

1 *House* BILL NO. *396*  
 2 INTRODUCED BY *Richard [unclear] [unclear]*  
 3 *[unclear]*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO IMPLEMENT ARTICLE  
 5 II, SECTION 3 OF THE 1972 CONSTITUTION BY PROVIDING  
 6 GUIDELINES FOR CITIZEN PARTICIPATION IN THE OPERATIONS OF  
 7 GOVERNMENT AGENCIES."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Legislative intent. The legislature finds  
 11 and declares pursuant to the mandate of Article II, section  
 12 3, of the 1972 Montana Constitution that legislative  
 13 guidelines should be established to secure to the people of  
 14 Montana their constitutional right to be afforded reasonable  
 15 opportunity to participate in the operation of governmental  
 16 agencies prior to the final decision of the agency.

17 Section 2. Definitions. As used in this act:

18 (1) "Agency" means any board, bureau, commission,  
 19 department, authority, or officer of the state or local  
 20 government authorized by law to make rules except:

- 21 (a) the legislature and any branch, committee, or  
 22 officer thereof;
- 23 (b) the judicial branches and any committee or officer  
 24 thereof;
- 25 (c) the governor, except that an agency is not exempt

1 because the governor has been designated as a member  
 2 thereof; or

3 (d) the state military establishment and agencies  
 4 concerned with civil defense and recovery from hostile  
 5 attack.

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

- 12 (a) statements concerning only the internal management  
 13 of an agency and not affecting private rights or procedures  
 14 available to the public;
- 15 (b) declaratory rulings as to the applicability of any  
 16 statutory provision or of any rule;
- 17 (c) intra-agency memoranda.

18 Section 3. Agency requirements. (1) Before an agency  
 19 makes a decision adopting a rule or policy, awarding a  
 20 contract, granting or denying a permit, license, except  
 21 where the issuance of such permits or licenses involves no  
 22 more than a ministerial act, change of rate or otherwise  
 23 deciding an issue of significant interest to the public, the  
 24 agency shall provide for, encourage, and assist public  
 25 participation to the fullest extent practicable which shall

1 include, but not be limited to:

2 (a) reasonable notice of its intended action;

3 (b) a method of affording interested persons  
4 reasonable opportunity to submit data, views or arguments,  
5 orally or in writing prior to the final decision of the  
6 agency.

7 (2) Each agency shall adopt guidelines for its  
8 programs, which guidelines shall provide policies and  
9 procedures to facilitate public participation in those  
10 programs, consistent with subsection (1) of this section.  
11 These guidelines shall be adopted as rules and published in  
12 a manner which may be provided to a member of the public  
13 upon request.

14 Section 4. Enforcement. No agency decision is valid  
15 or effective against any person or party whose rights have  
16 been prejudiced by an agency's failure to comply with this  
17 act. The district courts of the state have jurisdiction to  
18 set aside an agency decision under this act upon petition of  
19 the aggrieved party made within ninety (90) days of the date  
20 of the decision.

-End-

Approved by Committee  
on Judiciary

*House* BILL NO. *396*

INTRODUCED BY *Richard P. ...*

A BILL FOR AN ACT ENTITLED: "AN ACT TO IMPLEMENT ARTICLE II, SECTION 3 OF THE 1972 CONSTITUTION BY PROVIDING GUIDELINES FOR CITIZEN PARTICIPATION IN THE OPERATIONS OF GOVERNMENT AGENCIES."

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

Section 1. Legislative intent. The legislature finds and declares pursuant to the mandate of Article II, section 3, of the 1972 Montana Constitution that legislative guidelines should be established to secure to the people of Montana their constitutional right to be afforded reasonable opportunity to participate in the operation of governmental agencies prior to the final decision of the agency.

Section 2. Definitions. As used in this act:

(1) "Agency" means any board, bureau, commission, department, authority, or officer of the state or local government authorized by law to make rules except:

- (a) the legislature and any branch, committee, or officer thereof;
- (b) the judicial branches and any committee or officer thereof;
- (c) the governor, except that an agency is not exempt

1 because the governor has been designated as a member  
2 thereof; or

3 (d) the state military establishment and agencies  
4 concerned with civil defense and recovery from hostile  
5 attack.

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

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

15 (b) declaratory rulings as to the applicability of any  
16 statutory provision or of any rule;

17 (c) intra-agency memoranda.

18 Section 3. Agency requirements. (1) Before an agency  
19 makes a decision adopting a rule or policy, awarding a  
20 contract, granting or denying a permit, license, except  
21 where the issuance of such permits or licenses involves no  
22 more than a ministerial act, change of rate or otherwise  
23 deciding an issue of significant interest to the public, the  
24 agency shall provide for, encourage, and assist public  
25 participation to the fullest extent practicable which shall

1 include, but not be limited to:

2 (a) reasonable notice of its intended action;

3 (b) a method of affording interested persons  
4 reasonable opportunity to submit data, views or arguments,  
5 orally or in writing prior to the final decision of the  
6 agency.

7 (2) Each agency shall adopt guidelines for its  
8 programs, which guidelines shall provide policies and  
9 procedures to facilitate public participation in those  
10 programs, consistent with subsection (1) of this section.

11 These guidelines shall be adopted as rules and published in  
12 a manner which may be provided to a member of the public  
13 upon request.

14 Section 4. Enforcement. No agency decision is valid  
15 or effective against any person or party whose rights have  
16 been prejudiced by an agency's failure to comply with this  
17 act. The district courts of the state have jurisdiction to  
18 set aside an agency decision under this act upon petition of  
19 the aggrieved party made within ninety (90) days of the date  
20 of the decision.

-End-

1 *House* BILL NO. *396*  
 2 INTRODUCED BY *Nelson Hunsicker Duane Holmes*  
 3 *Richard Lynch Geraldley*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO IMPLEMENT ARTICLE  
 5 II, SECTION 8 OF THE 1972 CONSTITUTION BY PROVIDING  
 6 GUIDELINES FOR CITIZEN PARTICIPATION IN THE OPERATIONS OF  
 7 GOVERNMENT AGENCIES."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Legislative intent. The legislature finds  
 11 and declares pursuant to the mandate of Article II, section  
 12 8, of the 1972 Montana Constitution that legislative  
 13 guidelines should be established to secure to the people of  
 14 Montana their constitutional right to be afforded reasonable  
 15 opportunity to participate in the operation of governmental  
 16 agencies prior to the final decision of the agency.

17 Section 2. Definitions. As used in this act:

18 (1) "Agency" means any board, bureau, commission,  
 19 department, authority, or officer of the state or local  
 20 government authorized by law to make rules except:

- 21 (a) the legislature and any branch, committee, or
- 22 officer thereof;
- 23 (b) the judicial branches and any committee or officer
- 24 thereof;
- 25 (c) the governor, except that an agency is not exempt

1 because the governor has been designated as a member  
 2 thereof; or

3 (d) the state military establishment and agencies  
 4 concerned with civil defense and recovery from hostile  
 5 attack.

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

- 12 (a) statements concerning only the internal management
- 13 of an agency and not affecting private rights or procedures
- 14 available to the public;
- 15 (b) declaratory rulings as to the applicability of any
- 16 statutory provision or of any rule;
- 17 (c) intra-agency memoranda.

18 Section 3. Agency requirements. (1) Before an agency  
 19 makes a decision adopting a rule or policy, awarding a  
 20 contract, granting or denying a permit, license, except  
 21 where the issuance of such permits or licenses involves no  
 22 more than a ministerial act, change of rate or otherwise  
 23 deciding an issue of significant interest to the public, the  
 24 agency shall provide for, encourage, and assist public  
 25 participation to the fullest extent practicable which shall

1 include, but not be limited to:

2 (a) reasonable notice of its intended action;

3 (b) a method of affording interested persons  
4 reasonable opportunity to submit data, views or arguments,  
5 orally or in writing prior to the final decision of the  
6 agency.

7 (2) Each agency shall adopt guidelines for its  
8 programs, which guidelines shall provide policies and  
9 procedures to facilitate public participation in those  
10 programs, consistent with subsection (1) of this section.  
11 These guidelines shall be adopted as rules and published in  
12 a manner which may be provided to a member of the public  
13 upon request.

14 Section 4. Enforcement. No agency decision is valid  
15 or effective against any person or party whose rights have  
16 been prejudiced by an agency's failure to comply with this  
17 act. The district courts of the state have jurisdiction to  
18 set aside an agency decision under this act upon petition of  
19 the aggrieved party made within ninety (90) days of the date  
20 of the decision.

-End-

March 11, 1975

SENATE COMMITTEE ON JUDICIARY  
AMENDMENTS TO HOUSE BILL NO. 396

That House Bill No. 396, third reading, be amended as follows:

1. Amend page 2, section 3, line 18.  
Following: "(1)"  
Strike: "Before an"  
Insert: "Except where the issuance of a permit or license involves no more than a ministerial act, the"
2. Amend page 2, section 3, line 19.  
Following: line 18  
Strike: "makes"  
Insert: "before making"
3. Amend page 2, section 3, lines 20 through 21 and line 22.  
Following: "license,"  
Strike: "except where the issuance of such permits or licenses involves no more than a ministerial act,"
4. Amend page 2, section 3, line 23.  
Following: "public,"  
Strike: "the"
5. Amend page 2, section 3, line 24.  
Following: line 23  
Strike: "agency"

1 HOUSE BILL NO. 396  
 2 INTRODUCED BY MELOY, HUENNEKENS, DRISCOLL, HOLMES, RICHARDS,  
 3 LYNCH, YARDLEY  
 4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO IMPLEMENT ARTICLE  
 6 II, SECTION 8 OF THE 1972 CONSTITUTION BY PROVIDING  
 7 GUIDELINES FOR CITIZEN PARTICIPATION IN THE OPERATIONS OF  
 8 GOVERNMENT AGENCIES."

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. There is a new R.C.M. section numbered  
12 82-4226 that reads as follows:

13 82-4226. Legislative intent. The legislature finds  
14 and declares pursuant to the mandate of Article II, section  
15 8, of the 1972 Montana constitution that legislative  
16 guidelines should be established to secure to the people of  
17 Montana their constitutional right to be afforded reasonable  
18 opportunity to participate in the operation of governmental  
19 agencies prior to the final decision of the agency.

20 Section 2. There is a new R.C.M. section numbered  
21 82-4227 that reads as follows:

22 82-4227. Definitions. As used in this act:

23 (1) "Agency" means any board, bureau, commission,  
24 department, authority, or officer of the state or local  
25 government authorized by law to make rules except:

1 (a) the legislature and any branch, committee, or  
2 officer thereof;

3 (b) the judicial branches and any committee or officer  
4 thereof;

5 (c) the governor, except that an agency is not exempt  
6 because the governor has been designated as a member  
7 thereof; or

8 (d) the state military establishment and agencies  
9 concerned with civil defense and recovery from hostile  
10 attack.

11 (2) "Rule" means any agency regulation, standard, or  
12 statement of general applicability that implements,  
13 interprets, or prescribes law or policy or describes the  
14 organization, procedures, or practice requirements of any  
15 agency. The term includes the amendment or repeal of a  
16 prior rule, but does not include:

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

20 (b) declaratory rulings as to the applicability of any  
21 statutory provision or of any rule;

22 (c) intra-agency memoranda.

23 Section 3. There is a new R.C.M. section numbered  
24 82-4228 that reads as follows:

25 82-4228. Agency requirements. (1) Before--an EXCEPT



1 ~~WHERE THE ISSUANCE OF A PERMIT OR LICENSE INVOLVES NO MORE~~  
 2 ~~THAN A MINISTERIAL ACT, THE~~ agency makes BEFORE MAKING a  
 3 ~~decision adopting a rule or policy, awarding a contract,~~  
 4 ~~granting or denying a permit, license, except where the~~  
 5 ~~issuance of such permits or licenses involves no more than a~~  
 6 ~~ministerial act, change of rate or otherwise deciding an~~  
 7 ~~issue of significant interest to the public, the agency~~  
 8 ~~shall provide for, encourage, and assist public~~  
 9 ~~participation to the fullest extent practicable which shall~~  
 10 ~~include, but not be limited to:~~

- 11 (a) ~~reasonable notice of its intended action;~~
- 12 (b) ~~a method of affording interested persons~~  
 13 ~~reasonable opportunity to submit data, views or arguments,~~  
 14 ~~orally or in writing prior to the final decision of the~~  
 15 ~~agency. EACH AGENCY SHALL DEVELOP PROCEDURES FOR PERMITTING~~  
 16 AND ENCOURAGING THE PUBLIC TO PARTICIPATE IN AGENCY  
 17 DECISIONS THAT ARE OF SIGNIFICANT INTEREST TO THE PUBLIC.  
 18 THE PROCEDURES SHALL ASSURE ADEQUATE NOTICE AND ASSIST  
 19 PUBLIC PARTICIPATION BEFORE A FINAL DECISION IS MADE ON THE  
 20 ADOPTION OF A RULE OR POLICY, AWARDING A CONTRACT, GRANTING  
 21 OR DENYING A PERMIT, LICENSE OR CHANGE OF RATE THAT IS OF  
 22 SIGNIFICANT INTEREST TO THE PUBLIC.

23 (2) AN AGENCY SHALL BE DEEMED TO HAVE COMPLIED WITH  
 24 THE NOTICE PROVISIONS OF THIS ACT IF:

- 25 (A) AN ENVIRONMENTAL IMPACT STATEMENT IS PREPARED AND

1 DISTRIBUTED AS REQUIRED BY THE MONTANA ENVIRONMENTAL POLICY  
 2 ACT, TITLE 69, CHAPTER 65;

3 (B) A PROCEEDING IS HELD AS REQUIRED BY THE MONTANA  
 4 ADMINISTRATIVE PROCEDURE ACT, TITLE 82, CHAPTER 42;

5 (C) A PUBLIC HEARING, AFTER APPROPRIATE NOTICE IS  
 6 GIVEN, IS HELD PURSUANT TO ANY OTHER PROVISION OF STATE LAW  
 7 OR A LOCAL ORDINANCE OR RESOLUTION; OR

8 (D) A NEWSPAPER OF GENERAL CIRCULATION WITHIN THE AREA  
 9 TO BE AFFECTED BY A DECISION OF SIGNIFICANT INTEREST TO THE  
 10 PUBLIC HAS CARRIED A NEWS STORY OR ADVERTISEMENT CONCERNING  
 11 THE DECISION PRIOR TO A FINAL DECISION ON A MATTER.

12 (3) PROCEDURES FOR ASSISTING PUBLIC PARTICIPATION  
 13 SHALL INCLUDE A METHOD OF AFFORDING INTERESTED PERSONS  
 14 REASONABLE OPPORTUNITY TO SUBMIT DATA, VIEWS OR ARGUMENTS,  
 15 ORALLY OR IN WRITTEN FORM, PRIOR TO MAKING A FINAL DECISION  
 16 THAT IS OF SIGNIFICANT INTEREST TO THE PUBLIC.

17 (4) THE PROVISIONS OF THIS ACT DO NOT APPLY TO:

18 (A) AN AGENCY DECISION THAT MUST BE MADE TO DEAL WITH  
 19 AN EMERGENCY SITUATION AFFECTING THE PUBLIC HEALTH, WELFARE  
 20 OR SAFETY;

21 (B) AN AGENCY DECISION THAT MUST BE MADE TO MAINTAIN  
 22 OR PROTECT THE INTERESTS OF THE AGENCY, INCLUDING BUT NOT  
 23 LIMITED TO THE FILING OF A LAWSUIT IN A COURT OF LAW OR  
 24 BECOMING A PARTY TO AN ADMINISTRATIVE PROCEEDING; OR

25 (C) A DECISION INVOLVING NO MORE THAN A MINISTERIAL

1 ACT.

2 ~~(2)~~ (5) Each agency shall adopt guidelines for its  
3 programs, which guidelines shall provide policies and  
4 procedures to facilitate public participation in those  
5 programs, consistent with subsection (1) of this section.  
6 These guidelines shall be adopted as rules and published in  
7 a manner which may be provided to a member of the public  
8 upon request.

9 Section 4. There is a new R.C.M. section numbered  
10 82-4229 that reads as follows:

11 82-4229. Enforcement. ~~No-agency-decision-is-valid-or~~  
12 ~~effective-against-any-person-or-party-whose-rights-have-been~~  
13 ~~prejudiced-by-an-agency's-failure-to-comply-with--this--act.~~

14 The district courts of the state have jurisdiction to set  
15 aside an agency decision under this act upon petition of ~~the~~  
16 ~~aggrieved-party~~ ANY PERSON WHOSE RIGHTS HAVE BEEN PREJUDICED  
17 made within ~~ninety-(90)~~ THIRTY (30) days of the date of the  
18 decision.

-End-