

1 *Senate* BILL NO. 125
 2 INTRODUCED BY *Turnage Lynch* *Halliburton Deane*
 3 *Kolzig Flynn Graham Mcomber* *Rosell Dumble*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT CLASSIFYING RULES MADE *STONERS*
 5 UNDER THE ADMINISTRATIVE PROCEDURE ACT AS ADJECTIVE OR *SOVEREIGN*
 6 SUBSTANTIVE RULES; REQUIRING THE APPROVAL OF THE LEGISLATURE *LOOKIE*
 7 BEFORE SUBSTANTIVE RULES TAKE EFFECT; PROVIDING FOR THE *Holt*
 8 ADOPTION OF INTERIM EMERGENCY SUBSTANTIVE RULES; AMENDING *Brown*
 9 SECTIONS 82-4202, 82-4203.1, 82-4204, AND 82-4205, R.C.M. *E. Smith*
 10 1947."
 11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 13 Section 1. Legislative findings and purpose. The *Manning*
 14 legislature finds that the executive departments of the *CONGRESS*
 15 state have published their various existing rules and *Blaylock*
 16 regulations in the Montana Administrative Code and have thus *STUY*
 17 fulfilled one initial purpose of the rule-making provisions *NEHREN*
 18 of the Administrative Procedure Act. The legislature *Negley*
 19 further finds that rule-making proceedings conducted *Lee*
 20 henceforth will primarily involve either the implementation *Mathis*
 21 of new statutes or the application of older rule-making *Alton*
 22 authority to current problems and that, in either event, *McBride*
 23 such rule-making can be significantly legislative in *Albers*
 24 character. It is the purpose of this act to more fully *Reber*
 25 involve the legislature in reviewing rules proposed to be *Hind*
Mundy
Jergensen
Boyle

1 added to the Montana Administrative Code.
 2 Section 2. Section 82-4202, R.C.M. 1947, is amended to
 3 read as follows:
 4 "82-4202. Definitions. For purposes of this act:
 5 (1) "Agency" means any board, bureau, commission,
 6 department, authority or officer of the state government
 7 authorized by law to make rules and to determine contested
 8 cases, except that the provisions of this act shall not
 9 apply to the following:
 10 (a) the legislature and any branch, committee or
 11 officer thereof;
 12 (b) the judicial branches and any committee or officer
 13 thereof;
 14 (c) the governor, except that an agency otherwise
 15 covered by this act shall not be exempt because the governor
 16 has been designated as a member thereof;
 17 (d) the state military establishment and agencies
 18 concerned with civil defense and recovery from hostile
 19 attack;
 20 (e) the state board of pardons, except that said board
 21 shall be subject to the requirements of section ~~3-402-4203~~
 22 82-4203 and ~~5-402-4205~~ 82-4205 ~~of this act~~ and its rules
 23 shall be published in the Montana administrative code and
 24 register;
 25 (f) the supervision and administration of any penal,

SB/25

1 mental, medical or eleemosynary institution with regard to
 2 the admission, release, institutional supervision, custody,
 3 control, care or treatment of inmates, prisoners or
 4 patients;

5 (g) the administration and management of educational
 6 institutions;

7 (h) the financing, construction and maintenance of
 8 public works.

9 (2) "Rule" means each agency regulation, standard or
 10 statement of general applicability that implements,
 11 interprets, or prescribes law or policy, which shall be
 12 known as a substantive rule, or describes the organization,
 13 procedures, or practice requirements of an agency, which
 14 shall be known as an adjective rule. The term includes the
 15 amendment or repeal of a prior rule, but does not include:

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

19 (b) declaratory rulings issued pursuant to section ~~10~~
 20 ~~82-4210~~ 82-4218 of this act;

21 (c) intra-agency memoranda;

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

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

8 (f) rules relating to personnel standards, job
 9 classifications or salary ranges for agency employees;

10 (g) uniform rules adopted pursuant to interstate
 11 compact, except that such rules shall be filed in accordance
 12 with section 10 [82-4210] of this act and shall be published
 13 in the Montana administrative code and register.

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

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

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

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

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

9 Section 3. Section 82-4203.1, R.C.M. 1947, is amended
10 to read as follows:

11 "82-4203.1. Legislative review of rules. (1) The
12 secretary of state shall, on the date the legislature
13 convenes in regular session in 1974, transmit to both the
14 senate and house of representatives one (1) copy of all
15 rules in the Montana administrative code, not including
16 superseded or repealed rules.

17 (2) The secretary of state shall, on the date the
18 legislature convenes in each regular session after 1974,
19 transmit to both the senate and house of representatives one
20 (1) copy of all rules, which are in the Montana
21 administrative code, adopted or amended by agencies since
22 the convening of the previous regular session.

23 (3) The legislature may approve, by one or more joint
24 resolutions, the rules transmitted to it under subsection
25 (2) of this section.

1 ~~(3)--(4)~~ The legislature may, by joint resolution,
2 repeal any rule in the Montana administrative code. If a
3 rule is repealed, the legislature shall, in the joint
4 resolution, state its objections to the repealed rule. If an
5 agency adopts a new rule to replace the repealed rule, the
6 agency shall adopt the new rule in accordance with the
7 objections stated by the legislature in the joint
8 resolution. ~~if the legislature does not repeal a rule--filed~~
9 ~~with--it before the adjournment of that regular session, the~~
10 ~~rule remains valid.~~

11 ~~(4)--(5)~~ The legislature may also, by joint
12 resolution, direct a change to be made in any rule in the
13 Montana administrative code or direct the adoption of an
14 additional rule. If a change in any rule or the adoption of
15 an additional rule is directed to be made, the legislature
16 shall, in the joint resolution, state the nature of the
17 change or the additional rule to be made, and its reasons
18 therefor. The agency shall, in the manner provided in the
19 Montana Administrative Procedure Act, adopt a new rule in
20 accordance with the legislative direction.

21 ~~(5)--(6)~~ Rules All rules made by agencies, ~~and~~
22 including changes in rules directed by the legislature,
23 under subsection (4) or (5) of this section, shall conform
24 and be pursuant to statutory authority."

25 Section 4. Section 82-4204, R.C.M. 1947, is amended to

SB/25

1 read as follows:

2 "82-4204. Adoption--amendment or repeal of
3 rules--emergency rules. (1) Prior to the adoption,
4 amendment or repeal of any rule, the agency shall:

5 (a) Give written notice of its intended action. The
6 notice shall include a statement of either the terms or
7 substance of the intended action or a description of the
8 subjects and issues involved, and the time when, place
9 where, and manner in which interested persons may present
10 their views thereon. The notice shall be filed with the
11 secretary of state for publication in the Montana
12 administrative register as provided in section 6---(2)
13 ~~{82-4206--(2)}~~ 82-4206 (2) ~~of this act~~ and mailed to persons
14 who have made timely requests to the agency for advance
15 notice of its rule-making proceedings. The notice shall be
16 published and mailed at least twenty (20) days in advance of
17 the agency's intended action. If any statute shall provide
18 for a different method of publication, the affected agency
19 shall comply with the statute in addition to the
20 requirements contained herein. However, in no case shall the
21 notice period be less than twenty (20) days.

22 (b) Afford interested persons reasonable opportunity
23 to submit data, views or arguments, orally or in writing. In
24 the case of substantive rules, opportunity for oral hearing
25 shall be granted if requested by either ten per cent (10%)

1 or twenty-five (25) of the persons who will be directly
2 affected by the proposed rule, by a governmental subdivision
3 or agency or by an association having not less than
4 twenty-five (25) members who will be directly affected.
5 Contested case procedures need not be followed in hearings
6 held pursuant to this section. Where a hearing is otherwise
7 required by statute, nothing herein shall be deemed to alter
8 that requirement. The agency shall consider fully written
9 and oral submissions respecting the proposed rule. ~~Upon~~
10 ~~adoption-of-a-rule,~~

11 (c) Publish a notice in the administrative register of
12 its recommendation to the legislature with respect to the
13 proposed rule-making action, if the rule is substantive.
14 Following publication of this notice and prior to the
15 convening of the next regular session of the legislature, an
16 agency, if requested to do so by an interested person
17 either prior to adoption or within thirty (30) days
18 thereafter, shall issue a concise statement of the principal
19 reasons for and against its adoption, incorporating therein
20 its reasons for overruling the considerations urged against
21 its adoption;

22 (d) Secure legislative approval, if a substantive
23 rule, as provided under sections 82-4203.1 and 82-4205.

24 (2) If an agency finds that an imminent peril to the
25 public health, safety or welfare requires ~~adoption-of-a~~ an

1 adjective rule upon fewer than twenty (20) days' notice or a
 2 substantive rule upon fewer than twenty (20) days' notice
 3 and subsequent legislative approval and states in writing
 4 its reasons for that finding, it may proceed, without prior
 5 notice or hearing or upon any abbreviated notice and hearing
 6 that it finds practicable, to adopt an emergency rule. ~~The~~
 7 An adjective rule may be effective for a period not longer
 8 than one hundred and twenty (120) days, but the adoption of
 9 an identical rule under subsections (1) (a) and (1) (b) of
 10 this section is not precluded. An interim emergency
 11 substantive rule may be effective for a period of not longer
 12 than one hundred twenty (120) days before it must be adopted
 13 in conformance with subsection (1) of this section. The
 14 sufficiency of the reasons for a finding of imminent peril
 15 to the public health, safety or welfare shall be subject to
 16 judicial review.

17 (3) No rule adopted after the effective date of this
 18 act shall be valid unless adopted in substantial compliance
 19 with subsections (1) and (2) of this section.

20 (4) An agency may use informal conferences and
 21 consultations as a means of obtaining the viewpoints and
 22 advice of interested persons with respect to contemplated
 23 rule making. An agency may also appoint committees of
 24 experts or interested persons or representatives of the
 25 general public to advise it with respect to any contemplated

1 rule making. The powers of the committees shall be advisory
 2 only. Nothing herein shall relieve the agency from following
 3 rule-making procedures required by this act.

4 (5) Rules shall not unnecessarily repeat statutory
 5 language. Whenever it is necessary to refer to statutory
 6 language in order to convey the meaning of a rule
 7 interpreting the language, the reference shall clearly
 8 indicate that portion of the language which is statutory and
 9 the portion which is amplification of the language. Each
 10 rule shall include a citation of authority pursuant to which
 11 it, or any part thereof, is adopted.

12 (6) Each agency shall at least annually review its
 13 rules to determine if any new rule should be adopted or any
 14 existing rule should be modified or repealed."

15 Section 5. Section 82-4205, R.C.M. 1947, is amended to
 16 read as follows:

17 "82-4205. Filing of rules--effective date of rules.

18 (1) On or before the 60th day following the effective date
 19 of this act, each agency shall file with the secretary of
 20 state a certified copy of each rule adopted by it on or
 21 before the effective date of this act and remaining in
 22 effect. Any rule not so filed shall be deemed to have been
 23 abrogated by the agency and shall be void and of no effect.

24 (2) Each agency shall file with the secretary of state
 25 a certified copy of each rule adopted by it subsequent to

SB/LS

1 the effective date of this act. Each adjective rule shall
 2 become effective ten (10) days after publication in the
 3 Montana administrative register or code as provided in
 4 section ~~6-182-4206~~ 82-4206, ~~of this act~~, except that:

5 (a) If a later date is required by statute or
 6 specified in the rule, the later date shall be the effective
 7 date.

8 (b) Subject to applicable constitutional or statutory
 9 provisions, an emergency rule shall become effective
 10 immediately upon filing with the secretary of state, or at a
 11 stated date less than ten (10) days following publication in
 12 the Montana administrative code or register, if the agency
 13 finds that this effective date is necessary because of
 14 imminent peril to the public health, safety or welfare. The
 15 agency's finding and a brief statement of reasons therefor
 16 shall be filed with the rule. The agency shall take
 17 appropriate measures to make emergency rules known to every
 18 person who may be affected by them.

19 (3) Each substantive rule shall become effective upon
 20 approval by the legislature under section 82-4203.1,
 21 subsection (3), except that:

22 (a) An agency may adopt a substantive rule as an
 23 interim emergency rule when, after following the procedures
 24 in section 82-4204, the agency finds that the rule must be
 25 adopted because of imminent peril to the public health,

1 safety or welfare. The agency's finding and a brief
 2 statement of reasons therefor shall be filed with the rule
 3 and must be approved by the governor and then by the
 4 legislative council, by not less than two-thirds of the
 5 members of the council present and voting. An interim
 6 emergency substantive rule expires upon adjournment of the
 7 next succeeding legislative session unless that legislature
 8 approves the rule.

9 (b) If a later date is required by statute or by the
 10 resolution approving the rule, or is specified in the rule,
 11 the later date shall be the effective date.

12 ~~(3)~~ (4) The secretary of state may prescribe a
 13 format, style and arrangement for rules which are filed
 14 pursuant to this act and may refuse to accept the filing of
 15 any rule that is not in substantial compliance therewith. He
 16 shall keep and maintain a permanent register of all rules
 17 filed (including superseded and repealed rules), which shall
 18 be open to public inspection, and shall provide copies of
 19 any rule upon request of any person or agency. Unless
 20 otherwise provided by statute, the secretary of state may
 21 require the payment of the cost of providing such copies."

-End-

On motion, printed and
placed on Second Reading.

SENATE BILL NO. 125

INTRODUCED BY TURNAGE, LYNCH, HAZELBAKER, DRAKE, KOLSTAD,
FLYNN, GRAHAM, MCOMBER, ROSELL, DUNKLE, STEPHENS,
GOODOVER, ROSKIE, GALT, BROWN, E. SMITH, MANNING, CONOVER,
BLAYLOCK, STORY, MEHRENS, HEALY, LEE, MATHERS, OLSON,
MCCALLUM, ABER, NELSON, HIMSL, MANLEY, JERGESON, BOYLAN

A BILL FOR AN ACT ENTITLED: "AN ACT CLASSIFYING RULES MADE
UNDER THE ADMINISTRATIVE PROCEDURE ACT AS ADJECTIVE OR
SUBSTANTIVE RULES; REQUIRING THE APPROVAL OF THE LEGISLATURE
BEFORE SUBSTANTIVE RULES TAKE EFFECT; PROVIDING FOR THE
ADOPTION OF INTERIM EMERGENCY SUBSTANTIVE RULES; AMENDING
SECTIONS 82-4202, 82-4203.1, 82-4204, AND 82-4205, R.C.M.
1947."

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

Section 1. Legislative findings and purpose. The
legislature finds that the executive departments of the
state have published their various existing rules and
regulations in the Montana Administrative Code and have thus
fulfilled one initial purpose of the rule-making provisions
of the Administrative Procedure Act. The legislature
further finds that rule-making proceedings conducted
henceforth will primarily involve either the implementation
of new statutes or the application of older rule-making

authority to current problems and that, in either event,
such rule-making can be significantly legislative in
character. It is the purpose of this act to more fully
involve the legislature in reviewing rules proposed to be
added to the Montana Administrative Code.

Section 2. Section 82-4202, R.C.M. 1947, is amended to
read as follows:

"82-4202. Definitions. For purposes of this act:

(1) "Agency" means any board, bureau, commission,
department, authority or officer of the state government
authorized by law to make rules and to determine contested
cases, except that the provisions of this act shall not
apply to the following:

(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 otherwise
covered by this act shall not be exempt because the governor
has been designated as a member thereof;

(d) the state military establishment and agencies
concerned with civil defense and recovery from hostile
attack;

(e) the state board of pardons, except that said board
shall be subject to the requirements of section ~~3-4203~~

1 ~~82-4203~~ and ~~5-(82-4205)~~ 82-4205 of this act and its rules
 2 shall be published in the Montana administrative code and
 3 register;

4 (f) the supervision and administration of any penal,
 5 mental, medical or eleemosynary institution with regard to
 6 the admission, release, institutional supervision, custody,
 7 control, care or treatment of inmates, prisoners or
 8 patients;

9 (g) the administration and management of educational
 10 institutions;

11 (h) the financing, construction and maintenance of
 12 public works.

13 (2) "Rule" means each agency regulation, standard or
 14 statement of general applicability that implements,
 15 interprets, or prescribes law or policy, which shall be
 16 known as a substantive rule, or describes the organization,
 17 procedures, or practice requirements of an agency, which
 18 shall be known as an adjective rule. The term includes the
 19 amendment or repeal of a prior rule, but does not include:

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

23 (b) declaratory rulings issued pursuant to section ~~18~~
 24 ~~(62-4218)~~ 82-4218 of this act;

25 (c) intra-agency memoranda;

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

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

12 (f) rules relating to personnel standards, job
 13 classifications or salary ranges for agency employees;

14 (g) uniform rules adopted pursuant to interstate
 15 compact, except that such rules shall be filed in accordance
 16 with section 10 [82-4210] of this act and shall be published
 17 in the Montana administrative code and register.

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

23 (4) "License" includes the whole or part of any agency
 24 permit, certificate, approval, registration, charter or
 25 other form of permission required by law, but does not

1 include a license required solely for revenue purposes.

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

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

10 (7) "Person" means any individual, partnership,
11 corporation, association, governmental subdivision or public
12 organization of any character other than an agency.

13 Section 3. Section 82-4203.1, R.C.M. 1947, is amended
14 to read as follows:

15 "82-4203.1. Legislative review of rules. (1) The
16 secretary of state shall, on the date the legislature
17 convenes in regular session in 1974, transmit to both the
18 senate and house of representatives one (1) copy of all
19 rules in the Montana administrative code, not including
20 superseded or repealed rules.

21 (2) The secretary of state shall, on the date the
22 legislature convenes in each regular session after 1974,
23 transmit to both the senate and house of representatives one
24 (1) copy of all rules, which are in the Montana
25 administrative code, adopted or amended by agencies since

1 the convening of the previous regular session.

2 (3) The legislature may approve, by one or more joint
3 resolutions, the rules transmitted to it under subsection
4 (2) of this section.

5 ~~(3)~~--(4) The legislature may, by joint resolution,
6 repeal any rule in the Montana administrative code. If a
7 rule is repealed, the legislature shall, in the joint
8 resolution, state its objections to the repealed rule. If an
9 agency adopts a new rule to replace the repealed rule, the
10 agency shall adopt the new rule in accordance with the
11 objections stated by the legislature in the joint
12 resolution. ~~If the legislature does not repeal a rule--filed~~
13 ~~with--it--before--the--adjournment--of--that--regular--session--the~~
14 ~~rule--remains--valid.~~

15 ~~(4)~~--(5) The legislature may also, by joint
16 resolution, direct a change to be made in any rule in the
17 Montana administrative code or direct the adoption of an
18 additional rule. If a change in any rule or the adoption of
19 an additional rule is directed to be made, the legislature
20 shall, in the joint resolution, state the nature of the
21 change or the additional rule to be made, and its reasons
22 therefor. The agency shall, in the manner provided in the
23 Montana Administrative Procedure Act, adopt a new rule in
24 accordance with the legislative direction.

25 ~~(5)~~--(6) Rules All rules made by agencies, and

1 including changes in rules directed by the legislature,
 2 under subsection (4) or (5) of this section, shall conform
 3 and be pursuant to statutory authority."

4 Section 4. Section 82-4204, R.C.M. 1947, is amended to
 5 read as follows:

6 "82-4204. Adoption--amendment or repeal of
 7 rules--emergency rules. (1) Prior to the adoption,
 8 amendment or repeal of any rule, the agency shall:

9 (a) Give written notice of its intended action. The
 10 notice shall include a statement of either the terms or
 11 substance of the intended action or a description of the
 12 subjects and issues involved, and the time when, place
 13 where, and manner in which interested persons may present
 14 their views thereon. The notice shall be filed with the
 15 secretary of state for publication in the Montana
 16 administrative register as provided in section ~~6--(2)~~
 17 ~~{82-4206--(2)}~~ 82-4206 (2) ~~of this act~~ and mailed to persons
 18 who have made timely requests to the agency for advance
 19 notice of its rule-making proceedings. The notice shall be
 20 published and mailed at least twenty (20) days in advance of
 21 the agency's intended action. If any statute shall provide
 22 for a different method of publication, the affected agency
 23 shall comply with the statute in addition to the
 24 requirements contained herein. However, in no case shall the
 25 notice period be less than twenty (20) days.

1 (b) Afford interested persons reasonable opportunity
 2 to submit data, views or arguments, orally or in writing. In
 3 the case of substantive rules, opportunity for oral hearing
 4 shall be granted if requested by either ten per cent (10%)
 5 or twenty-five (25) of the persons who will be directly
 6 affected by the proposed rule, by a governmental subdivision
 7 or agency or by an association having not less than
 8 twenty-five (25) members who will be directly affected.
 9 Contested case procedures need not be followed in hearings
 10 held pursuant to this section. Where a hearing is otherwise
 11 required by statute, nothing herein shall be deemed to alter
 12 that requirement. The agency shall consider fully written
 13 and oral submissions respecting the proposed rule. ~~then~~
 14 ~~adoption-of-a-rule.~~

15 (c) Publish a notice in the administrative register of
 16 its recommendation to the legislature with respect to the
 17 proposed rule-making action, if the rule is substantive.
 18 Following publication of this notice and prior to the
 19 convening of the next regular session of the legislature, an
 20 agency, if ~~if~~ requested to do so by an interested person
 21 either prior to adoption or within thirty (30) days
 22 thereafter, shall issue a concise statement of the principal
 23 reasons for and against its adoption, incorporating therein
 24 its reasons for overruling the considerations urged against
 25 its adoption;

1 (d) Secure legislative approval, if a substantive
 2 rule, as provided under sections 82-4203.1 and 82-4205.

3 (2) If an agency finds that an imminent peril to the
 4 public health, safety or welfare requires ~~adoption of~~ an
 5 adjective rule upon fewer than twenty (20) days' notice or a
 6 substantive rule upon fewer than twenty (20) days' notice
 7 and subsequent legislative approval and states in writing
 8 its reasons for that finding, it may proceed, without prior
 9 notice or hearing or upon any abbreviated notice and hearing
 10 that it finds practicable, to adopt an emergency rule. ~~The~~
 11 An adjective rule may be effective for a period not longer
 12 than one hundred and twenty (120) days, but the adoption of
 13 an identical rule under subsections (1) (a) and (1) (b) of
 14 this section is not precluded. An interim emergency
 15 substantive rule may be effective for a period of not longer
 16 than one hundred twenty (120) days before it must be adopted
 17 in conformance with subsection (1) of this section. The
 18 sufficiency of the reasons for a finding of imminent peril
 19 to the public health, safety or welfare shall be subject to
 20 judicial review.

21 (3) No rule adopted after the effective date of this
 22 act shall be valid unless adopted in substantial compliance
 23 with subsections (1) and (2) of this section.

24 (4) An agency may use informal conferences and
 25 consultations as a means of obtaining the viewpoints and

1 advice of interested persons with respect to contemplated
 2 rule making. An agency may also appoint committees of
 3 experts or interested persons or representatives of the
 4 general public to advise it with respect to any contemplated
 5 rule making. The powers of the committees shall be advisory
 6 only. Nothing herein shall relieve the agency from following
 7 rule-making procedures required by this act.

8 (5) Rules shall not unnecessarily repeat statutory
 9 language. Whenever it is necessary to refer to statutory
 10 language in order to convey the meaning of a rule
 11 interpreting the language, the reference shall clearly
 12 indicate that portion of the language which is statutory and
 13 the portion which is amplification of the language. Each
 14 rule shall include a citation of authority pursuant to which
 15 it, or any part thereof, is adopted.

16 (6) Each agency shall at least annually review its
 17 rules to determine if any new rule should be adopted or any
 18 existing rule should be modified or repealed."

19 Section 5. Section 82-4205, R.C.M. 1947, is amended to
 20 read as follows:

21 "82-4205. Filing of rules--effective date of rules.
 22 (1) On or before the 60th day following the effective date
 23 of this act, each agency shall file with the secretary of
 24 state a certified copy of each rule adopted by it on or
 25 before the effective date of this act and remaining in

1 effect. Any rule not so filed shall be deemed to have been
2 abrogated by the agency and shall be void and of no effect.

3 (2) Each agency shall file with the secretary of state
4 a certified copy of each rule adopted by it subsequent to
5 the effective date of this act. Each adjective rule shall
6 become effective ten (10) days after publication in the
7 Montana administrative register or code as provided in
8 section ~~6-(82-4206)~~ 82-4206, ~~of this act~~ except that:

9 (a) If a later date is required by statute or
10 specified in the rule, the later date shall be the effective
11 date.

12 (b) Subject to applicable constitutional or statutory
13 provisions, an emergency rule shall become effective
14 immediately upon filing with the secretary of state, or at a
15 stated date less than ten (10) days following publication in
16 the Montana administrative code or register, if the agency
17 finds that this effective date is necessary because of
18 imminent peril to the public health, safety or welfare. The
19 agency's finding and a brief statement of reasons therefor
20 shall be filed with the rule. The agency shall take
21 appropriate measures to make emergency rules known to every
22 person who may be affected by them.

23 (3) Each substantive rule shall become effective upon
24 approval by the legislature under section 82-4203.1,
25 subsection (3), except that:

1 (a) An agency may adopt a substantive rule as an
2 interim emergency rule when, after following the procedures
3 in section 82-4204, the agency finds that the rule must be
4 adopted because of imminent peril to the public health,
5 safety or welfare. The agency's finding and a brief
6 statement of reasons therefor shall be filed with the rule
7 and must be approved by the governor and then by the
8 legislative council, by not less than two-thirds of the
9 members of the council present and voting. An interim
10 emergency substantive rule expires upon adjournment of the
11 next succeeding legislative session unless that legislature
12 approves the rule.

13 (b) If a later date is required by statute or by the
14 resolution approving the rule, or is specified in the rule,
15 the later date shall be the effective date.

16 ~~(3)~~ (4) The secretary of state may prescribe a
17 format, style and arrangement for rules which are filed
18 pursuant to this act and may refuse to accept the filing of
19 any rule that is not in substantial compliance therewith. He
20 shall keep and maintain a permanent register of all rules
21 filed (including superseded and repealed rules), which shall
22 be open to public inspection, and shall provide copies of
23 any rule upon request of any person or agency. Unless
24 otherwise provided by statute, the secretary of state may
25 require the payment of the cost of providing such copies."

SENATE BILL NO. 125

INTRODUCED BY TURNAGE, LYNCH, HAZELBAKER, DRAKE, KOLSTAD,
 FLYNN, GRAHAM, MCOMBER, ROSELL, DUNKLE, STEPHENS,
 GOODOVER, ROSKIE, GALT, BROWN, E. SMITH, MANNING, CONOVER,
 BLAYLOCK, STORY, MEHRENS, HEALY, LEE, MATHERS, OLSON,
 MCCALLUM, ABER, NELSON, HIMSL, MANLEY, JERGESON, BOYLAN

A BILL FOR AN ACT ENTITLED: "AN ACT CLASSIFYING RULES MADE
 UNDER THE ADMINISTRATIVE PROCEDURE ACT AS ADJECTIVE OR
 SUBSTANTIVE RULES; REQUIRING THE APPROVAL OF THE LEGISLATURE
 BEFORE SUBSTANTIVE RULES TAKE EFFECT; PROVIDING FOR THE
 ADOPTION OF INTERIM EMERGENCY SUBSTANTIVE RULES; AMENDING
 SECTIONS 82-4202, 82-4203.1, 82-4204, AND 82-4205, R.C.M.
 1947."

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

Section 1. Legislative findings and purpose. The
 legislature finds that the executive departments of the
 state have published their various existing rules and
 regulations in the Montana Administrative Code and have thus
 fulfilled one initial purpose of the rule-making provisions
 of the Administrative Procedure Act. The legislature
 further finds that rule-making proceedings conducted
 henceforth will primarily involve either the implementation
 of new statutes or the application of older rule-making

authority to current problems and that, in either event,
 such rule-making can be significantly legislative in
 character. It is the purpose of this act to more fully
 involve the legislature in reviewing rules proposed to be
 added to the Montana Administrative Code.

Section 2. Section 82-4202, R.C.M. 1947, is amended to
 read as follows:

"82-4202. Definitions. For purposes of this act:

(1) "Agency" means any board, bureau, commission,
 department, authority or officer of the state government
 authorized by law to make rules and to determine contested
 cases, except that the provisions of this act shall not
 apply to the following:

(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 otherwise
 covered by this act shall not be exempt because the governor
 has been designated as a member thereof;

(d) the state military establishment and agencies
 concerned with civil defense and recovery from hostile
 attack;

(e) the state board of pardons, except that said board
 shall be subject to the requirements of section ~~3-4203~~

THIRD READING

1 ~~82-4203 and 5-482-4205~~ 82-4205 of this act and its rules
2 shall be published in the Montana administrative code and
3 register;

4 (f) the supervision and administration of any penal,
5 mental, medical or eleemosynary institution with regard to
6 the admission, release, institutional supervision, custody,
7 control, care or treatment of inmates, prisoners or
8 patients;

9 (g) the administration and management of educational
10 institutions;

11 (h) the financing, construction and maintenance of
12 public works.

13 (2) "Rule" means each agency regulation, standard or
14 statement of general applicability that implements,
15 interprets, or prescribes law or policy, which shall be
16 known as a substantive rule, or describes the organization,
17 procedures, or practice requirements of an agency, which
18 shall be known as an adjective rule. The term includes the
19 amendment or repeal of a prior rule, but does not include:

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

23 (b) declaratory rulings issued pursuant to section ~~16~~
24 ~~42-4210~~ 82-4218 of this act;

25 (c) intra-agency memoranda;

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

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

12 (f) rules relating to personnel standards, job
13 classifications or salary ranges for agency employees;

14 (g) uniform rules adopted pursuant to interstate
15 compact, except that such rules shall be filed in accordance
16 with section 10 [82-4210] of this act and shall be published
17 in the Montana administrative code and register.

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

23 (4) "License" includes the whole or part of any agency
24 permit, certificate, approval, registration, charter or
25 other form of permission required by law, but does not

1 include a license required solely for revenue purposes.

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

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

10 (7) "Person" means any individual, partnership,
11 corporation, association, governmental subdivision or public
12 organization of any character other than an agency.

13 Section 3. Section 82-4203.1, R.C.M. 1947, is amended
14 to read as follows:

15 "82-4203.1. Legislative review of rules. (1) The
16 secretary of state shall, on the date the legislature
17 convenes in regular session in 1974, transmit to both the
18 senate and house of representatives one (1) copy of all
19 rules in the Montana administrative code, not including
20 superseded or repealed rules.

21 (2) The secretary of state shall, on the date the
22 legislature convenes in each regular session after 1974,
23 transmit to both the senate and house of representatives one
24 (1) copy of all rules, which are in the Montana
25 administrative code, adopted or amended by agencies since

1 the convening of the previous regular session.

2 (3) The legislature may approve, by one or more joint
3 resolutions, the rules transmitted to it under subsection
4 (2) of this section.

5 ~~(3)--(4)~~ (4) The legislature may, by joint resolution,
6 repeal any rule in the Montana administrative code. If a
7 rule is repealed, the legislature shall, in the joint
8 resolution, state its objections to the repealed rule. If an
9 agency adopts a new rule to replace the repealed rule, the
10 agency shall adopt the new rule in accordance with the
11 objections stated by the legislature in the joint
12 resolution. ~~If the legislature does not repeal a rule--filed~~
13 ~~with--it before the adjournment of that regular session--the~~
14 ~~rule remains valid,~~

15 ~~(4)--(5)~~ (5) The legislature may also, by joint
16 resolution, direct a change to be made in any rule in the
17 Montana administrative code or direct the adoption of an
18 additional rule. If a change in any rule or the adoption of
19 an additional rule is directed to be made, the legislature
20 shall, in the joint resolution, state the nature of the
21 change or the additional rule to be made, and its reasons
22 therefor. The agency shall, in the manner provided in the
23 Montana Administrative Procedure Act, adopt a new rule in
24 accordance with the legislative direction.

25 ~~(5)--(6)~~ (6) Rules All rules made by agencies, and

1 including changes in rules directed by the legislature,
2 under subsection (4) or (5) of this section, shall conform
3 and be pursuant to statutory authority."

4 Section 4. Section 82-4204, R.C.M. 1947, is amended to
5 read as follows:

6 "82-4204. Adoption--amendment or repeal of
7 rules--emergency rules. (1) Prior to the adoption,
8 amendment or repeal of any rule, the agency shall:

9 (a) Give written notice of its intended action. The
10 notice shall include a statement of either the terms or
11 substance of the intended action or a description of the
12 subjects and issues involved, and the time when, place
13 where, and manner in which interested persons may present
14 their views thereon. The notice shall be filed with the
15 secretary of state for publication in the Montana
16 administrative register as provided in section 6---(2)
17 ~~{82-4206--(2)}~~ 82-4206 (2) ~~of this act~~ and mailed to persons
18 who have made timely requests to the agency for advance
19 notice of its rule-making proceedings. The notice shall be
20 published and mailed at least twenty (20) days in advance of
21 the agency's intended action. If any statute shall provide
22 for a different method of publication, the affected agency
23 shall comply with the statute in addition to the
24 requirements contained herein. However, in no case shall the
25 notice period be less than twenty (20) days.

1 (b) Afford interested persons reasonable opportunity
2 to submit data, views or arguments, orally or in writing. In
3 the case of substantive rules, opportunity for oral hearing
4 shall be granted if requested by either ten per cent (10%)
5 or twenty-five (25) of the persons who will be directly
6 affected by the proposed rule, by a governmental subdivision
7 or agency or by an association having not less than
8 twenty-five (25) members who will be directly affected.
9 Contested case procedures need not be followed in hearings
10 held pursuant to this section. Where a hearing is otherwise
11 required by statute, nothing herein shall be deemed to alter
12 that requirement. The agency shall consider fully written
13 and oral submissions respecting the proposed rule. ~~Upon~~
14 ~~adoption-of-a-rule,~~

15 (c) Publish a notice in the administrative register of
16 its recommendation to the legislature with respect to the
17 proposed rule-making action, if the rule is substantive.
18 Following publication of this notice and prior to the
19 convening of the next regular session of the legislature, an
20 agency, if it requested to do so by an interested person
21 either prior to adoption or within thirty (30) days
22 thereafter, shall issue a concise statement of the principal
23 reasons for and against its adoption, incorporating therein
24 its reasons for overruling the considerations urged against
25 its adoption;

1 (d) Secure legislative approval, if a substantive
 2 rule, as provided under sections 82-4203.1 and 82-4205.

3 (2) If an agency finds that an imminent peril to the
 4 public health, safety or welfare requires ~~adoption-of-a~~ an
 5 adjective rule upon fewer than twenty (20) days' notice or a
 6 substantive rule upon fewer than twenty (20) days' notice
 7 and subsequent legislative approval and states in writing
 8 its reasons for that finding, it may proceed, without prior
 9 notice or hearing or upon any abbreviated notice and hearing
 10 that it finds practicable, to adopt an emergency rule. ~~The~~
 11 An adjective rule may be effective for a period not longer
 12 than one hundred and twenty (120) days, but the adoption of
 13 an identical rule under subsections (1) (a) and (1) (b) of
 14 this section is not precluded. An interim emergency
 15 substantive rule may be effective for a period of-not-longer
 16 than-one-hundred-twenty-(120)-days before it must be adopted
 17 in conformance with subsection (1) of this section. The
 18 sufficiency of the reasons for a finding of imminent peril
 19 to the public health, safety or welfare shall be subject to
 20 judicial review.

21 (3) No rule adopted after the effective date of this
 22 act shall be valid unless adopted in substantial compliance
 23 with subsections (1) and (2) of this section.

24 (4) An agency may use informal conferences and
 25 consultations as a means of obtaining the viewpoints and

1 advice of interested persons with respect to contemplated
 2 rule making. An agency may also appoint committees of
 3 experts or interested persons or representatives of the
 4 general public to advise it with respect to any contemplated
 5 rule making. The powers of the committees shall be advisory
 6 only. Nothing herein shall relieve the agency from following
 7 rule-making procedures required by this act.

8 (5) Rules shall not unnecessarily repeat statutory
 9 language. Whenever it is necessary to refer to statutory
 10 language in order to convey the meaning of a rule
 11 interpreting the language, the reference shall clearly
 12 indicate that portion of the language which is statutory and
 13 the portion which is amplification of the language. Each
 14 rule shall include a citation of authority pursuant to which
 15 it, or any part thereof, is adopted.

16 (6) Each agency shall at least annually review its
 17 rules to determine if any new rule should be adopted or any
 18 existing rule should be modified or repealed."

19 Section 5. Section 82-4205, R.C.M. 1947, is amended to
 20 read as follows:

21 "82-4205. Filing of rules--effective date of rules.
 22 (1) On or before the 60th day following the effective date
 23 of this act, each agency shall file with the secretary of
 24 state a certified copy of each rule adopted by it on or
 25 before the effective date of this act and remaining in

1 effect. Any rule not so filed shall be deemed to have been
2 abrogated by the agency and shall be void and of no effect.

3 (2) Each agency shall file with the secretary of state
4 a certified copy of each rule adopted by it subsequent to
5 the effective date of this act. Each adjective rule shall
6 become effective ten (10) days after publication in the
7 Montana administrative register or code as provided in
8 section ~~6-4206~~ 82-4206, ~~of this act~~, except that:

9 (a) If a later date is required by statute or
10 specified in the rule, the later date shall be the effective
11 date.

12 (b) Subject to applicable constitutional or statutory
13 provisions, an emergency rule shall become effective
14 immediately upon filing with the secretary of state, or at a
15 stated date less than ten (10) days following publication in
16 the Montana administrative code or register, if the agency
17 finds that this effective date is necessary because of
18 imminent peril to the public health, safety or welfare. The
19 agency's finding and a brief statement of reasons therefor
20 shall be filed with the rule. The agency shall take
21 appropriate measures to make emergency rules known to every
22 person who may be affected by them.

23 (3) Each substantive rule shall become effective upon
24 approval by the legislature under section 82-4203.1,
25 subsection (3), except that:

1 (a) An agency may adopt a substantive rule as an
2 interim emergency rule when, after following the procedures
3 in section 82-4204, the agency finds that the rule must be
4 adopted because of imminent peril to the public health,
5 safety or welfare. The agency's finding and a brief
6 statement of reasons therefor shall be filed with the rule
7 and must be approved by the governor and then by the
8 legislative council by not less than two-thirds of the
9 members of the council present and voting. An interim
10 emergency substantive rule expires upon adjournment of the
11 next succeeding legislative session unless that legislature
12 approves the rule.

13 (b) If a later date is required by statute or by the
14 resolution approving the rule, or is specified in the rule,
15 the later date shall be the effective date.

16 ~~(3)~~ (4) The secretary of state may prescribe a
17 format, style and arrangement for rules which are filed
18 pursuant to this act and may refuse to accept the filing of
19 any rule that is not in substantial compliance therewith. He
20 shall keep and maintain a permanent register of all rules
21 filed (including superseded and repealed rules), which shall
22 be open to public inspection, and shall provide copies of
23 any rule upon request of any person or agency. Unless
24 otherwise provided by statute, the secretary of state may
25 require the payment of the cost of providing such copies."

-End-

-12-