee may on its own call into question these rules. It does, however, provide another vehicle to allow the executive branch of government to streamline and update exactly what is required by the people of Montana.

Here again both Democrats and Republicans have said that the administrative branch of government is out of control. We need to develop a mechanism to allow a comprehensive review every few years to restore confidence in these rules.

There is no one in this committee who can state that our administrative rules are not duplicative, are not outdated and are not conflicting. But there is no one on this committee that can give any prompt and comprehensive solution to this dilemma.

As I testified in my support of Senate Bill 397, the Montana Constitution and state statutes give the executive the policy making authority over the executive branch of government. He is responsible for making certain that the executive branch, boards, bureaus and commissions are efficient and effective. He is responsible to the people of this state to make certain that he is doing everything he can to promote the general welfare of the state and coordinate the executive branch.

The bill requires the commission to:

1. consider the fiscal impact the rules have on state government, local government and private business;
2. coordinate the rules in various agencies so that a farmer or business person need not register with three separate departments on one product;

3. determine whether the rule is still necessary;
4. review the adequacy of the agency's rationale for the rule;
5. and, most importantly, whether that agency has the authority of this legislature to develop and implement the rule.

The other elected officials are not included in any review including the public service commission.

The fiscal impact is very slight with a budget of approximately \$4,500.

There is a termination date on this bill to allow the legislature to determine whether the commission was effective.

It is time to throw the window open on state government regulations and allow a breath of fresh air into this morass of endless regulation. I urge your support of Senate Bill 396.

Amend SB 396, third reading bill :

p. 3, line 6

Following: "governor,"

Insert ", and shall also submit a copy
of its recommendations to the
administrative code committee."

p. 3, line 7

Following: "SUBSECTION (5),"

Insert: "and following a hearing before
the administrative code committee"

ments apply with equal force to the states.

Because of this debate, the Uniform Commissioners incorporated optional provisions for gubernatorial and legislative review in the 1981 Model State Administrative Procedure Act.⁵¹ These provisions are intended to remedy the problems of unchecked agency activity while avoiding the defects of more rigorous and intrusive review systems.

EXHIBIT 5
3-22-89
396

II. NONJUDICIAL REVIEW UNDER THE 1981 MODEL ACT

The 1981 Model Act includes two optional methods for subjecting agency rulemaking to nonjudicial review. The first enables the governor to review and veto agency rules;⁵² the second provides for a special legis-

48. See, e.g., Bonfield, *supra* note 14, at 897; Bruff & Gellhorn, *supra* note 45, at 1414-17; McGowan, *supra* note 45, at 1147-48.

49. See, e.g., Bonfield, *supra* note 14, at 898; Bruff & Gellhorn, *supra* note 45, at 1425; Robinson, *The Federal Communications Commission: An Essay on Regulatory Watchdogs*, 64 VA. L. REV. 169, 210 n.95 (1978).

50. Adjudication is increasingly considered an inappropriate method for formulating important policies. See 1 K. DAVIS, *ADMINISTRATIVE LAW TREATISE* § 6:38 (2d ed. 1978). Davis believes that the current rulemaking procedure is superior to adjudication in six ways: (1) it provides systematic notification to interested persons; (2) notice and comment proceedings inform the agency of the views of persons unrepresented in an adjudication; (3) adjudication allows the creation of policy that affects unrepresented persons; (4) rulemaking allows the agency to consult all interested persons; (5) rulemaking is usually prospective; (6) the legislature may influence rulemaking but not adjudications. *Id.* at 625; see also Kahn, *The NLRB and Higher Education: The Failure of Policymaking Through Adjudication*, 21 U.C.L.A. L. REV. 63 (1973) (describing problems caused by case-by-case decision-making in the NLRB's application of National Labor Relations Act guidelines to universities and colleges).

51. Because it is a "model" act, all sections and provisions are optional. See 1981 MODEL ACT, *supra* note 5, prefatory note at 4 (each state should adopt only "as much of the act as is helpful in its particular circumstances"). Certain sections, provisions, and phrases are enclosed in brackets to denote that they are expressly optional. These include the gubernatorial and legislative review sections.

52. [SECTION 3-202. [Gubernatorial Review of Rules; Administrative Rules Counsel.]]

(a) To the extent the agency itself would have authority, the governor may rescind or suspend all or a severable portion of a rule of an agency. In exercising this authority, the governor shall act by an executive order that is subject to the requirements applicable to the adoption and effectiveness of a rule.

(b) The governor may summarily terminate any pending rule-making proceeding by an executive order to that effect, stating therein the reasons for the action. The executive order must be filed in the office of the [secretary of state], which shall promptly forward a certified copy to the agency and the [administrative rules editor]. An executive order terminating a rule-making proceeding becomes effective on [the date it is filed] and must be published in the next issue of the [administrative bulletin].

(c) Within the office of the governor, there shall be an [administrative rules counsel] to advise the governor in the execution of the authority vested under this Article. The [administrative rules counsel] shall be appointed by the governor and shall serve at the pleasure of the governor.]
1981 MODEL ACT, *supra* note 5, § 3-202 (brackets denote optional section or provision) (based on IOWA CODE § 17A.4(6) (Supp. 1981)).

53. [SECTION 3-203. [Administrative Rules Review Committee.]]

There is created the ["administrative rules review committee"] of the legislature. The committee shall be [bipartisan]; and shall be composed of [3] senators appointed by the [president of the senate] and [3] representatives appointed by the [speaker of the house]. A committee member shall be appointed within [30] days after the convening of a regular session. The term of office shall be for [2] years while a member of the legislature beginning on the date of appointment to the committee. However, while a member of the legislature, a member of the committee whose term has expired shall serve until a successor is appointed. A vacancy on the committee may be filled at any time by the original appointing authority for the remainder of the term. The committee shall choose a chairperson from its membership for a [2] year term and may employ such staff as it deems advisable.]

1981 MODEL ACT, *supra* note 5, § 3-203 (brackets denote optional section or provision) (based on IOWA CODE § 17A.8(1), (2), (8) (1978)).

54. SECTION 3-204. [Administrative Rules Review Committee Review of Rules.]

(a) The [administrative rules review committee] shall selectively review possible, proposed, or adopted rules, and prescribe appropriate committee procedures for that purpose. The committee may receive and investigate complaints from members of the public with respect to possible, proposed, or adopted rules, and hold public proceedings thereon.

(b) Committee meetings must be open to the public. Subject to procedures established by the committee, persons may present oral argument, data, or views at those meetings. The committee may require a representative of an agency whose possible, proposed, or adopted rule is under examination to attend a committee meeting and answer relevant questions. The committee may also communicate to the agency its comments on any possible or proposed rule, and require the agency to respond thereto in writing. Unless impracticable, in advance of each committee meeting notice of the time and place of the meeting and the specific subject matter to be discussed shall be given to the agency.

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LEAGUE OF WOMEN VOTERS OF MONTANA
Joy Bruck, President
1601 Illinois, Helena, Mt. 59601

SB 396: An act allowing the Governor to establish a commission to review existing administrative rules and make recommendations to the Governor, who may then order changes in the rules.

The League of Women Voters opposes SB 396. We have followed the Administrative Code Committee since its establishment and have found that the committee has done a good job of reviewing the rules, making sure they are not conflicting and that they are within the bounds of legislative intent. The Committee is equally divided...Senators, Representatives, Republicans, and Democrats. And, rules are reviewed by the public when public hearings are called. To appoint a commission to review what has already been reviewed by the Legislature and the public seems costly, adds an unneeded layer to the bureaucracy, and gives a great deal of authority to a group of unelected people.

The Governor, as head of the Executive Branch, has appointed the Department Heads, and it seems to us that if there is a question about the rules contained in the Administrative Rules of Montana, the Governor should be asking them to review those rules pertaining to their department. If they find some that are questionable, they should take the proper steps to correct it through the proper channels, not excluding the legislature or the public in the process.

And, we question the right of the governor to oversee the rules established by agencies under the jurisdiction of another elected official.

We believe that this is an unnecessary piece of legislation, and we ask that you oppose it.

Joy Bruck, 1601 Illinois, Helena, Mt. 59601, 443-3772.

March 22, 1989

EXHIBIT 7
DATE 3-22-89
SB 442

MONTANA DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
HOUSE JUDICIARY COMMITTEE
TESTIMONY FOR CHANGES PROPOSED IN MCA 50-17-106

TUBERCULOSIS CONTROL

Tuberculosis is a communicable disease and there are instances when persons need to be detained to prevent their spreading tuberculosis to the public. Provisions for such a detention have existed in the tuberculosis statute, Title 50, Chapter 17. Montana Department of Health and Environmental Sciences (MDHES) and local health departments have had some difficulty, however, in implementing this provision because of a step in the process. From the time of the summons for a person to appear for a hearing until the hearing can be held there must be a three-day waiting period. In the past couple of years, we have had approximately six instances per year where persons not complying with tuberculosis treatment have needed to be mandated to diagnosis and/or treatment. Several of them have been transients and have simply disappeared during that three-day waiting period. Although they have no identifiable Montana residence, we've come to learn that it's likely they will once again surface in Montana still having the untreated tuberculosis they had when they disappeared. Another concern in this issue is related to the person developing drug-resistance from sporadic treatment. Several of the cases to which I am referring are cases where drug resistance has formed. Tuberculosis treatment still requires a minimum of six months of uninterrupted therapy. If a person takes medication for one month, disappears for a month and continues a pattern such as that for any period of time, the organisms will soon become resistant to traditional tuberculosis treatment. There are several instances in the United States where people have developed organisms that are totally untreatable. It is our concern for these persons individually, but also for the public who then are at risk of contracting untreatable tuberculosis from persons who resist or sporadically take treatment.

Removal of the three-day waiting period in the hearing process to detain someone for tuberculosis diagnosis and treatment should ensure the public persons with communicable tuberculosis and/or drug resistant organisms are not free to spread tuberculosis in their community.

Amendments to Senate Bill No. 54
Third Reading Copy

Requested by Dept. Revenue, Sheriffs, and Bankers
For the Committee on the Judiciary

Prepared by John MacMaster
March 18, 1989

1. Page 2, lines 5 through 11.

Strike: "A sheriff" on line 5 through the end of line 11

Insert: "(a) A sheriff or agent shall return a levy to the department along with any funds collected and a status report within 90 days of the date of the levy.

(b) The levy may also be returned, on the request of the sheriff, by the person or entity upon whom it is levied. It must be returned within 90 days of the date of the levy, along with any confiscated funds and a status report on a form supplied by the department.

(c) Whether a levy is initially returned by the sheriff or the person or entity upon whom it is levied, the person or entity upon whom it is levied must remit additional funds collected under the levy every 30 days, along with a status report.

(d) If the person or entity upon whom a levy is served notifies the department within 30 days of the date of the levy that they have no relationship with the delinquent taxpayer, or if they have a relationship and inform the department upon termination of the relationship, the department must withdraw the levy."

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. SB 433

DATE MARCH 22, 1989

SPONSOR SEN. WILLIAMS

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. SB 397 1062DATE MARCH 22, 1989SPONSOR SEN. MEYER

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
<i>(Carole) Morton</i>	Board of Public Ed		X
<i>Ben Hardin</i>	MT. Motor Carriers Assn	X	
<i>Brant Quick</i>	NPRC		X
<i>Yama Langley</i>	MT. Mining Assn.	X	
<i>Stan Bradshaw</i>	Trout Unlimited		✓
<i>Don Hgets</i>	MT Chamber of Commerce	X	
<i>Janet Ellis</i>	Audubon Society		✓
<i>Jim Mockler</i>	MT. Coal Council	✓	
<i>Kim Wilson</i>	Sierra Club		✓
<i>Virginia Johnson</i>	MEIC		✓
<i>Jim Jensen</i>	MEIC		✓
<i>Don Judge</i>	MT STATE APK-CFO		X
<i>John Delano</i>	Helena	X	
<i>Carol Mesher</i>	MT. Cattle Women		
<i>Al Hington</i>	Helena MT	X	
<i>J LAHR</i>	MPC	X	
<i>GENE PHILLIPS</i>	PP&L	X	
<i>Jerry Kack</i>	MT Stockgrowers	✓	
<i>Eric Heaver</i>	WEA		✓
<i>Gray Holgerson</i>	Audubon		✓

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VISITORS' REGISTER

Judiciary

COMMITTEE

BILL NO.

SB 397 20/2

DATE _____

3/22/89

SPONSOR

Meyer

[illegible]

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VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. BB 396 1 of 2 DATE MARCH 22, 1989SPONSOR SEN. MEYER

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
<i>Claudette Morton</i>	Board of Public Ed.		X
<i>Ben Hardwell</i>	MT Motor Carriers Assn	X	
<i>Grant Quicks</i>	NPRC		X
<i>Mary A. Canale</i>	mt. Mining Assn.	X	
<i>Don Ingers</i>	MT Chamber of Commerce	X	
<i>Stan Bradshaw</i>	Town of Chiswick	X	✓
<i>Janet Ellis</i>	Audubon Society		✓
<i>Son Mackler</i>	MT. Coal Council	✓	
<i>Kim Wilson</i>	Sierra Club		+
<i>Virginia Jellison</i>	MEIC		X
<i>Jim Jensen</i>	MEIC		X
<i>Don Judge</i>	MT STATE AFL-CIO		X
<i>John Delano</i>	Helena	+	
<i>Carol Mosher</i>	Mt. Battle Women	X	
<i>Al Kingston</i>	Helena, Mont	X	
<i>LAHR</i>	MPC	X	
<i>Kerry Jack</i>	MT Stockgrowers	✓	
<i>GEORGE PHILLIPS</i>	PPSL	X	
<i>Eric Feaver</i>	MEA		X

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VISITORS' REGISTER

COMMITTEE

DATE 22 March 89

SPONSOR

[illegible]

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JUDICIARY

BILL NO. SB 452

DATE MARCH 22, 1989

SPONSOR SEN. GAGE

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VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. SB 442

DATE MARCH 22, 1989

SPONSOR SEN. LYNCH

[illegible]

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JUDICIARY

BILL NO. HJR 36

DATE MARCH 22, 1989

SPONSOR REP. DANE BROWN

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