

1 *Senate* BILL NO. *268*
 2 INTRODUCED BY *LYNCH Flynn Turnage*
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A PERMANENT
 5 JOINT INTERIM COMMITTEE OF THE LEGISLATURE KNOWN AS THE
 6 ADMINISTRATIVE CODE COMMITTEE; PROVIDING FOR THE REVIEW OF
 7 RULES PROPOSED TO BE ADOPTED UNDER THE ADMINISTRATIVE
 8 PROCEDURE ACT BY THE COMMITTEE; AUTHORIZING THE COMMITTEE TO
 9 SUSPEND RULES UNTIL THE NEXT REGULAR LEGISLATIVE SESSION;
 10 AMENDING SECTION 84-4204, R.C.M. 1947; AND PROVIDING AN
 11 EFFECTIVE DATE."

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

14 Section 1. Administrative code committee --
 15 appointment and term of members -- officers. The
 16 administrative code committee consists of four (4) members
 17 of the senate and four (4) members of the house of
 18 representatives appointed before the sixtieth legislative
 19 day of the regular session in the same manner as standing
 20 committees of the respective houses are appointed. A
 21 vacancy on the committee occurring when the legislature is
 22 not in session shall be filled by the selection of a member
 23 of the legislature by the remaining members of the
 24 committee. No more than two (2) of the appointees of each
 25 house may be members of the same political party. A member

1 of the same political party. A member of the committee
 2 shall serve until his term of office as a legislator ends or
 3 until the end of the sixtieth legislative day of the session
 4 of the biennium following his appointment or until his
 5 successor is appointed, whichever occurs first. The
 6 committee shall elect one (1) of its members as chairman and
 7 such other officers as it deems necessary.

8 Section 2. Meetings. The committee shall meet as often
 9 as may be necessary, during and between legislative
 10 sessions. Committee members shall be reimbursed from the
 11 appropriation to the legislative council for their actual
 12 and necessary expenses incurred as a result of interim
 13 meetings, and paid compensation as provided by law for
 14 interim standing committees.

15 Section 3. Appointment of employees and consultants.
 16 The administrative code committee may appoint whatever
 17 employees, consultants, or counsel are necessary to carry
 18 out the provisions of this act, within the limitations of
 19 legislative appropriations.

20 Section 4. Hearings -- suspension of rule -- notice --
 21 publication. The committee shall consider all rules
 22 referred to it under section 82-4204, and shall conduct
 23 hearings on such rules as it considers necessary. The
 24 committee may suspend any rule promulgated subsequent to the
 25 adjournment of the last preceding regular session of the

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1 legislature. The committee shall notify the promulgating
 2 state agency and the secretary of state of any rule it
 3 suspends, which rule shall not be published in the
 4 administrative code or supplement while so suspended. The
 5 period of suspension runs until the next regular session of
 6 the legislature convenes. The committee shall report each
 7 suspension to the next legislature.

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

10 *82-4204. Adoption -- amendment or repeal of rules --
 11 emergency rules. (1) Prior to the adoption, amendment or
 12 repeal of any rule, the agency shall:

13 (a) Give written notice of its intended action. The
 14 notice shall include a statement of either the terms or
 15 substance of the intended action or a description of the
 16 subjects and issues involved, and the time when, place
 17 where, and manner in which interested persons may present
 18 their views thereon. The notice shall be filed with the
 19 secretary of state for publication in the Montana
 20 administrative register as provided in section 6 (2)
 21 [82-4206 (2)] of this act and mailed to persons who have
 22 made timely requests to the agency for advance notice of its
 23 rule-making proceedings. The notice shall be published and
 24 mailed at least twenty (20) days in advance of the agency's
 25 intended action. If any statute shall provide for a

1 different method of publication, the affected agency shall
 2 comply with the statute in addition to the requirements
 3 contained herein. However, in no case shall the notice
 4 period be less than twenty (20) days.

5 (b) Afford interested persons reasonable opportunity to
 6 submit data, views or arguments, orally or in writing. In
 7 the case of substantive rules, opportunity for oral hearing
 8 shall be granted if requested by either ten per cent (10%)
 9 or twenty-five (25) of the persons who will be directly
 10 affected by the proposed rule, by a governmental subdivision
 11 or agency or by an association having not less than
 12 twenty-five (25) members who will be directly affected.
 13 Contested case procedures need not be followed in hearings
 14 held pursuant to this section. Where a hearing is otherwise
 15 required by statute, nothing herein shall be deemed to alter
 16 that requirement. The agency shall consider fully written
 17 and oral submissions respecting the proposed rule. Upon
 18 adoption of a rule, an agency, if requested to do so by an
 19 interested person either prior to adoption or within thirty
 20 (30) days thereafter, shall issue a concise statement of the
 21 principal reasons for and against its adoption,
 22 incorporating therein its reasons for overruling the
 23 considerations urged against its adoption.

24 (c) Refer each rule proposed to be adopted, following
 25 compliance with paragraphs (a) and (b), to the

1 administrative code committee of the legislature.

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

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

18 (4) An agency may use informal conferences and
19 consultations as a means of obtaining the viewpoints and
20 advice of interested persons with respect to contemplated
21 rule making. An agency may also appoint committees of
22 experts or interested persons or representatives of the
23 general public to advise it with respect to any contemplated
24 rule making. The powers of the committees shall be advisory
25 only. Nothing herein shall relieve the agency from following

1 rule-making procedures required by this act.

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

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

13 Section 6. This act is effective upon passage and
14 approval.

-End-

Approved by Committee
on Judiciary

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2 INTRODUCED BY LYNCH, FLYNN, TURNAGE

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17 of the senate and four (4) members of the house of
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19 day of the regular session in the same manner as standing
20 committees of the respective houses are appointed. A
21 vacancy on the committee occurring when the legislature is
22 not in session shall be filled by the selection of a member
23 of the legislature by the remaining members of the
24 committee. No more than two (2) of the appointees of each
25 house may be members of the same political party. A member

1 ~~of the same political party.~~ A member of the committee shall
2 serve until his term of office as a legislator ends or until
3 the end of the sixtieth legislative day of the session of
4 the biennium following his appointment or until his
5 successor is appointed, whichever occurs first. The
6 committee shall elect one (1) of its members as chairman and
7 such other officers as it deems necessary.

8 Section 2. Meetings. The committee shall meet as often
9 as may be necessary, during and between legislative
10 sessions. Committee members shall be reimbursed from the
11 appropriation to the legislative council for their actual
12 and necessary expenses incurred as a result of interim
13 meetings, and paid compensation as provided by law for
14 interim standing committees.

15 Section 3. Appointment of employees and consultants.
16 The administrative code committee may appoint whatever
17 employees, consultants, or counsel are necessary to carry
18 out the provisions of this act, within the limitations of
19 legislative appropriations.

20 Section 4. Hearings~~----~~suspension-of-rule~~----~~notice~~---~~
21 publication~~---~~The-committee-shall-consider~~----~~all~~---~~rules
22 referred-to-it-under-section-82-4204-and-shall-conduct
23 hearings-on-such-rules-as-it-considers-necessary~~---~~The
24 committee-may-suspend-any-rule-promulgated-subsequent-to-the
25 adjournment-of-the-last-preceding-regular-session-of-the

~~legislature. The committee shall notify the promulgating state agency and the secretary of state of any rule it suspends, which rule shall not be published in the administrative code or supplement while so suspended. The period of suspension runs until the next regular session of the legislature convenes. The committee shall report each suspension to the next legislature.~~ POWERS OF THE COMMITTEE.

(1) THE COMMITTEE SHALL REVIEW ALL PROPOSED RULES REFERRED TO IT UNDER SECTION 82-4202 AND MAY:

(A) PREPARE WRITTEN RECOMMENDATIONS FOR THE ADOPTION, AMENDMENT OR REJECTION OF A RULE AND SUBMIT THOSE RECOMMENDATIONS TO THE DEPARTMENT PROPOSING THE RULE WHEN A RULE-MAKING HEARING WILL NOT BE HELD IN ACCORDANCE WITH THE PROVISIONS OF SECTION 82-4204;

(B) PREPARE RECOMMENDATIONS FOR THE ADOPTION, AMENDMENT OR REJECTION OF A RULE AND SUBMIT ORAL OR WRITTEN TESTIMONY AT A RULE-MAKING HEARING; OR

(C) REQUEST THAT A RULE-MAKING HEARING BE HELD IN ACCORDANCE WITH THE PROVISION OF SECTION 82-4204.

(2) THE COMMITTEE SHALL PREPARE A REPORT TO THE LEGISLATURE AT LEAST ONCE EACH BIENNIUM AND MAY RECOMMEND AMENDMENTS TO THE ADMINISTRATIVE PROCEDURE ACT OR THE REPEAL, AMENDMENT OR ADOPTION OF A RULE AS PROVIDED IN SECTION 82-4203.1.

Section 5. Section 82-4204, R.C.M. 1947, is amended to

read as follows:

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

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

(b) Afford interested persons reasonable opportunity to submit data, views or arguments, orally or in writing. In the case of substantive rules, opportunity for oral hearing 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, an agency, if requested to do so by an
 11 interested person either prior to adoption or within thirty
 12 (30) days thereafter, shall issue a concise statement of the
 13 principal reasons for and against its adoption,
 14 incorporating therein its reasons for overruling the
 15 considerations urged against its adoption.

16 (c) Refer each rule proposed to be adopted, following
 17 compliance with paragraphs (a) and (b), to the
 18 administrative code committee of the legislature.

19 (2) If an agency finds that an imminent peril to the
 20 public health, safety or welfare requires adoption of a rule
 21 upon fewer than twenty (20) days' notice and states in
 22 writing its reasons for that finding, it may proceed,
 23 without prior notice or hearing or upon any abbreviated
 24 notice and hearing that it finds practicable, to adopt an
 25 emergency rule. The rule may be effective for a period not

1 longer than one hundred and twenty (120) days, but the
 2 adoption of an identical rule under subsections (1) (a) and
 3 (1) (b) of this section is not precluded. The sufficiency of
 4 the reasons for a finding of imminent peril to the public
 5 health, safety or welfare shall be subject to judicial
 6 review.

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

10 (4) An agency may use informal conferences and
 11 consultations as a means of obtaining the viewpoints and
 12 advice of interested persons with respect to contemplated
 13 rule making. An agency may also appoint committees of
 14 experts or interested persons or representatives of the
 15 general public to advise it with respect to any contemplated
 16 rule making. The powers of the committees shall be advisory
 17 only. Nothing herein shall relieve the agency from following
 18 rule-making procedures required by this act.

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 20 language. Whenever it is necessary to refer to statutory
 21 language in order to convey the meaning of a rule
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 23 indicate that portion of the language which is statutory and
 24 the portion which is amplification of the language. Each
 25 rule shall include a citation of authority pursuant to which

1 it, or any part thereof, is adopted.

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

5 Section 6. This act is effective upon passage and
6 approval.

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THIRD READING

~~legislature. The committee shall notify the promulgating state agency and the secretary of state of any rule it suspends, which rule shall not be published in the administrative code or supplement while so suspended. The period of suspension runs until the next regular session of the legislature convenes. The committee shall report each suspension to the next legislature.~~ POWERS OF THE COMMITTEE.

(1) THE COMMITTEE SHALL REVIEW ALL PROPOSED RULES REFERRED TO IT UNDER SECTION 82-4202 AND MAY:

(A) PREPARE WRITTEN RECOMMENDATIONS FOR THE ADOPTION, AMENDMENT OR REJECTION OF A RULE AND SUBMIT THOSE RECOMMENDATIONS TO THE DEPARTMENT PROPOSING THE RULE WHEN A RULE-MAKING HEARING WILL NOT BE HELD IN ACCORDANCE WITH THE PROVISIONS OF SECTION 82-4204;

(B) PREPARE RECOMMENDATIONS FOR THE ADOPTION, AMENDMENT OR REJECTION OF A RULE AND SUBMIT ORAL OR WRITTEN TESTIMONY AT A RULE-MAKING HEARING; OR

(C) REQUEST THAT A RULE-MAKING HEARING BE HELD IN ACCORDANCE WITH THE PROVISION OF SECTION 82-4204.

(2) THE COMMITTEE SHALL PREPARE A REPORT TO THE LEGISLATURE AT LEAST ONCE EACH BIENNIUM AND MAY RECOMMEND AMENDMENTS TO THE ADMINISTRATIVE PROCEDURE ACT OR THE REPEAL, AMENDMENT OR ADOPTION OF A RULE AS PROVIDED IN SECTION 82-4203.1.

Section 5. Section 82-4204, R.C.M. 1947, is amended to

read as follows:

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

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

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 2 affected by the proposed rule, by a governmental subdivision
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 11 interested person either prior to adoption or within thirty
 12 (30) days thereafter, shall issue a concise statement of the
 13 principal reasons for and against its adoption,
 14 incorporating therein its reasons for overruling the
 15 considerations urged against its adoption.

16 (c) Refer each rule proposed to be adopted, following
 17 compliance with paragraphs (a) and (b), to the
 18 administrative code committee of the legislature.

19 (2) If an agency finds that an imminent peril to the
 20 public health, safety or welfare requires adoption of a rule
 21 upon fewer than twenty (20) days' notice and states in
 22 writing its reasons for that finding, it may proceed,
 23 without prior notice or hearing or upon any abbreviated
 24 notice and hearing that it finds practicable, to adopt an
 25 emergency rule. The rule may be effective for a period not

1 longer than one hundred and twenty (120) days, but the
 2 adoption of an identical rule under subsections (1) (a) and
 3 (1) (b) of this section is not precluded. The sufficiency of
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 8 act shall be valid unless adopted in substantial compliance
 9 with subsections (1) and (2) of this section.

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 11 consultations as a means of obtaining the viewpoints and
 12 advice of interested persons with respect to contemplated
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 14 experts or interested persons or representatives of the
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 17 only. Nothing herein shall relieve the agency from following
 18 rule-making procedures required by this act.

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5 Section 6. This act is effective upon passage and
6 approval.

-End-

COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL NO. 268

Be amended in the third reading copy as follows:

1. Amend title, page 1, lines 8 and 9.

Following: "COMMITTEE;"

Strike: "AUTHORIZING THE COMMITTEE TO SUSPEND RULES UNTIL THE NEXT
REGULAR LEGISLATIVE SESSION;"

2. Amend title, page 1, line 10.

Following: "SECTION"

Strike: "84-4204"

Insert: "82-4204"

AS SO AMENDED BE CONCURRED IN

SENATE BILL NO. 268

INTRODUCED BY LYNCH, FLYNN, TURNAGE

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21 ~~publication---The---committee---shall---consider---all---rules~~
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1 ~~legislature. The committee shall notify the promulgating~~
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 12 RECOMMENDATIONS TO THE DEPARTMENT PROPOSING THE RULE WHEN A
 13 RULE-MAKING HEARING WILL NOT BE HELD IN ACCORDANCE WITH THE
 14 PROVISIONS OF SECTION 82-4204;

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18 (C) REQUEST THAT A RULE-MAKING HEARING BE HELD IN
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 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, an agency, if requested to do so by an
 11 interested person either prior to adoption or within thirty
 12 (30) days thereafter, shall issue a concise statement of the
 13 principal reasons for and against its adoption,
 14 incorporating therein its reasons for overruling the
 15 considerations urged against its adoption.

16 (c) Refer each rule proposed to be adopted, following
 17 compliance with paragraphs (a) and (b), to the
 18 administrative code committee of the legislature.

19 (2) If an agency finds that an imminent peril to the
 20 public health, safety or welfare requires adoption of a rule
 21 upon fewer than twenty (20) days' notice and states in
 22 writing its reasons for that finding, it may proceed,
 23 without prior notice or hearing or upon any abbreviated
 24 notice and hearing that it finds practicable, to adopt an
 25 emergency rule. The rule may be effective for a period not

1 longer than one hundred and twenty (120) days, but the
 2 adoption of an identical rule under subsections (1) (a) and
 3 (1) (b) of this section is not precluded. The sufficiency of
 4 the reasons for a finding of imminent peril to the public
 5 health, safety or welfare shall be subject to judicial
 6 review.

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

10 (4) An agency may use informal conferences and
 11 consultations as a means of obtaining the viewpoints and
 12 advice of interested persons with respect to contemplated
 13 rule making. An agency may also appoint committees of
 14 experts or interested persons or representatives of the
 15 general public to advise it with respect to any contemplated
 16 rule making. The powers of the committees shall be advisory
 17 only. Nothing herein shall relieve the agency from following
 18 rule-making procedures required by this act.

19 (5) Rules shall not unnecessarily repeat statutory
 20 language. Whenever it is necessary to refer to statutory
 21 language in order to convey the meaning of a rule
 22 interpreting the language, the reference shall clearly
 23 indicate that portion of the language which is statutory and
 24 the portion which is amplification of the language. Each
 25 rule shall include a citation of authority pursuant to which

1 it, or any part thereof, is adopted.

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

5 Section 6. This act is effective upon passage and
6 approval.

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